



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

**Complaint no. : 1361 of 2021
Date of decision : 28.02.2023**

KANIKA SOOD
AND VARUN SOOD
R/O : EC 254, Maya Enclave
Hari Nagar
New Delhi - 110064

Complainants

Versus

M/S ACHALESHWAR
INFRASTRUCTURE
PVT. LTD.
ADDRESS: Plot No. 83, Sector 32,
Gurugram, Haryana 122001

Respondent

APPEARANCE:

For Complainants:

Mr. Anshul Goel Advocate

For Respondent:

Mr. Prashant Sheoran Advocate

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ORDER

1. This is a complaint filed by Ms. Kanika Sood and Mr. Varun Sood (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainants, on 31.03.2018 they booked a residential independent floor, in respondent's project "Samsara" in Township named Brahma City, situated at sector-60, Gurugram. They made payment of Rs 5,00,000 as booking amount. The respondent issued allotment letter dated 20.04.2018 and allotted unit No. M28, admeasuring 1878 sq. ft along with stilt parking space numbered as p4, p5, p6 to accommodate parking of 3 cars. An agreement for sale dated 26.06.2018 was executed between parties in this regard. It was registered with competent authority on 25.09.2020.
3. As per Clause 7 of agreement for sale, possession of said unit was to be delivered by the developer/respondent to them (complainants) within 27 months from the date of registration of agreement for sale. They (complainants) made timely payments of all demands, as raised by


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respondent, in accordance with the payment plan. No amount remained due, on their part.

4. The respondent had committed to give possession of the unit by September 2020. Vide email dated 07.09.2019 the respondent showed its inability to allot 3 car parkings, as per the agreement for sale and assured to refund the amount for 3rd car parking space, at the time of offer of possession. The respondent sent an email dated 19.11.2019, stating that they (complainants) left car parking space, out of their personal choice, although they (complainants) never expressed any such choice. The respondent forced them (complainants) to sign and send that letter to it (respondent).
5. The respondent offered possession of unit on 20.11.2019. As they (complainants) protested against respondent's attempt to deprive them of one car parking, the respondent vide its e-mail dated 28.11.2019, offered a paltry amount of Rs 2,50,000. Same was rejected by them vide their email dated 28.11.2019. They (complainants) vide email dated 11.12.2019 requested for discount of Rs 11,16,000 and even indicated to settle for Rs 6,69,600 in lieu of the 3rd car parking space, but respondent reiterated its offer of Rs 2,50,000/- for not providing the 3rd car parking space. Aggrieved by the misconduct of respondents, they

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- (complaints) vide their email dated 15.12.2019, insisted upon 3rd car parking space, and requested the respondent to strictly abide by terms and conditions of agreement.
6. The respondent scheduled the inspection of unit by them on 01.08.2020. They (complainants) noticed some defects in the unit and apprised about the same to the representative of respondent, who assured to rectify the defects, within two weeks.
 7. The respondent informed complainants that registration of conveyance deed cannot be done, as the registering authority was closed during that time. As possession of unit was getting delayed, due to non-registration of conveyance deed, they (complainants) insisted upon handing over of possession of unit, without a conveyance deed.
 8. The respondent issued a fixed format possession letter falsely showing as if all terms and conditions of agreement for sale had been complied with and complainants had no claim against respondent despite the fact that various amenities/facilities including car parking space were not provided by respondent. When they (complainants) signed the possession letter with remarks "subject to terms and conditions of the agreement" the promoter refused to accept it. The respondent forced them to sign on the dotted lines of false and fabricated 'Possession Letter' issued by



respondent. It was falsely stated therein that all terms and conditions of agreement were fulfilled. The respondent coerced them (complainants) to sign maintenance agreement with a third party, at the time of handing over of possession claiming it to be mandatory. Only after signing of possession letter and maintenance deed by complainants, the respondent handed over possession of the unit on 24.09.2020. They (complainants) immediately after taking possession of the unit, sent an email to respondent highlighting various facilities which respondent failed to provide in violation of terms and conditions of the agreement.

9. The respondent failed to provide 3rd car parking space as specified in allotment letter, which resulted in loss of Rs 9,00,000 to them.

10. Further, the respondent failed to provide toilet in undivided ground floor area despite agreed provisions of the same in definition 'y' which describes undivided share of ground floor area as consisting of 'lift out + staircase + lobby+ toilet, the share of complainants would come to Rs 66,666.

