



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. - 829 of 2022

Date of Institution: - 06.05.2022

Date of Decision: - 16.08.2022

Sukhraj Singh s/o Gian Singh r/o H.No 364, Street No. 2A, Guru Harikishan
Nagar, Phagwara, Punjab - 144401

....COMPLAINANT

VERSUS

Ruhil Promoter Pvt. Ltd., office 2nd Floor, Ruhil Tower, MIE Part-B, Delhi-
Rohtak Road, Bahadurgarh, Jhajjar, Haryana – 124507.

....RESPONDENT

Hearing:- 4th

Present:- Mr. Jasdeep Singh Advocate, Counsel for the complainants through
video conferencing
Ms. Navneet Advocate, Counsel for the respondent through video
conferencing

Saeha Gupta

JUDGEMENT:-

Brief facts of case of the complainant are:

1. In the year 2012, the complainant had applied for a residential apartment (measuring 1250 sq. ft.) in Ruhil Residency, Sector- 3, Bahadurgarh by making payment of booking amount of ₹2,50,000/-. The said booking amount was transferred in the account of respondent promoter on 28.09.2012. The total sale price for the said apartment was ₹31,05,000/-. On further demand raised by the respondent, the complainant had paid amount of ₹2,00,000/- on 13.03.2013, ₹3,50,000/- on 19.06.2013 and ₹1,00,000/- on 04.09.2013. The complainant was allotted Apartment no. H-1201, 12th Floor, Tower no. H-1 admeasuring 1250 sq. ft. vide allotment letter dated 04.09.2013. On 29.10.2013 apartment buyer agreement was executed by respondent with the complainant. As per agreement, the respondent had assured the complainant to handover possession of apartment within 36 months from the date of executing the agreement alongwith further grace period of 180 days. As per agreement, the respondent had also assured the complainant to provide the amenities, fittings and fixtures with best quality. The complainant kept on making the payments towards sale consideration of the said apartment and made a total payment of ₹25,47,906/-. As per agreement, the respondent was liable to handover possession of apartment by 29.10.2016. After considering the grace period, the respondent should have handed over the possession of the apartment with all amenities by 29.04.2017. Despite passing of 5 years, the respondent has failed to handover the possession of the said apartment

to the complainant. Respondent had intentionally executed apartment buyer agreement after one year of payment of first instalment. The complainant had also taken loan for purchase of said apartment. The complainant alongwith respondent and the bank had executed tripartite agreement dated 15.02.2014. The complainant has been paying regular instalments of loan. Bank is repeatedly sending letter for submission of title deed, failing which legal action would be taken against the complainant by the bank. Till date the respondent is not able to get occupation letter. The respondent has been deficient in providing services to the complainant as the complainant despite having made most of the payment towards sale consideration of the said apartment, the respondent has failed to handover the possession of the apartment and also failed to get executed conveyance deed of the apartment. The said conduct on the part of respondent reflects arbitrary, callous and monopolistic approach of the highest degree. The act of the respondent is unprofessional and unethical and contrary to established principles of law. The respondent cannot illegally and unjustly enrich itself and put the complainant, who is innocent allottee, at loss. The complainant by way of the present complaint had initially sought the relief directing the respondent to handover possession of the apartment along with amenities, fittings and fixtures as per agreement, directing the respondent to pay delay interest till the time respondent failed to handover physical possession of the unit, directing the respondent to execute conveyance deed in favour of the complainant, directing the respondent to pay compensation in the sum of ₹5,00,000/- for mental agony

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and harassment along with litigation cost of ₹1,00,000/-. On the first hearing i.e. on 06.07.2022, learned counsel for the complainant had withdrawn relief of possession along with delay interest. He had made a statement that the present complaint would be proceeded for compensation for mental agony and harassment along with litigation cost. Resultantly, now the complaint is seeking relief of compensation for mental agony and harassment along with litigation cost

2. Upon notice, respondent had appeared through counsel and filed reply taking preliminary objections that the complaint is misconceived, erroneous and untenable in the eyes of law. The reliefs claimed by the complainant do not fall with the jurisdiction of Adjudicating Officer. The complaint is not maintainable. The apartment buyer agreement was executed much prior to coming into force of RERA Act 2016. The complaint is not based on correct factual situation and the issues raised are not in right perspective. On merits, it has been submitted that the construction of entire project including both the phases has been completed and occupation certificate has also been issued by the concerned department. The respondent is ready to handover possession to the complainant. The complainant is putting vague and bald allegations upon the respondent and seeking interest for delayed possession. When the construction is complete and respondent is willing to offer the possession, the complainant is not entitled to any interest for delayed possession. The complainant is making false averments and levying false acquisitions upon the respondent so as to enrich himself wrongfully and extract extra payment from the respondent. Delay in

