



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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## BEFORE THE ADJUDICATING OFFICER

**Complaint No. – 883 of 2022**

**Date of Institution:- 06.05.2022**

**Date of Decision: - 18.11.2022**

Manjeet Singh s/o Late Amar Singh r/o H.No 2963, Sunny Enclave, Sector-125,  
Mohali, Punjab - 140301

....COMPLAINANT

VERSUS

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

....RESPONDENT

**Hearing:- 11<sup>th</sup>**

**Present:-** Mr. Jasdeep Singh Advocate, Counsel for the complainant  
Ms. Navneet Advocate, Counsel for the respondent

*Sachin Gupta*

**JUDGEMENT:-**

Brief facts of case of the complainants are:

1. In the year 2012, the complainant had applied for a residential apartment in Ruhil Residency, Sector- 3, Bahadurgarh measuring 1250 sq. ft. by making payment of booking amount of ₹2,50,000/-. The said booking amount was transferred in the account of respondent promoter on 25.09.2012. The total sale price for the said apartment was ₹30,42,500/-. On further demand raised by the respondent, the complainant paid amount of ₹2,00,000/- on 04.03.2013, ₹5,50,000/- on 05.06.2013 and ₹4,00,000/- on 06.11.2013. The complainant was allotted Apartment no. H-1202, 12<sup>th</sup> Floor, Tower no. H-2 admeasuring 1250 sq. ft. vide allotment letter dated 05.06.2013. On 24.08.2013 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, fitting and fixtures with best quality. The complainant kept on making the payments towards sale consideration of the said independent floor and made a total payment of ₹25,91,724/-. As per agreement, the respondent was liable to handover possession of apartment by 24.08.2016. After considering the grace period the respondent should have handed over the possession of the apartment with all amenities by 24.02.2017. 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 making first instalment. The complainant had also taken a loan in respect of the said apartment. The complainant alongwith respondent and the bank had executed tripartite agreement dated 03.02.2014. The complainant has been paying regular instalments of loan. Till date the respondent is not able to get occupation letter for the tower and has failed to offer actual possession of the said apartment with all the amenities and the facilities. 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, fitting 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 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 complainant is seeking relief of compensation for mental agony and harassment along with litigation cost. On 09.09.2022 learned counsel for complainant had moved an application for amendment of complaint, which was allowed. By way of amended complaint, the complainant has sought compensation for mental agony and harassment to the tune of ₹20,00,000/-.

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 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 itself by wrongfully extracting 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 is not attributable to the respondent. Respondent has not adopted 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 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 in violation to the provisions of RERA Act 2016. Nowhere in the complaint any violation of provisions of Act, 2016 has been mentioned. The complaint is liable to be dismissed on this ground alone. The complaint is not maintainable before Adjudicating Officer.

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 tax etc. The complainant had delayed the execution of apartment buyer agreement. The respondent did not give any assurance with respect to amenities, fittings and fixtures. The complainant had approached the respondent and opted for purchase of said unit based on his own investigations and judgements. Based on documentary evidence, the complainant has paid ₹25,91,724/-. The said amount has been paid

with various defaults. Hence respondent is also entitled to payment of delayed 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 conditions. Moreover delay was occurred due to some 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 of the apartment. The respondent has prayed for dismissal of the complaint.

4. Arguments of both learned counsel for the parties have been heard carefully 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 ₹30,42,500/-. Sum of ₹25,91,724/- was paid by the complainant to the respondent company on different dates. The complainant was allotted apartment no.H-1202, 12<sup>th</sup> Floor, Tower no.H-2 vide allotment letter dated 05.06.2013. Apartment buyer agreement was executed between the respondent and the complainant on 24.08.2013. 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. 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-I is the letter placed on record by learned counsel for the complainant as Annexure C-5 and another reminder-II is dated 13.08.2022. The copy of said reminder-II 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. Without providing statement of account, the allottees are being told to clear the dues and take possession of the unit. Learned counsel for complainant has placed on record copy of another document, which is addressed to Manjeet Singh, the present complainant and on the top of the said document, 'Provisional Demand Letter Ruhil Residency' has been written. In the reply it has been mentioned by learned counsel for respondent 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 dated 13.08.2022 and intelligently the respondent has told the complainant that holding charges would be charged with effect from 17.03.2022 and maintenance charges from 21.03.2022. It is also pertinent to mention here that the present complaint has been filed on 06.05.2022. During 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 25.09.2012. The complainant had paid an amount of ₹2,00,000/- on 04.03.2013, ₹5,50,000/- on 05.06.2013, ₹4,00,000/- on 06.11.2013, ₹6,61,309/- on 20.02.2014, ₹2,64,168/- on 26.06.2014, ₹2,43,071/- on 22.09.2014 and ₹23,176/- on 22.06.2015. Thus total amount of ₹25,91,724/- has been paid by the complainant Manjeet 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 and compensation @ 6% p.a. is being paid to the present complainant.



7. Though, the complainant has paid total amount of ₹25,91,724/-, yet out of this amount, he has also paid ₹23,176/- as EDC/IDC, which the respondent promoter has to pay to the Government. It is not the case of refund, rather as perversion of respondent the project was complete and possession has already been offered. Hence at the time of calculating amount of compensation to be paid to the complainant, amount of ₹23,176/- is to be deducted from the total amount paid by the complainant to the respondent.

8. The calculation of compensation is tabulated below:

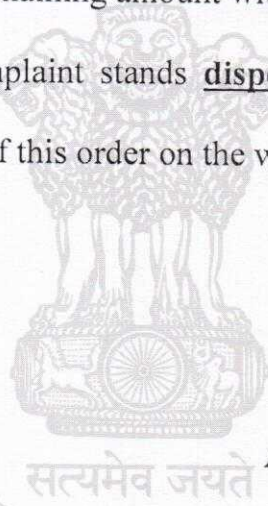
#### Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹2,50,000/-	25.09.2012 to 18.11.2022	6 %	₹ 1,52,342/-
₹2,00,000/-	04.03.2013 to 18.11.2022	6 %	₹ 1,16,614/-
₹5,50,000/-	05.06.2013 to 18.11.2022	6 %	₹ 3,12,279/-
₹4,00,000/-	06.11.2013 to 18.11.2022	6 %	₹ 2,16,986/-
₹6,61,309/-	20.02.2014 to 18.11.2022	6 %	₹ 3,47,214/-
₹2,64,168/-	26.06.2014 to 18.11.2022	6 %	₹ 1,33,228/-
₹2,43,071/-	22.09.2014 to 18.11.2022	6 %	₹ 1,19,071/-
<b>₹25,68,548/-</b>			<b>₹ 13,97,734/-</b>

Saeta Gupta

9. The complainant is also awarded ₹25,000/- as cost of litigation.
10. The total compensation comes to ₹13,97,734/- + ₹25,000 = ₹14,22,734/- (Rupees Fourteen Lakh Twenty Two Thousand Seven Hundred and Thirty Four only).
11. In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹14,22,734/- (Rupees Fourteen Lakh Twenty Two Thousand Seven Hundred and Thirty Four 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.

18.11.2022



*Sarita Gupta*

(DR. SARITA GUPTA)  
ADJUDICATING OFFICER

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

*Sarita Gupta*

(DR. SARITA GUPTA)  
ADJUDICATING OFFICER