



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. – 793 of 2022
Date of Institution: - 04.05.2022
Date of Decision: - 25.08.2022

Som Prakash Agarwala s/o Sh. Kedar Nath Agarwala r/o H.No C-1-64, Rajasthali
Apartments, Pitampura, Delhi- 110034

....COMPLAINANT

VERSUS

Ansal Properties & Infrastructure Ltd., office 115 Ansal Bhawan, 16, Kasturba
Gandhi Marg, New Delhi - 110001

....RESPONDENT

Hearing:- 4th

Present:- Mr. Akshat Mittal Advocate, Counsel for the complainant through
video conferencing
Mr. Ajay Ghangas Advocate, Counsel for the respondent through
video conferencing

Squite Gupta

JUDGEMENT:-

Brief facts of case of the complainant are:

1. On 16.01.2006, the complainant was approached by representatives of respondent company with their newly launched advance registration scheme, committing to book flats out of their newly launched projects in Delhi NCR, which includes Sonipat and Gurugram from Haryana and Noida, Greater Noida and Ghaziabad from U.P. Scheme prescribed for making payment of advance deposit depending on size of the flat @ ₹1,600/- per sq. ft. with commitment to allot a flat. On 19.01.2006, the complainant had made payment of ₹4,50,000/- advance deposit, whereby the respondent was committed to allot a flat measuring 1800 sq. ft. to 2000 sq. ft., 4 bedroom @ ₹1,600/- per sq. ft. In pursuance to said booking, the respondent had issued allotment letter dated 09.11.2006 in favour of the complainant vide which flat no. 3, 6th Floor, Tower 35 measuring 1850 sq. ft. in Green Escape Complex, Sonipat was allotted to the complainant on basic sale price of ₹29,60,000/-. It was also mentioned in the allotment letter that basic development work at the site has commenced. The complainant had further made payment of ₹3,49,200/- vide demand draft dated 03.04.2007 drawn on Punjab National Bank, a sum of ₹1,77,600/- vide demand draft dated 28.05.2007 drawn on Punjab National Bank. Lastly he had paid ₹1,77,600/- on 11.02.2008. A total payment of ₹11,54,400/- has been duly made on the basis of demands raised by the respondent. Flat buyers agreement was executed between the parties on 09.02.2007. As per clause 6 of flat buyers agreement, it was construction linked

payment plan. As per clause 12 of flat buyers agreement dated 09.02.2007, the respondent was duty bound to hand over possession of the flat within a period of 30 months. As such the possession could have been offered latest within a period of 30 months from the execution of agreement dated 09.02.2007, which comes out to 09.08.2009. The construction of the tower was never started. Respondent has failed to deliver the possession of the flat even after delay of $16\frac{1}{2}$ years since the payment of booking amount and more than $12\frac{1}{2}$ years from the due date of possession as per agreement. It has been admitted by the respondent that the construction work in the project has been abandoned and there is no progress at the site. All the demands of amount raised by the respondent company were false as the construction work of tower no.35 was not even commenced. The respondent has played a fraud on the complainant under a pre-planned scheme with the consent and connivance of Directors and senior officials of the company. The funds collected from the allottees of tower no. 35 were diverted to finance the management of other business. The terms and conditions enumerated in flat buyers agreement are drafted mischievously with utmost cunning demeanour. The said agreement is unilateral and clearly against the model agreement for sale. The respondent company has intentionally, consciously, concoctedly and maliciously duped the complainant, who has invested his hard earned lifetime savings with the respondent company. The complainant has repeatedly and continuously expressed discontent and objected to delay and malafide attitude of the respondent towards allottees. The complainant has made numerous requests

and made efforts seeking redressal of his grievances. The respondent has left no stone unturned to harass the innocent allottee and the money paid to the respondent has been struck with it for more than a continuous period of 16 years. The complainant has been waiting with utmost patience in the hope of getting possession of the flat. Owing to false statements in advance registration scheme launched by the respondent, the complainant has sustained heavy losses. The respondent has neither constructed the tower in which flat was allotted to the complainant nor offered any alternate flat in other project of respondent in NCR region. The complainant decided to withdraw from the project of the respondent and is entitled to refund of entire investment along with interest and compensation. Complaint bearing no. 696 of 2020 is pending before Hon'ble Authority for refund of the paid amount. As per provisions of the Act, it becomes abundantly clear that intention of legislature is that allottee cannot be forced to continue with the project on an occasion where there is a clear violation of Section 18(1)(a) of the Act on the part of developer and that the allottee has right to seek refund of entire amount paid to the promoter apart from compensation to be adjudicated upon by learned Adjudicating Officer. The delays and malafides on the part of respondent have resulted into extreme disproportionate gain and unfair advantage to the respondent which has been in continuous possession of the amounts paid by the complainant without any intention to comply with the promises. The cause of action is continuous and the default is repetitive in nature. The possession of the flat has not been handed over despite a lapse of more than

