



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint no. 385 of 2022

Date of Institution: 24.03.2022

Date of Decision: 07.06.2022

Dr. Pratima w/o Dr. Ravi Kumar r/o village Pucca Tala, P.O. Kandwal, Tehsil Nurpur, District Kangra, Himachal Pradesh

....COMPLAINANT

VERSUS

M/s Ansal Crown Infrabuild Pvt. Ltd., 118 UFF, Prakash Deep Building, 7, Tolstoy Marg, New Delhi – 110001, through its Managing Director.

....RESPONDENT

Hearing: 3rd

Present: - Sh. Anuj Chauhan Advocate, Counsel for the complainant through video conferencing
Respondent ex-parte

Soeila Gupta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. In November 2010, the complainant had booked a unit having an area of 3116 sq. ft. in Ansal Crown Height, project of respondent for total sale consideration of ₹83,11,930/-. An amount of ₹8,00,000/- was paid by the complainant in November itself. Vide allotment letter dated 18.12.2010 flat bearing no.T-2/303 was allotted to the complainant. On 09.11.2010 apartment buyer's agreement was executed between the respondent and the complainant. As per clause 4 of apartment buyer's agreement, possession of the flat was to be delivered within 36 months from the date of execution of apartment buyer's agreement. As per clause 4 of apartment buyer's agreement, the date of delivery of possession was 09.11.2013. The complainant strictly adhered to the schedule of payment linked plan. From 09.11.2010 to 12.09.2015 he had paid ₹50,48,126/- to the respondent. Since 09.11.2010 to 29.06.2016, the complainant had followed the respondent for updates of construction but the respondent had always avoided the queries of the complainant. On 09.11.2013, the possession of the flat became due but respondent defaulted in providing possession. Having paid huge amount, the complainant was sure that she would get possession of the flat but the hopes and confidence of the complainant have been shattered beyond imagination and it has become a constant harassment and mental torture besides financial loss the

complainant is suffering continuously. The respondent had gained undue enrichment by collecting huge sums from the buyers without any benefits to them. The respondent had also incorporated clauses which are to its own advantage and prejudicial to the interest of the complainant. After long time suffering and harassment, on 29.06.2016, the complainant was forced to file consumer complaint bearing no.203 of 2017 against the respondent before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula. Vide order dated 19.11.2018, Hon'ble State Commission directed the respondent to refund the amount of ₹50,48,126/- alongwith interest @12% p.a. from the date of respective deposits till the date of realization. It was also observed that if payment is not made within 2 months of the orders, the complainant would be entitled to get the interest @18% p.a. in defaulting period. The respondent was also directed to pay ₹3,00,000/- as compensation for mental agony and physical harassment and ₹21,000/- as litigation charges. Even after passing of orders by Hon'ble State Commission, the respondent neglected to comply with the order and committed contempt of Hon'ble State Commission. With intent to defeat the lawful right of the complainant, the respondent had filed first appeal bearing no.800 of 2019 before Hon'ble National Consumer Disputes Redressal Commission. Vide order dated 30.04.2019, Hon'ble National Commission upheld the order of refund passed by Hon'ble State Commission. On 03.05.2019, the complainant had filed execution application no.40 of 2019 before Hon'ble State Commission. Even after long and rigorous litigation, the complainant has not received any relief and

the mental agony and harassment of the complainant are continuing till date. By way of the present complaint, the complainant has sought compensation to the tune of ₹10,00,000/- for harassment, injury on account of mental agony, hardship and trauma both mental and physical along with interest, compensation of ₹10,00,000/- after holding respondent guilty of indulging into unfair trade practice and providing deficient services to the complainant, loss to the complainant from the date of which the breach took place and ₹1,00,000/- on account of litigation charges. The interim relief was sought by the complainant to the extent of ₹10,00,000/- to be deposited by the respondent.

2. Notice was successfully delivered upon the respondent. Despite that none had appeared on behalf of respondent despite giving two opportunities. Vide order dated 19.05.2022, the respondent was ordered to be proceeded against ex-parte.

3. Arguments of learned counsel for the complainant have been heard and documents placed on the record have been meticulously examined.

