



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. - 2562 of 2022

Date of Institution: - 21.09.2022

Date of Decision: - 20.12.2022

Ms. Mamta Yadav w/o Mr. Raj Kumar Yadav, r/o B-718, Ashoka Marg, Sushant Lok, Gurgaon, Haryana - 122002

...COMPLAINANT

VERSUS

Movish Realtech Pvt Ltd., through its Managing Director, 203-205, Progressive Chamber, D-3 Block Commercial Complex, Prashant Vihar, North West Delhi - 110085

....RESPONDENT

Hearing:- 5th

Present:- Mr. Kunal Thapa Advocate, Counsel for the complainant
Ms. Navneet Advocate, Counsel for the respondent through video conferencing

Saeita Gupta

JUDGEMENT:

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

1. On 18.03.2013, the complainant had booked a unit in 'The Cubix', project of the respondent in Dharuhera, Haryana on payment of ₹3,40,000/-. Despite the fact that at the time of booking of the flat, the respondent was not having requisite clearances and certificates from the concerned Authority for constructing and developing the said project, it falsely represented that it was having all the approvals and the same constitutes as an unfair trade practice under Section 7(1)(C) of RERA Act. Builder Buyer Agreement was executed on 30.08.2013. As per clause 6 of the said agreement, the possession of the unit was to be handed over within a period of 42 months i.e. upto 30.02.2017. The respondent was also granted grace period of 6 months to handover the possession by 30.08.2017. The respondent failed to handover the possession of the unit to the complainant. The complainant had opted for construction linked plan. After signing the agreement, only twice demand letter was issued to the complainant. On visit to the site, it was revealed that there was absolutely no construction going on the site of respondent. The whole project was standstill. Till date the said area is underdeveloped and no completion certificate has been granted to the respondent from competent Authority. At the time of registration of the project 'The Cubix', the respondent had furnished information with Hon'ble Authority

on 23.10.2019. As per said information furnished by respondent, internal roads and pavements, water supply system, storm water drainage, electricity supply system, sewage treatment & garbage disposal, street lights, security and firefighting, playgrounds and parks, club house, community centre, shopping area, renewable energy system, hospital/dispensary and solid waste collection were yet to be prepared. Till date none of the facility has been constructed. At the time of issuance of brochure, the project would comprise of convenient shopping, jogging and walking trails, parks and play areas, club house, rain water harvesting, state of the art gymnasium, yoga and meditation center, cafeteria, basketball court, badminton court and swimming pool which are not present. It was also written that the whole township will be surrounded by lush green area all over. Ever after passing of 7 years from the date of booking, none of the facilities has been provided by the respondent to the complainant. It was explicitly stated by the respondent at the time of purchase of flat to the complainant that the said facility would be available at the time of committed date of possession i.e. 30.08.2017. Due to incorrect and false averments made by the respondent, the complainant feels cheated out of her hard-earned money. The complainant used to visit the site office of the respondent time and again to check progress of the project as well as to talk to representative of the project. They assured that the project shall be constructed within stipulated period of time. The said conduct of respondent amounts to unfair trade practice and is a direct violation of Section 12 of RERA Act due to which the complainant has suffered financially, mentally

and physically. The respondent is liable to compensate the complainant for such grave deficiency in services, unfair trade practice and delay in offer of possession. The respondent had applied for revision of complete building plans and had received approval of revised building plans for the said project on 30.10.2018 i.e. after more than 1 year of due date of possession. The respondent was bound to take approval of at least 2/3rd of the allottees before any addition or alteration of already sanctioned plan. From the revision of building plans of the project in the year 2018 by the respondent, it is evident that necessary approvals and construction of the project was halted till 2018 as respondent was not having any requisite sanctions from competent Authority to continue with the construction of the buildings. For revision of building plans, the respondent has failed to take necessary approvals from the allottees. The complainant had booked the flat as per building plans and layout plans in the year 2013 and now changing the same without any prior information of the complainant is completely unfair and also covered under unfair trade practice under Section 71 (c) of the Act. On this ground, the whole amount deposited by the complainant alongwith interest be refunded to her. Due to such inactions of the respondent, the complainant has suffered immensely as the veracity of information provided was false and misleading. Therefore, the complainant needs to be compensated. The respondent had offered possession to the complainant after 4 years from the stipulated period as per the Builder Buyer Agreement in the year 2013. The respondent had issued an offer of possession on 10.11.2021 alongwith demand letter qua the unit booked