17½ years from the date of booking. The complainant is a super senior citizen and the respondent has extremely harassed the innocent complainant. It has repeatedly lied about the status of construction and has cunningly concealed the true picture and the pathetic state of affairs. The complainant was kept in dark which amounts to extra ordinary mental harassment. On 07.03.2012, the respondent gave golden opportunity to the allottees to get interest waiver on the outstanding dues. The respondent asked the complainant to clear the outstanding dues on or before 30.03.2012 mentioning that in the past also the complainant was given such opportunities of waiver of interest and this was the last and final opportunity. The said letter was absolutely wrong with there being no outstanding amount payable on the part of complainant. The above said letter was duly replied by the complainant. Despite that the respondent issued a demand letter dated 14.03.2012 demanding payment of ₹2,74,465/- as un-paid interest liability, whereas the outstanding dues of the complainant were nil and the same was also confirmed by the respondent company. The said letter was duly replied by the complainant vide letter dated 19.03.2012. Instead of rectifying the demands and amending the conduct, the respondent company kept on issuing other fraudulent demand letters. The complainant along with other aggrieved allottees held a meeting with senior executives of respondent company on 19.03.2019 where the respondent had admitted the factum of non-construction and non-delivery of flats and assured to revert back with a scheme for issuing interest and compensation etc. No such scheme was ever launched or communicated by the respondent to the

complainant. Aggrieved by the same, the complainant has issued notice dated 18.04.2019 to the respondent. Since no reply was given by the respondent, the complainant had issued another notice dated 23.12.2019 to respondent company. On 01.03.2020, the complainant along with his son made a visit to Sonipat office of respondent company. He was informed that there was no immediate plan to start the construction of tower no. 35. The representatives of respondent company also ruled out possibility of allotment of any other alternative accommodation to the complainant. The complainant has been made to suffer extreme mental harassment and distress at the end of respondent. Even the request of alternate flat has been turned down by the respondent company. The respondent is evading its responsibility on one pretext or the other. The direct and indirect effects of actions and malafides of respondent company in not offering possession of the flat, have left unimaginable and endless count of mental, physical and financial harassment. The complainant has also suffered huge pecuniary loss as the cost of construction has escalated during these 17 years. The price of the flat in question at the time of booking 17 years back in January 2006 was agreed at ₹1,600/- per sq. ft. Prices of similar properties in the area have risen manifolds. Complainant is now forced to purchase another apartment elsewhere with highly escalated prevailing market value of similar flat which would now be around 5 times of the rates prevailing in the year 2006-2007. On the other hand respondent would drive huge gains being in possession of 30 acres of land of Green Escape Society. Hence it has necessitated filing of complaint.

2. Upon notice, respondent appeared through counsel and filed reply taking preliminary objections that the complaint is not maintainable, the complainant has not come to the Court with clean hands and concealed true and material facts. The complaint is totally based on falsehood. The complainant has concealed this fact that earlier also he had filed complaint bearing no. 696 of 2020 under Section 31 of RERA Act before this Court on the same facts and praying for similar relief. On merits, the respondent has submitted that construction against unit no. 0130-0-350603, Green Escape has been abandoned by the respondent and in these circumstances, the respondent had offered alternate unit to the complainant. During the course of arguments before Hon'ble Authority, the respondent had offered to allot another unit to the complainant in the same project but the complainant had refused to accept the said offer and claimed refund of amount with interest. The said complaint was allowed vide order dated 05.05.2022 and refund of the amount paid by the complainant was allowed along with interest @ Rule 15 of RERA Rules. In the present complaint, the complainant concealed the facts regarding filing of the previous complaint and has prayed for the same relief which was claimed in the previous complaint, which has already decided by Hon'ble Authority. The request of alternative flat was declined by the complainant himself. The complainant has miserably failed to make out a case for compensation against the respondent. Hence the present complaint on the same facts is not maintainable. The complainant has raised false and frivolous issues in order to unnecessarily harass and pressurise the

respondent. The relief sought by the complainant is wrong and misleading. The respondent is not liable to pay any amount of compensation to the complainant and no penalty can be imposed on the respondent. The complaint is liable to be dismissed with costs.

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

4. Perusal of records shows that the complainant has claimed booking of flat measuring 1800-2000 sq. ft. in Green Escape @ 1,600/- per sq. ft. On 19.01.2006, the complainant had paid ₹4,50,000/- vide cheque drawn on Allahabad Bank, Delhi. The copy of receipt in the said amount has been placed on record as Annexure C-3(a). The complainant had paid ₹3,49,200/- vide demand draft dated 03.04.2007 drawn on PNB. The copy of receipt of amount of ₹3,49,200/- has been placed on record as Annexure C-3(b). On 28.05.2007, the complainant had paid ₹1,77,600/- copy of receipt of the said amount has been placed on record as Annexure C-3(c). The complainant has also paid an amount of ₹1,77,600/- on 11.02.2008 and the copy of receipt of the said amount has been placed on record as Annexure C-3(d). Thus it is proved on the record that since 19.01.2006 till 11.02.2008, a total sum of ₹11,54,400/- has been paid by the complainant to the respondent company. Flat buyer agreement was executed between the parties on 09.02.2007, copy of which has been placed on the record as Annexure C-4, vide which Apartment no. 03, 6th Floor, Tower 35 having area of 1850 sq. ft. was allotted to the complainant at rate of ₹1,600/- per sq. ft., for