11. The respondent failed to provide hot water supply in kitchen through solar water heater system specified in scheduled D, item 6 despite a clear stipulation for provision

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of same in clause 1.6 of BBA which caused them loss of Rs 30,000.

12. Even after receipt of entire sale consideration of unit on 20.12.2019, the respondent delayed the execution of conveyance deed and thereby delayed the possession of the apartment beyond 20.03.2020. Accordingly, respondent is liable to pay interest on total consideration of apartment for delay of 6 months i.e. Rs 12,04,625.

13. The misconduct of respondent has caused grave mental agony and harassment to them (complainants) and hence same are entitled to get compensation of Rs 10 lakhs.

14. As per clause 7.6 of agreement, if respondent fails to complete or unable to give possession of apartment along with car parking spaces in accordance with terms of agreement for sale, the respondent was liable pay interest at prescribed rate as per rules for every month of delay, till actual possession of unit. The same is also stipulated in clause 9.2 (ii) proviso, in case of default by respondent.

15. Contending that the respondent has breached the fundamental terms of the contract, the complainants by filing the complaint in hands have sought the following reliefs-----

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- (i) Refund of Rs. 9,96,666 on account of not providing 3rd car parking space.
- (ii) Toilet in the undivided share on the ground floor area.
- (iii) Solar water heater system in kitchen.
- (iv) A compensation of Rs 10,00,000/- for the anxiety, mental agony, and harassment.

16. The respondent contested the complaint by filing a reply. It is averred that complainants have misrepresented that they have paid hefty amount towards three parking spaces. The parking area was never sold to complainants rather right of usage for 3 parking spaces was promised along with independent floor at no extra cost. The saleable area as defined in clause 'Y' of agreement for sale does not include parking space. Even in schedule A of agreement, parking was not included in description of apartment for the purpose of saleable area. No amount has been charged towards the car parking space and same were provided as complementary only. Moreover, at the time of allotment, complainants were duly agreed that parking along with unit will be complementary only and agreed to said terms by signing on payment plan along with conditions of complementary parking, same is Annexure R 1. The demand for proportionate refund calculating the size of parking is out of question. Though initially three car parking

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spaces were offered but during construction due space problem only two car parking were feasible.

17. Moreover, complainants have taken possession of unit along with two car parking spaces and got the conveyance deed executed on 04.01.2021. The complainants have no right to seek compensation or refund from respondent after execution of conveyance deed.

18. Further, the building in which unit of complainants is situated, consists of 3 independent floors. Single solar heater was to be installed for all the three units. The solar heater of good quality comes at a total price of Rs 1,00,000 which if installed would have been charged by all the three floor owners. However, the functioning of solar heater depends upon climatic conditions and in winters it is less functional. Moreover, it will occupy more terrace space and there was no good quality of solar heater available at that point of time. The calculation provided by complainants qua loss on account of solar heater is hypothetical and $1/3^{\text{rd}}$ cost of solar water heater comes to Rs 33,333/- which is saved as it's not installed. The loss calculated by complainants are only 30,000 thus even at this rate they are at benefit of Rs 3,333/-

19. It is further averred by respondent that toilet could not be provided in undivided share of ground floor, due to



construction norms/rules and also due to the fact that, most of co-owners in said project are not in support of construction of the same. As a precautionary measures, respondent has left wet points at ground floors and if all owners agree for construction for toilets the same may be constructed.

20. Further, there has been no delay in execution of conveyance deed. The agreement for sale was executed on 26.06.2018 and as per clause 7.1. of the agreement, possession was to be handed over within 27 months. Accordingly, if we count 27 months from the date of execution of agreement for sale, the due date of possession comes to be 25.09.2020 and as admitted by complainants themselves, they took possession of the unit on 01.09.2020 itself. Thus, there is no delay in handing over of possession. Moreover, as per clause 10 of agreement for sale, conveyance deed was to be executed within 3 to 6 months from the date of possession of unit. The due date of possession as per the agreement for sale was 25.09.2020 and actual date of delivery of possession is 01.09.2020, Accordingly, the time period for execution of conveyance deed comes to be March 2021. Same has been executed and got registered on 04.01.2021 i.e. much before time stipulated in agreement.

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21. Contending all this, respondent prayed for dismissal of complaint.