4. The complainant had booked a flat measuring 3116 sq. ft. in Ansal Crown Heights, project of respondent in November 2010 for total sale consideration of ₹83,11,930/-. An amount of ₹8,00,000/- was paid along with application form. On 18.12.2010, complainant was allotted flat bearing no.T-2/303. Copy of application form has been placed on the record as Annexure C1, proving initial payment of ₹8,00,000/-. Copy of allotment letter dated 18.12.2010 has been placed on record as Annexure C2 showing that flat no.303 Tower-2 measuring super area of 3116 sq. ft. at Ansal Crown Heights, Faridabad was

allotted to the complainant. Copy of apartment buyer's agreement dated 09.11.2010 has been placed on the record as Annexure C3. As per clause 4 of the said agreement, possession of flat would be delivered within a period of 36 months from the date of entering into agreement. Copy of customer ledger of the complainant in the account books of the respondent has been placed on record by learned counsel for complainant as Annexure C4 showing total payment of ₹50,48,126/- by the complainant. Despite all these documents, the possession of flat has not been delivered to the complainant. The complainant has herself stated in the complaint that she had filed consumer Complaint no.203 of 2017 before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula. Copy of order dated 19.11.2018 passed by said Commission has been placed on record as Annexure C5. Vide said order Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula had directed the respondent to refund amount of ₹50,48,126/- alongwith interest @ 12% p.a. from the date of respective deposits till realization. It has also awarded compensation of ₹3,00,000/- for mental agony and harassment and ₹21,000/- as litigation charges. Though it has been stated and argued by learned counsel for the complainant that the respondent had filed appeal before Hon'ble National Consumer Disputes Redressal Commission and appeal was dismissed, yet no copy of order of Hon'ble National Consumer Disputes Redressal Commission has been placed on record. The complainant has also stated that she had filed execution petition before Hon'ble State Consumer Disputes Redressal Commission, Haryana Panchkula, no copy

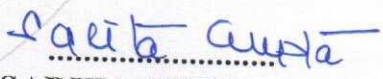
of said execution petition has been placed on record. In the event that the complainant did not succeed in execution of order dated 19.11.2018 passed by Hon'ble State Consumer Disputes Redressal Commission, Haryana, complainant opted to file the present complaint before different forum. In consumer case before Hon'ble State Consumer Disputes Redressal Commission, Haryana refund along with compensation for mental agony and harassment and litigation cost was sought, which was awarded. In the present complaint along with compensation for mental agony and harassment and litigation charges, the complainant has also sought compensation as respondent was indulging into unfair trade practice and also for providing deficient services to the complainant. At this stage, it is relevant to point it out here that when the relief of compensation for mental agony and harassment and litigation charges was demanded from Hon'ble State Consumer Disputes Redressal Commission, Haryana and was awarded, now for the same relief and for same cause of action, the complainant cannot file a complaint before this Court. Though, the additional reliefs compensation for respondent's indulging into unfair trade practice and also for providing deficient services to the complainant have been sought, yet it is relevant to mention here that these are not the separate reliefs for which separate complaint/petition would lie. These reliefs could also be asked at the time of filing case before Hon'ble State Consumer Disputes Redressal Commission, Haryana. The doctrine of res judicata becomes applicable to the present case. Meaning thereby, the relief of compensation for providing deficient services to the complainant and also for

respondent's indulging into unfair trade practices could also be sought from the same Court. The complainant has herself admitted that execution against order dated 19.11.2018 passed by Hon'ble State Consumer Disputes Redressal Commission, Haryana is pending before that Court only. The complainant is estopped from filing complaint/case at different forums for same reliefs and cause of action. If after obtaining decree from this Court, the respondent/judgment debtor fails to obey or execute the said decree/order, would the complainant move to some other forum demanding the same relief and for the same cause of action? The answer is obviously no. It would lead to multiplicity of litigation.

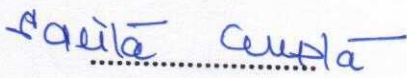
5. Resultantly, it is hereby observed that the present complaint is hit by principles of res judicata and not maintainable. For the same relief, the complainant cannot be permitted to choose any number of forums.

6. Sequel to aforesaid discussions and observations, this complaint is ordered to be dismissed with no order as to costs. File be consigned to record room after uploading of this order on the website of the Authority.

07.06.2022


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 7 pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER