

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 785 of 2021
Date of decision : 06.01.2022

GVS Sai Prasad And B.S Rao
ADDRESS: A-3/204, Block3, Kailash Dham,
Plot No. E-01, Sector 50 Noida-201301

Complainants

Versus

M/S Assotech Moonshine Urban Developers
ADDRESS: 148 F, Pocket IV, Mayor Vihar,
Phase-I, Delhi-110091

Respondent

APPEARANCE:

For Complainant:

Mr. Ajay Kumar Advocate

For Respondent :

Mr Devender Kr. Kataria Adv

HARERA
ORDER
GURUGRAM

1. This is complaint filed by G.V.S Sai Prasad and B.S Rao (buyers/allottees) under section 31 read with section 35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) with prayer:
 - a. to award compensation of Rs. 5,00,000/- in favour of the complainants and against the respondent.

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- b. to Award cost of litigation of Rs. 60,000/- against the respondent.
- c. to pass such other and further order as Adjudicating Officer may deem fit and proper in the facts and circumstances of the present case.
2. According to the complainants, they booked a residential apartment in the project named Assotech Blith at Sector-99, Gurgaon, Haryana being developed by the respondent. They were allotted an apartment bearing no. 1104 at 11th floor admeasuring 1685 sq. ft vide allotment letter dated 20.07.2012 for a total sale consideration Rs. 86,50,750/-. As per clause 57 of the allotment letter, the possession of the apartment was to be delivered with 42 months from the issuance of the allotment letter, but the possession was not delivered to them (complainants) within prescribed period.
3. They (complainants) were left with no choice but to approach the authority. They filed a complaint no. 11/2018 Vide order dated 19.06.2018, Authority allowed their complaint. The respondent was directed to give interest at prescribed rate for every month of delay till handing over possession. Now the complainants have approached this forum (AO) seeking compensation of Rs. 5,00,000/- etc as described earlier.
4. The respondent contested the claim of complainants, by filing a reply. It is averred that the authority, apart from giving direction to it (respondent) about payment of interest, directed the complainants to deposit Rs. 26,20,875/- to it (respondent) along with interest at same rate. The respondent disclosed that filed an appeal before Appellate Tribunal against the order dated

19.06.2018 passed by the authority as referred above and said appeal has been dismissed.

5. As per Section 72 of the Act, 2016, following the factors are to be taken into account by the Adjudicating Officer, while adjudging the quantum of compensation or interest as the case may be. Section 72 is reproduced here as under:

Section 72:

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

6. The authority while deciding complaint (11/2018) as mentioned above, opined that the complainants reserve their right to seek compensation from the promoter, for which they shall make separate application to the adjudicating officer, if required.
7. As the authority, after passing order, granting compensation to the complainants, advised the complainants to approach this forum for compensation. In such circumstances, this forum is competent to entertain this complaint.
8. According to complainants, they are senior citizens. They invested their entire hard-earned money, saved till their retirement, in

purchase of apartment in question. Despite all this ,they could not get roof on their head i.e. possession of apartment. They have limited resources and not able to purchase another house. They are residing in rental accommodation.

9. However, the complainants did not adduce any evidence to prove that same are paying any rent. Even then, it is undisputed facts that the complainants could not get possession of their apartment, which ~~was same~~^{was} purchased by them from the respondent.
10. Major portion of sale consideration had already been paid by the complainants. This forum can take judicial notice of the fact that prices of residential houses have been increased several folds since 2012 i.e., the period when apartment in question was allotted to the complainants. Considering ~~the~~^{the} said facts and circumstances of complainants, I find that claim of compensation of Rs. 5,00,000/- is not excessive but an appropriate amount of compensation. Same is thus allowed to the complainants, to be paid by the respondent.
11. The complainants did not put on file any receipt of payments to their advocate as fee, but it is fact ~~that~~^{that} the same was represented by an advocate during proceedings of this matter. The complainants are allowed Rs. 20,000/- as cost of litigation.
12. Complaint stand ~~disposed~~^{disposed} of. Respondent is directed to pay amount of compensation within 30 days of this order, otherwise same will be liable to pay interest @10% P.A till realisation of amount.

[Handwritten signature]
A.O.

13. File be consigned to records.

dkh 6-1-2023
(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram



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