by the complainant. The total amount demanded by the respondent from the complainant is above ₹10,00,000/-, over and above the price at which the respondent is currently selling the same unit in open market. Such malpractice and fraudulent practice by the respondent is against the statutory provision of law and also against principles of natural justice. Because of misleading information and inactions, the complainant has gravely suffered monetarily, mentally and physically. The amount deposited by the complainant way back in the year 2013 has been in continuous possession of the respondent and its reaping benefits were being used by the respondent, vide which the respondent has unfair advantage over the complainant and also gained disproportionately. The amount deposited by the complainant and been used by the respondent would have been invested in other avenues, the complainant would have gained some substantial returns. No information with respect to the project is being shared by the respondent with the complainant. The complainant has sought compensation of ₹1,00,000/- under Section 12 of the Act for furnishing false information with respect to licenses possessed and amenities in the brochure, compensation of ₹1,00,000/- under Section 14 of the Act, compensation of ₹1,00,000/- for causing mental, physical and financial harassment to the complainant and ₹50,000/- as cost of litigation.

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 complainant has misdirected herself in filing the complainant as the reliefs claimed by her do not fall within jurisdiction of this

Court. The claim for compensation is to be adjudged by Adjudicating Officer and no complaint can be entertained by learned Authority in respect of matters to be adjudicated by Adjudicating Officer, hence the complaint is without jurisdiction. No agreement for sale as referred to under the provision of 2016 Act and 2017 Rules has been executed between the respondent company and the complainant. In fact, Apartment Buyer Agreement was executed much prior to coming into force of RERA Act, 2016. The adjudication of the complaint for interest and compensation as provided under Section 12, 14, 18 and 19 of RERA Act 2016 has to be in reference to agreement for sale executed in terms of 2016 Act and 2017 Rules and no other agreement. The contents of the present case are incorrect and denied. The complaint is not based on correct factual situation and issue raised is not in right perspective. The respondent has obeyed the legal obligations and also complied with the provision of law. The respondent company had registered the project under RERA on 20.08.2018. The service plan was approved on 13.02.2019, fire plan approval was sanctioned on 25.10.2019 and electricity plan was approved on 10.12.2019. The delay in execution of project was caused due to financial crunch as such the respondent revised the date of completion. Hon'ble Authority also acceded of the request of the respondent for extension of registration of the project and it was extended till 14.09.2021. Despite respondent fulfilling all its obligations as per the provisions laid down by law, the approval of service plans was to be undertaken by concerned Government Authorities and was not within power and control of respondent. The respondent had even paid

all the requisite amount and made all the requirements/documentation so as to get approval of such service plans at the earliest. The respondent cannot be held liable on account of delay in approval of all service plans by concerned Department/Authorities and time period for calculating due date of possession shall start only when the necessary approvals had been provided by the Government Authorities and the same was known to the complainant since inception. The complainant had booked an apartment in the project 'The Cubix' of the respondent situated at Tehsil Dharuhera, District Rewari, Haryana and the complainant was allotted residential flat no.B-1-603, Sector-23, Dharuhera, Rewari, Haryana. The complainant is a defaulter as she never turned to pay single penny after making payment of two installments in the sum of ₹6,90,000/-, the last payment was made on 20.08.2013 despite several and repeated requests and reminders sent by the respondent. The complainant is liable for breach of demand clause of agreement executed by the complainant without any demur and protest. As per terms of the agreement, the respondent could have cancelled the allotment upon each default and could forfeit the earnest money. In the interest of the complainant on each and these occasions, the respondent had chosen not to cancel the allotment. The complainant has not cleared the outstanding dues till date, hence the complainant is liable to pay interest as per clause 7(iii) of Builder Buyer Agreement. The respondent has put forth its best efforts to complete the project. On account of factors and circumstances which were beyond control of respondent, have restrained the respondent to complete the project within

stipulated period as force majeure conditions have been adduced: viz delay is due to stoppage of work because of ban on use of ground water pursuant to order dated 31.07.2020 from Hon'ble Punjab and Haryana High Court in CWP 20032 of 2008 titled as Sunil Singh v/s Ministry of Environment and Other. Accordingly show cause notice dated 14.08.2012 was issued by District Administration to 81 developers in Gurugram, including the present respondent, causing suspension of construction work at site due to this stoppage and complete slowdown in construction work. Due to non-availability of water, the respondent had to re-deploy resources and equipment to use alternate water source for construction. The construction industry faced acute shortage of sand due to ban of sand mining by Hon'ble High Court of Punjab and Haryana, which adversely affected construction activities in Gurugram and in the neighboring States, delay was also caused due to order dated 08.11.2016 putting the ban on construction activities in National Capital Region passed by Hon'ble National Green Tribunal ("NGT") in order to get rid the national capital from smog etc., reservation agitation in Haryana, unforeseen event of demonetization by the Government on 8th November, 2016 greatly affected the mobilization and payments of workforces, vendors and contractors at the site, few months deeply impacted the procurement and supply of materials from many contractors on account of implementation of Goods and Services Tax (GST) across India since 01.07.2017, revision of building layout plan, service plan and fire plan due to part migration land area from 16.612 acre to 9.40 acre, procurement of labour and transportation/delivery

of equipments got stalled due to spread of deadly Corona Virus, Hon'ble Ministry of Environment and Forest and Ministry of Mines imposed restrictions on excavation of topsoil for manufacturing of bricks, Hon'ble Ministry further directed not to manufacture bricks within a radius of 50 kms from coal and lignite-based thermal power plants without mixing 25% of ash soil, the Mining Department imposed restrictions on manufacturing of sand from Aravali region and avoiding the performance of contractual obligations of making timely payments by several allottees including the complainant also led to delay in completion of the project. The specific factors which were beyond the control of respondent should not be a ground to claim compensation as in the application form itself, it has specifically been mentioned that there may be delay due to non-performance by Government Agencies. These were force majeure events which had hindered the progress of construction and delayed the process of handing over the flats to the allottees including the complainant, for which the respondent cannot be held liable. The respondent has completed the project and also moved an application on 07.12.2020 before Hon'ble Director Town and Country Planning, Haryana for granting of part occupation certificate of the towers. The respondent has also submitted quarterly progress report for the compliance of phase 1 of the project with regard to stage of construction work till 31.12.2020 to show its bonafide. The respondent has received occupation certificate from the concerned Authorities on 08.11.2021. The respondent had made legitimate offer of possession to the complainant within two days of receipt of occupation

certificate vide letter dated 10.11.2021. The respondent requested the complainant to clear the outstanding dues against her and take possession of the unit. The complainant did not turn up to clear outstanding dues against her or to take possession. Reminder was sent to her vide letter dated 20.12.2021. She was again requested to comply with the formalities for execution of conveyance deed and to take physical possession. Even then the complainant neither gave any response nor came forward to take possession. The complainant is at fault in not taking the possession even after issuance of offer of possession letter. It amounts to breach of provision of Section 19(10) of RERA Act, according to which every allottee was to take physical possession of the apartment, plot or building. As per provisions of Section 19(6) of RERA Act, every allottee shall be responsible to make necessary payments within time and also share of registration charges etc. Since the complainant had not taken possession without any cause and has not cleared the outstanding amount against her till date, the respondent is entitled to claim holding charges till date of actual physical possession of the unit. The complainant is also liable to pay interest for the period of delay computed from the date when the payment became due. The complainant is also liable to clear the outstanding amount as per statement of account dated 14.11.2022. The complainant is putting vague and bald allegations upon the respondent and seeking compensation particularly when the construction is complete and respondent is willing to offer the possession. The complainant is making false averments and levying false accusations upon the respondent so as to enrich

herself wrongfully and extract extra payment from the respondent. The complainant is living in a residential property and she has invested her money in the said project of respondent for future gain/profit purpose. The complainant is making unreasonable claims at belated stage and such claims are counterblasts for her breaches and defaults. 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. The sole objective of the complainant is to harass the respondent by making false and frivolous allegations. The complainant is misusing this forum for quick gains by illegally claiming compensation with interest. The complainant has failed to bring on record any violation of provisions of RERA Act. The grounds of relief sought by the complainant are fictitious, baseless, vague and created to misrepresent and misleading the Authority. None of the reliefs is sustainable in the eyes of law. The respondent has prayed for dismissal of the complaint with exemplary cost.

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 file shows that the complainant had booked a flat in 'The Cubix' project of the respondent on 18.03.2013 on payment of ₹3,40,000/-. On 20.08.2013, she had paid ₹3,50,000/- to the respondent. On 30.08.2013 Builder Buyer Agreement was executed between the parties. As per agreement, possession of the flat was to be handed over within 42 months i.e. till 30.02.2017. Grace period of 6 months was also granted to the respondent: viz upto

30.08.2017. The possession was to be given to the complainant. As per version of respondent, the respondent company had registered the project under RERA on 20.08.2018. The service plan was approved on 13.02.2019, fire plan approval was sanctioned on 25.10.2019 and the electricity plan approved on 10.12.2019. Meaning thereby till the date possession was to be handed over to the complainant and other allottees of the project i.e. 30.08.2017, neither the construction was started nor any plan was approved. The respondent has itself mentioned in its reply that the project was got registered under RERA on 20.08.2018 only. All the plans were proved later on. Learned counsel for the respondent has taken the plea that on 14.08.2012 notice was issued by District Administration for suspension of construction work. It is very interesting to note that even after issuance of notice by District Administration for suspension of construction work, the respondent company launched its project and invited applications for booking of the flats. The complainant had also booked the flat on 18.03.2013 and payment of ₹3,40,000/- was made by the complainant to the respondent. At that time also, the respondent was well aware that because of notice issued by District Administration for suspension of construction work, the company would not be able to raise any construction. Flat Buyer Agreement between the complainant and the respondent was entered into 30.08.2013. It is the averment of the respondent that on 08.11.2016 vide order passed by Hon'ble National Green Tribunal, New Delhi there was ban on construction activities in National Capital Region (NCR). It is further averment of the respondent that on 08.11.2016

because of demonetization, construction activities suffered a lot and greatly affected mobilization and payment of workforces, vendors and contractors at the site. There was reservation agitation in Haryana. Few months deeply impacted the procurement and supply of materials from many contractors on account of implementation of Goods and Services of Tax across India since 01.07.2017. It is pertinent to mention here that all these grounds were taken before Hon'ble Authority in Complaint no.1362 of 2021 titled as Krishna Kant Dubey v/s Ashiana Realtech Pvt. Ltd., which was decided alongwith other complaints against Ashiana Realtech Pvt. Ltd., which is now known as Movish Realtech Pvt. Ltd. In para 5 (iv) at page no.13 of the said judgement, it has been observed that the argument of respondent that delay has been caused on account of force majeure conditions cannot be accepted. Such circumstances being cited have been prevailing for the last many years which could have been foreseen at the time of executing Builder Buyer Agreement. It has further been observed that noting extra-ordinary had happened which could be called as Act of God or a circumstance which could not have been foreseen by the respondent.

5. Rejecting the plea of force majeure taken by the respondent, the respondent was held liable to pay interest for the period of delay caused in offering possession. Since, the observation of Hon'ble Authority is there with regard to the plea of force majeure taken by respondent in Complaint no.1362 of 2021, this observation of Hon'ble Authority is also applicable to the present case. When the registration of the project was applied before RERA Panchkula and it

was got registered on 20.08.2018, the time for handing over possession of the flat to the complainant had already expired. Likewise, when the service plan was approved on 13.02.2019, fire plan on 25.02.2019 and electricity plan on 10.12.2019, date for handing over possession to the complainant had already expired. Later on after moving application before the RERA Panchkula, it had sought extension for completion of the project and time was extended till 14.09.2021. So far as the ground of part migration of land from 16.612 acre to 9.40 acre is concerned, the plea of the complainant is that respondent was bound to take approval of 2/3rd allottees before addition or alternation of already sanctioned plan. The respondent has replied that the complainant was well informed in advance that the building plan was tentative and was subject to changes. It is worthwhile to mention here that it is not an Act of God or any circumstance for which some other party is responsible, the respondent had itself got migrated the area from one to another. In that eventuality, layout plan was required to be revised for which complainant is not bound to suffer. Hence, all the averments taken by the respondent are not being considered, for which period compensation is not required to be paid to the complainant. It is the averment of respondent that occupation certificate from concerned Authority has been received on 08.11.2021 and on 10.11.2021 possession was offered to the complainant. Copy of letter dated 10.11.2021 offering possession to the complainant has been placed on record by learned counsel for respondent as Annexure R-5. Reminder was also sent to the complainant to take possession on

20.12.2021 vide Annexure R-6. There is no averment of complainant that there is some defect in letter dated 10.11.2021 vide which possession was offered to the complainant.

6. It has been argued by learned counsel for the respondent that the complainant has wrongly averred that the respondent is selling the same type of unit after fixing the cost over and above ₹10,00,000/-. It has been argued that as per statement of account dated 14.11.2022 and demand letter dated 10.11.2022, the complainant is liable to pay an amount of ₹42,41,941/- alongwith interest amounting to ₹25,73,891.10/-.

7. At this stage, the issue is not being decided as to after payment of what amount, the complainant is entitled to take possession. Rather the main point for consideration is as to whether the complainant is entitled to compensation as the amount deposited by her was being utilized by the respondent even after passing of date of delivery of possession.

8. The fact remains the same that amount of ₹3,40,000/- which was deposited by the complainant on 14.03.2013 and amount of ₹3,50,000/- which was deposited by the complainant on 20.08.2013 was utilized by the respondent. It amounts to wrongful gain by the respondent and wrongful loss to the complainant. It is pertinent to mention here that though amount was deposited by the complainant on 14.03.2013 and 20.08.2013 respectively, yet possession was to be delivered to her on 30.08.2017. The period for which the amount deposited by the complainant was utilized by the respondent after expiry of date of handing

over of possession, compensation has to be paid to the complainant for that period i.e. 31.08.2017 till 10.11.2021, the date on which valid offer of possession was made by the respondent to the complainant. The computation of compensation would be as:-

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹3,40,000/-	31.08.2017 to 10.11.2021	6%	₹85,680/-
₹3,50,000/-	31.08.2017 to 10.11.2021	6%	₹88,200/-
Total			1,73,880/-

9. The first relief sought by complainant is to direct the respondent to compensate the complainant in the sum of ₹1,00,000/- under Section 12 of RERA Act for furnishing false information with respect to licences possessed and the amenities in the brochure, which never materialised till date, on the basis of which the complainant had deposited her money with the respondent. It is pertinent to mention here that though the complainant has alleged that she was assured by the respondent that it has received all the approvals, yet perusal of Builder Buyer Agreement dated 30.08.2013, it has nowhere been written that the respondent company has received all the approvals/sanctions from appropriate Authority. Rather, it has been mentioned that M/s Ashiana Realtech Pvt. Ltd. and M/s Intime Developers Pvt. Ltd. collectively applied for license to Director General Town and Country Planning, Haryana, for permission for construction and development

of residential group housing colony which was granted on 15.03.2012. So far as the mention of amenities in the brochure is concerned, it has been mentioned in Builder Buyer Agreement that the builder has allowed the buyer an inspection of approval of the project plans, ownership record and all other documents relating to title, competency and all other relevant details of the flat and buyer has confirmed and fully satisfied in all respects with regard to right, title and interest of the builder. The buyer has agreed that there shall be no further investigation and objection in this regard. The buyer acknowledges that the builder has readily provided all information and clarifications and not relied upon and is not influenced by any architect's plans, sale plan, sale brochures, advertisements, representations, warranties, statements or estimates of any nature whatsoever whether written or oral.....

10. Since neither there is any specific mention of any of the amenities in brochure or any information to licensees, which later on turned to be false is present in the agreement, nor the complainant can say that she is influenced by the brochure, no compensation is being awarded under this head.

11. The next head under which the compensation sought by the complainant is contravention of Section 14 of RERA Act at the time of booking in the year 2013. Section 14 of RERA Act is with regard to adherence to the sanctioned plans and project specifications by the promoter. It is on the record that the sanction plans were approved by the respondent and later on they were revised in the year 2018. It cannot be said that the construction was not made as

per sanctioned plans. Claimant is not entitled to claim any compensation under this head also.

12. Under relief no.3, the complainant has demanded ₹1,00,000/- as compensation on account of mental agony and harassment. Since the complainant has demanded ₹1,00,000/-, she cannot be given more than the relief claimed. Hence, the compensation on account of mental agony and harassment is restricted to ₹1,00,000/-. Under the head of compensation for mental agony and harassment, the compensation has been granted to the tune of ₹1,00,000/-

13. Under relief no.4, the complainant has sought litigation cost to the tune of ₹50,000/-. However a sum of ₹25,000/- is being granted as cost of litigation.

12. The total compensation comes to ₹1,00,000/- + ₹25,000 = ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only).

14. In these terms, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only) within 90 days to the complainant. First instalment i.e. 50% of total decretal amount is to be paid within 45 days from the date of uploading of this order and remaining 50% amount within next 45 days.

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

20.12.2022

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 19 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