construction of the project was because of circumstances beyond the control of respondent. As per Clause 9(vii) of the agreement entered into between the parties, the complainant/allottee had agreed not to claim compensation of any nature. Despite that the present complaint has been filed. Despite force majeure conditions, the respondent was able to complete the unit. The complainant is living in a residential property and he has invested in the project of respondent for future gain purpose. The investment has been made by the complainant for his own benefit. He has been looking for a good apartment for his own purpose whether residential or commercial in Bahadurgarh. After detailed investigation of the project, the complainant had invested in the project of respondent. The complainant had himself approached the respondent for purchase of unit in the said project. It is denied that the complainant was under impression that possession would be handed over very soon. When the possession of unit is about to be handed over, the complainant is making unreasonable claims at such belated stage. Such claims of the complainant are mere counter blasts for his breaches and defaults which are not attributable to the respondent. Respondent has not adopted any unfair trade practice. The complainant has not approached the Court with clean hands and is trying to suppress material facts before the Court. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The sole objective of the complainant is to harass the respondent by making false and frivolous allegations

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against the respondent as the real estate market is slowed down. The complainant seems to be misusing this forum for quick gains by illegally claiming compensation with interest. The complaint is devoid of merits and has been filed by the complainant with sole motive to harass and pressurize the respondent to bow down to his illegal demands. The complaint is an abuse of process of law and is liable to be dismissed. Respondent company is not one of those developers who are trying to dupe and defraud the buyers by making false promises. The complainant has failed to bring on record anything contradictory in violation to the provisions of RERA Act 2016. Nowhere in the complaint any violation of provision of Act, 2016 has been mentioned. The complaint is liable to be dismissed on this ground alone.

3. On merits, it has been admitted by the respondent that a sum of ₹2,50,000/- has been paid by the complainant to the respondent, for which relevant documents have been placed on the record. The sale price of the unit does not include statutory charges, other charges and taxes etc. The complainant had delayed the execution of apartment buyer agreement. The respondent did not give any assurance with respect to amenities, fitting and fixtures. The complainant had approached the respondent and opted for purchase of said unit based on his own investigation and judgement. Based on documentary evidence, the complainant has paid ₹25,47,906/-. The said amount has been paid with various defaults. Hence respondent is also entitled to delayed payment of interest. The complainant had made payment till 2015 only and refused to pay further

instalments without any justification that hampers the completion of the project and the complainant is himself liable for making defaults of payment. The respondent has not delayed the developing of the project. The possession was to be given within the period of 36 months from the date of execution of agreement with further grace period of 180 days under normal circumstances excluding force majeure circumstances as per agreement. Moreover delay was occurred due to circumstances beyond the control of respondent. As per clause 9.1 of apartment buyer agreement, the respondent shall be entitled to a reasonable extension of time for delivery of possession of said unit when the situation is beyond the control of respondent i.e. force majeure. The said terms and conditions were agreed, consented and duly signed by the complainant at the time of execution of agreement. The construction of the project got effected for more than 1 year because of outburst of covid. It is denied that the respondent has been deficient in providing services to the complainant. The occupation certificate has been issued by the concerned department and the respondent is ready to deliver possession. The respondent has prayed for dismissal of the complaint.

4. Arguments of both learned counsel for the parties have been heard along with meticulous examination of the records of the case.

5. It is not disputed that in the year 2012, the complainant had booked a residential apartment measuring 1,250 sq. ft. in Ruhil Residency, Sector-3, Bahadurgarh by making a payment of booking amount in the sum of ₹2,50,000/- . The total sale price for the said apartment was ₹31,05,000/-. Sum of

₹25,47,906/- was paid by the complainant to the respondent company on different dates. The complainant was allotted apartment no.H-1201, 12th Floor, Tower no.H-1 vide allotment letter dated 04.09.2013. Apartment buyer agreement was executed between the respondent and the complainant on 29.10.2013. The possession of the apartment was to be handed over to the complainant within 36 months from the date of execution of apartment buyer agreement with further grace period of 180 days. It is the averment of learned counsel for respondent that offer of possession has already been made to the complainant. During the course of arguments, learned counsel for respondent was asked to submit in the Court, copy of offer of possession allegedly given to the complainant. An e-mail has been sent by the respondent counsel on the official mail of Hon'ble Authority. On downloading the said mail, it has been noticed that the said alleged offer of possession is not addressed to any allottee. Rather it is a general letter even without bearing any date. Instead of sending separate letters of offer of possession to all the allottees, a general undated letter has been prepared without referring to any particular allottee and also without attaching statement of account of that particular allottee. Learned counsel for respondent has argued that reminders were also sent to the complainant for taking possession of the respective unit after clearing the dues. The copy of said reminder has been sent by e-mail by learned counsel for respondent. The copy of said reminder shows that even it is also not addressed to any allottee or the present complainant. Though it has been written that the company has received occupation certificate on 17.03.2022, yet statement

of account has not been attached with the said letter. It has been mentioned that the holding charges of the unit would be started from the day of having received occupation certificate and maintenance charges from 21.03.2022. It is very interesting to note that even this reminder does not bear date and is not addressed to any allottee or the present complainant. Without providing statement of account, the allottees are being told to clear the dues and take possession of the unit. Learned counsel for respondent has mailed another document, which is addressed to Sukhraj Singh, the present complainant and on the top of the said document, 'Provisional Demand Letter Ruhil Residency' has been written. Learned counsel for the respondent has also sent copy of courier receipt showing sending of the said letter to Sukhraj Singh and the date has been mentioned as 01.07.2022. In the reply it has been mentioned by learned counsel for complainant that intimation was given to complainant that the respondent company had received occupation certificate on 17.03.2022 and holding charges would be started from the day of having received occupation certificate and maintenance charges from 21.03.2022. The Provisional Demand Letter is being sent on 01.07.2022 and from intelligently the respondent has told the complainant to charge holding charges from 17.03.2022 and maintenance charges from 21.03.2022, without intimating anything to the complainant. It is also pertinent to mention here that the present complaint has been filed on 06.05.2022. Till the pendency of the present complaint, letter showing Provisional Demand has been allegedly sent to the complainant. Before this demand letter, all the documents

were being mailed without mentioning any date and without mentioning the name of any allottee, they have no relevancy at all. It does not stand proved that at any point of time valid offer of possession was made to the complainant by the respondent company after receiving occupation certificate.

6. It stands proved on the record that a sum of ₹2,50,000/- was paid by the complainant and it was transferred in the account of respondent company on 28.09.2012. The complainant had paid an amount of ₹2,00,000/- on 13.03.2013, ₹3,50,000/- on 19.06.2013 and ₹1,00,000/- on 04.09.2013, ₹11,06,249/- on 10.03.2014, ₹2,79,131/- on 04.04.2015, ₹23,176/- on 22.06.2015 and ₹2,39,350/- on 10.07.2015. Thus total amount of ₹25,47,906/- has been paid by the complainant Sukhraj Singh to the respondent. Though a number of letters have been mailed by learned counsel for respondent with regard to giving offer of possession to the complainant or first reminder or second reminder for taking possession of apartment on payment of balance amount, yet in the foregoing paragraphs it has been observed that at no point of time, valid offer was given by the respondent company to the complainant. Meaning thereby, the amount which was being paid by the complainant since 2012 has been utilized by the respondent to its advantage and it has caused wrongful gain to the respondent and wrongful loss to the complainant, which entitles the complainant for payment of compensation as per provisions of Section 71 of the Act. Since, respondent has failed to prove valid offer of possession, compensation is being granted till the date of passing of order.

7. As per observations of Hon'ble Apex Court in Civil Appeal No.6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. v/s DLF Southern Homes Pvt Ltd (now known as BEGUM OMR Homes Pvt. Ltd.) and Ors. it has been observed that compensation @ 6% p.a. is to be paid to the allottee/home buyer.

8. The calculation of compensation is tabulated below:

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹2,50,000/-	28.09.2012 to 16.08.2022	6 %	₹1,48,356/-
₹2,00,000/-	13.03.2013 to 16.08.2022	6 %	₹1,13,227/-
₹3,50,000/-	19.06.2013 to 16.08.2022	6 %	₹1,92,510/-
₹1,00,000/-	04.09.2013 to 16.08.2022	6 %	₹53,737/-
₹11,06,249/-	10.03.2014 to 16.08.2022	6 %	₹5,60,459/-
₹2,79,131/-	04.04.2015 to 16.08.2022	6 %	₹1,23,521/-
₹23,176/-	22.06.2015 to 16.08.2022	6 %	₹9,955/-
₹2,39,350/-	10.07.2015 to 16.08.2022	6 %	₹1,02,101/-
₹25,47,906			₹13,03,866/-

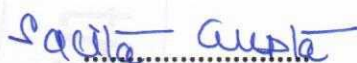
9. In the relief clause the complainant has demanded ₹5,00,000/- as compensation on account of mental agony and harassment. Since the complainant has demanded ₹5,00,000/-, he cannot be given more than the relief claimed.

Hence the compensation on account of mental agony and harassment is restricted to ₹5,00,000/- and ₹25,000/- is granted as cost of litigation. The total amount to be paid to the complainant comes to ₹5,00,000/- + ₹25,000/- = ₹5,25,000/-.

10. In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹5,25,000/- (Rupees Five Lakhs Twenty Five Thousand only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

11. The present complaint stands **disposed of**. File be consigned to record room after uploading of this order on the website of the Authority.

16.08.2022


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 12 pages and all the pages have been checked and signed by me.