22. Findings on the relief sought by the complainants.

(i) Non-provision of the 3rd Car Parking space.

It is not denied rather admitted by the respondent that, the complainants were promised three car parking spaces. Admittedly, the respondent provided only two parking spaces, which is in clear violation of the agreement entered between the parties. The contention of the respondent that the provision of car parking was complimentary and nothing was charged in the name of car parking is untenable and I don't find any substance in this plea. The provision of three car parking spaces was one of the considerations for complainants to purchase the unit in question. The complainants are thus entitled for compensation. As stated above, the complainants have prayed to grant Rs. 9,96,666/- as compensation for not providing the 3rd car parking space. No explanation is given by the complainants as to how they calculated the amount of Rs. 9,96,666/-. The respondent is stated to have agreed to pay Rs. 2,50,000/- in this regard. Car parking is simply a facility to park vehicles, it doesn't make allottee, owner of the space. Considering all this, this forum thinks it appropriate that Rs. 3,50,000/- will

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be an appropriate amount of compensation to the complainants in this regard. Same is allowed to be paid by the respondent.

(ii) Non provision of toilet space in the undivided share on the ground floor area.

Again, it is not denied by the respondent that the complainants were promised a toilet space in the undivided share of the ground floor, however, the respondent did not provide the same. All this is in clear violation of the agreement between the parties. The contentions raised by the respondent regarding construction norms and lack of consensus amongst the co-owners is untenable. Even otherwise, there is nothing on record to verify that other allottees were not in favour of such toilet. The complainants are entitled for compensation from respondent for violating the promise made in this regard. This (toilet) is again a facility, which does not confer title upon the space, on which toilet is constructed. No amount is ~~however~~ calculated by any of the parties, in this regard. A compensation of Rs. 50,000/- is allowed to the complainants on this count, same is ~~allowed~~ to be paid by the respondent.

(iii) Non-installation of solar water heater system in the kitchen.

As per ~~the~~ Schedule D, Item 6 of the BBA, the complainants were promised a solar water heater system in the kitchen, However, it is not disputed by the respondent that it failed to provide the same. All this is in clear violation of the agreement between the parties. ~~As per respondent, the cost of a solar water heater system is about one lac rupees.~~ Further, there are three units in one building, the complainants are entitled to one-third only. As per respondent, the cost of a good quality solar heater system is Rs. one lac. Although no evidence is adduced by the respondent to prove this fact. Considering the escalation in prices of solar heater system, this forum allows a compensation of Rs. 50,000/- to the complainants in this regard. Same is allowed to be paid by the respondent.

(iv) Compensation for anxiety, mental agony, harassment etc.

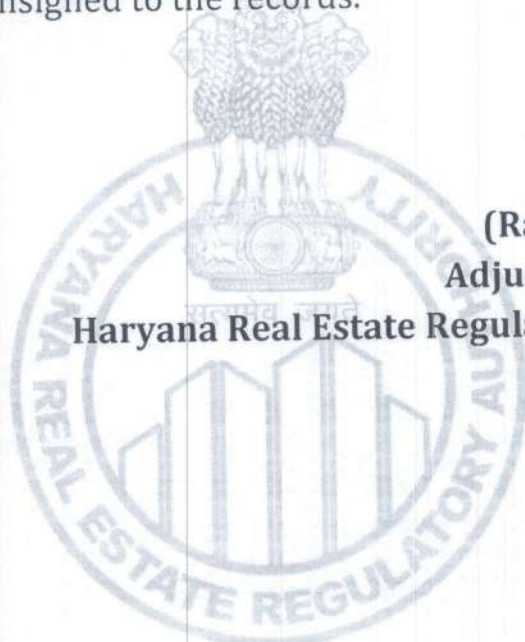
The complainants have asked for Rs. 10 lacs as compensation for anxiety, mental agony, etc. Apparently the complainants have suffered agony of trial, including anxiety, mental trauma, and harassment due to pendency of this case. There is no formula to decide amount of compensation in this regard. Keeping in view facts of this case, this forum (AO) allows a sum of Rs. 1,00,000/- as



compensation to the complainants in this regard, to be paid by the respondent.

23. The Complaint stands disposed of. The respondent is directed to pay entire amount of compensation as detailed above, within 30 days of this order, otherwise same will be liable to pay interest @10% P.A, till realisation of amount.

24. File be consigned to the records.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
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