which the basic price comes to ₹29,60,000/-. As per clause 12 of the said builder buyer agreement, the possession of the flat would be handed over to the allottee within 30 months from the date of execution of builder buyer agreement. Since builder buyer agreement was executed on 09.02.2007, possession of the flat was to be delivered upto 09.08.2009. It is proved on the record that till date, possession has not been delivered by respondent company to the complainant. The complainant has stated in his complaint that the construction work had not been started on the site. It has not been denied by the respondent company. At the time of filing of written statement/reply, it has been mentioned that complainant was offered alternate flat but the request of the alternate flat was declined by the complainant. On the other hand, it is a plea of the complainant that at no point of time any alternate flat was offered to him. The respondent company has not placed on record any document showing that alternate flat was offered to the complainant. Moreover, the complainant/allottee is not bound to accept the offer of alternate flat, if originally allotted flat has not been constructed or cannot be offered for possession for any other reason. If the complainant has chosen not to take alternate flat, it cannot be said that complainant was at fault. Learned counsel for respondent has argued that there was concealment of fact on the part of complainant that he had previously filed Complaint no.696 of 2020 before Hon'ble Authority. Perusal of the record shows that the complainant has himself mentioned in para no.20 of the complaint that Complaint no.696 of 2020 was filed seeking refund of the amount paid by the complainant along with interest which

was pending at the time of filing of complaint. At the time of arguments in the present case, it has been informed by both learned counsel for the parties that Complaint no.696 of 2020 has been disposed of by Hon'ble Authority vide order dated 05.05.2022 allowing refund along with interest in favour of the complainant. Though it has been argued by learned counsel for respondent that interest has already been allowed in favour of the complainant and there is no need for compensation, yet it is pertinent to mention here that compensation for mental agony and harassment is the right of the complainant and altogether different from the interest awarded.

5. As per provisions of Section 71 of RERA Act, an allottee is entitled to compensation if the promoter has violated any of the provisions under Section 12, 14, 18 and 19 of the Act. At the time of awarding compensation, the amount of disproportionate gain or unfair advantage taken by the promoter has to be considered along with amount of loss caused as a result of default by the promoter. It is apparent

on the record that since the year 2006 till February 2008, the complainant had paid total sum of ₹11,54,400/- and the respondent kept on enjoying the fruits of said deposit for long 16 years. Neither possession was offered nor any amount was given back to the complainant. On the other hand, respondent kept on sending demand letters to the complainant asking for the remaining amount. It is repetitive nature of default. The respondent has taken unfair advantage and has also gained disproportionately. Even after payment of ₹11,54,400/- 14-15 years back, the

complainant is deprived to use his own money which can be said as loss caused to the complainant. The amount is quantifiable.

6. As per observations of Hon'ble Apex Court in Civil Appeal No.6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleva 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 for default of the promoter, compensation @ 6% p.a. is to be paid to the allottee/home buyer.

7. Though refund along with interest has been allowed by Hon'ble Authority vide order dated 05.05.2022, yet it has been informed by learned counsel for the complainant that till date no payment has been made by the respondent. Hence compensation is being calculated till the date of passing of order in the present case.

8. The calculation of compensation is tabulated below:

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹4,50,000/-	19.01.2006 to 25.08.2022	6 %	₹4,48,496/-
₹3,49,200/-	03.04.2007 to 25.08.2022	6 %	₹3,22,833/-
₹1,77,600/-	28.05.2007 to 25.08.2022	6 %	₹1,62,584/-
₹1,77,600/-	11.02.2008 to 25.08.2022	6 %	₹1,55,023/-
₹11,54,400			₹10,88,936/-

9. The complainant is also awarded ₹25,000/- as cost of litigation.
10. The complainant has also sought compensatory interest @ 20% per annum bounded monthly on the entire amount deposited by the complainant with effect from the relevant dates of deposit.
11. In the foregoing paragraphs, compensation for mental harassment and agony along with cost of litigation has been awarded under relief 2 and 3 respectively to the complainant. Section 71(3) reads as:

While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

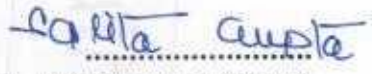
As per provisions of Section 71(3) of the Act, the words used are compensation or interest, the words used are not compensation and interest. Since the compensation is being awarded no interest has been awarded separately as claimed by the complainant. Hence no compensatory interest is being awarded under relief 1.

12. The total compensation comes to ₹10,88,936/- + ₹25,000 (cost of litigation) = ₹11,13,936/- (Rupees Eleven Lakh Thirteen Thousand Nine Hundred Thirty Six only).

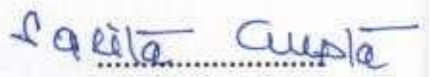
13. Sequel to aforesaid observations, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹11,13,936/- (Rupees Eleven Lakh Thirteen Thousand Nine Hundred Thirty Six only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

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

25.08.2022


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 13 pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER