



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint no. 2674 of 2022

Date of Institution: 10.10.2022

Date of Decision: 24.03.2023

Braham Pal Singh s/o Sh. Shyam Singh, r/o D-35, Shivalik Nagar, Bhel, Ranipur,
Haridwar-249403

....COMPLAINANT

VERSUS

M/s Raheja Developers Ltd., o/o W4D, 2014/5, Keshavekunj, Western Avenue,
Cariappa Marg, Sainik Farms, New Delhi - 110062

....RESPONDENT

Hearing: 9th

Present: - Mr. Akshat Mittal Advocate, Counsel for the complainant
through video conferencing
Sh. Braham Pal Singh, complainant through video
conferencing
Mr. Kamaljeet Dahiya Advocate, Counsel for the respondent

Saaita Gupta

JUDGEMENT:

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

1. The respondent Raheja Developers Ltd. had floated a scheme for the development of residential township in the name and style of 'Krishna Housing' to be constructed and developed under Affordable Housing Policy, 2013 on land situated at Sector 14, Sohna Road, Sohna, Haryana. In December 2014, the complainant had applied for allotment a residential unit on payment of ₹80,725/- . Vide provisional allotment letter dated 10.07.2015, the complainant was allotted One Bedroom flat bearing no.2005 at 1st Floor in Tower 12, having super area of 414.37 sq. ft. and balcony area of 64.58 sq. ft. in project 'Krishna Housing'. The total sale consideration of the unit was ₹15,24,022/-. A sum of ₹3,13,295/- was paid on 25.07.2015, ₹1,97,409/- on 14.01.2016, ₹1,90,503/- on 21.07.2016 and ₹1,90,503 on 25.02.2017. In this way a total sum of ₹9,72,435/- was paid by the complainant to the respondent. The complainant had booked the unit with the respondent company on the basis of assurance given by respondent that construction would be completed and possession would be handed over within 24 months from the date of last booking i.e. 19.12.2016. No Builder Buyer Agreement was executed between the parties in gross violation of provisions of RERA Act, 2016, which provides that a promoter was not to accept a sum more than 10% of the cost of apartment, plot or building as advance payment without

entering into written agreement for sale with that person. As per sample of Builder Buyer Agreement, the respondent has manipulated the time for offer of possession in clause 5.2 which says the company shall endeavour to complete the construction and offer possession within 48 months from the date of receiving of environment clearance or sanction of building plans whichever is later, but subject to force majeure clause and timely payment of instalment by allottee. The respondent had obtained environment clearance on 09.03.2015 and the building plans were sanctioned on 12.11.2014. In this way the due date for handing over of possessions comes to 08.03.2019, counting 48 months w.e.f. 09.03.2015. Since there was no construction till the year 2017, the project was blatantly underdeveloped, owing to miserable delay on the part of promoter and also taking into consideration the personal health problems of the complainant who is a senior citizen, applied for cancellation of the booking vide letter dated 24.07.2017. It has further been submitted that the sample agreement contained absolutely unilateral malafide clauses viz; clause no. 4.5, 4.10 and 5.1. Clause no.4.5 says that in the event of any delay or default in making the payment of instalment by the allottee, the allottee shall be liable to pay 15% per annum interest from the due date of payment of instalment. Clause 4.10 says that if there is any delay or default in making the payment of the instalments on time by the allottee, the allottee shall pay interest @ 15% per annum to the company from the due date of payment. Clause 5.1 says that in case allottee fails to deposit stamp duty or registration charges and all other incidental and legal expenses, the

company shall be free to appropriate part of sale price paid by the allottee towards said charges and expenses and allottee shall forthwith deposit the shortfall in the sale consideration so caused together with interest @ 15% per annum for the period of delay in deposit of sale consideration and all other charges so appropriated according to payment plan. Despite having such unilateral and strict clauses, which seek to impose an interest of 15% per annum on the allottee, the same agreement does not contain any penalty or interest to be paid by the respondent in case of delay in offer of possession. The terms of agreement have been drafted mischievously by the respondent and are completely one sided. The respondent company has issued payment demands to the complainant in conflict and in denial of assurance and understanding between the parties. Construction schedule has been assured by the respondent and mentioned in sample agreement have not been adhered to by the respondent. The complainant had been paying the instalments. Till 2017, the complainant had already made payment of more than 60% of sale consideration. Despite making hefty payment and complying with all illegal demands regarding payment made by respondent company, the respondent has failed to adhere to its assurances. The respondent company has intentionally, consciously, concoctedly and maliciously duped the complainant who has invested his hard earned savings of lifetime with respondent company. The respondent has failed to deliver possession of the unit in question even after 8 years of the booking and also failed to refund the amount even after more than 5 years of cancellation of the unit. The complainant was having all the rights to

withdraw from the project and to seek refund of the amount paid qua the unit in question, as an allottee cannot be forced to continue with the project if there is a clear violation of provisions of Section 18(1)(a) of RERA Act on the part of promoter. Respondent is in illegal possession of hard earned money paid by the complainant towards unit in question. The delays and malafides on the part of respondent have resulted in disproportionate gain and unfair advantage to the respondent which has been in continuous possession of the amounts paid by complainant without any intention to comply with the promises. The cause of action is continuous and default is repetitive in nature. The complainant has been visiting the site office of the respondent company and had made numerous requests and efforts seeking redressal of grievances. Earlier the complainant had filed Complaint no.96 of 2018 on 21.03.2018 before Hon'ble HARERA, Gurugram praying for direction to the respondent company for refund of the amount alongwith interest. The said complaint was allowed at Gurugram vide order dated 05.06.2018. Respondent was directed to refund the amount deposited by the complainant i.e. ₹9,72,435/- alongwith prescribed interest of 10.45% per annum w.e.f. 31.07.2017 and directions were given to the respondent to do the needful within one month. Since the order was not complied with, the complainant had filed execution before Hon'ble HARERA, Gurugram. In the said execution, the respondent/judgement debtor had made the payment of ₹3,00,000/- through cheque. After that no payment has been made to the complainant. During the course of hearing at Gurugram, it was revealed that Hon'ble Authority had no

territorial jurisdiction over the subject matter. The said execution petition was disposed of vide order dated 21.10.2021. The fact of lack of jurisdiction was not brought to the notice of the Authority by either of the parties during proceedings.

Complainant filed Complaint/Execution no.43 of 2022 before Hon'ble HRERA, Panchkula which was dismissed by Hon'ble Authority and the complainant was given liberty to file fresh complaint. Complainant filed another complaint bearing no.2365 of 2022 before Hon'ble Authority, which is sub-judice. The conduct of the respondent company warrants and invites the application of Section 61 of the Act which deals with penalty for contravention of other provisions of the Act. The conduct of respondent company amounts to several criminal offences including fraud and cheating. The respondent is responsible for causing excessive agony to the complainant for which the complainant is entitled to be compensated. The complainant has sought relief directing the respondent to pay compensatory interest @ 20% per annum compounded monthly, on the entire amount so deposited by the complainant qua the flat in dispute w.e.f. relevant dates of deposit, to direct the respondent to pay a sum of ₹50,00,000/- on account of mental harassment, agony, grievances and harassment caused to the complainant by deficiency in service, unfair trade practice and miserable attitude of the respondent alongwith interest and cost of litigation to the extent of ₹1,50,000/-.

2. Upon notice respondent has appeared and filed reply taking preliminary objections that the present complaint is not maintainable in view of

provisions of Section 11 C.P.C. and is liable to be dismissed as the said provision *debars the Court from exercising its jurisdiction to determine the list where it has* attained finality. The complaint completely based on the same grounds had already been adjudicated by Hon'ble HARERA, Gurugram in Complaint no.96 of 2018 titled as Brahampal Singh v/s Raheja Developers Ltd., which was decided vide order dated 05.06.2018. The present complaint has been filed by the same party, with same facts, same subject matter, against the same parties with same cause of action and the same relief, has already been decided in earlier Complaint no.96 of 2018. The doctrine of res judicata is applicable. If the same matter can be reopened, there will be no end to litigation. The complainant had also filed execution of order dated 05.06.2018 before Hon'ble HARERA, Gurugram. During the proceedings of said execution, the decree had been partly satisfied by the respondent by making part payment. It is not the complainant rather it is the respondent who is entitled for compensation as the complainant is harassing the respondent since inception, firstly the refusing the payment after booking of the unit in question as per terms of payment settled between the parties, that caused harassment to the respondent in terms of finances, the respondent had faced financial crunch on account of non-payment by the complainant that subsequently put adverse effect on the completion of the project. The complainant remained adamant to withdraw from the project even knowing before hand that the project falls under Affordable Housing Policy, 2013 issued by Government of Haryana, Town and Country Planning Department which does not permit to cancel any unit

on ground of some personal health problem to the allottee. As per para 5(iii)(h) of Affordable Housing Policy, 2013 under the heading allotment rates, allotment and eligibility criteria, waiting list of maximum of 25% of the total available number of flats available for allotment may be prepared. In case of surrender of flat by any successful applicant an amount of ₹25,000/- was to be deducted by the promoter. Such flats would be considered by the committee for offer to those applicants failing in the waiting list. The waiting list shall be maintained for a period of 2 years after that the booking amount shall be refunded back to the entitled applicants without any interest. The said provision for surrender of unit had already been exhausted much prior to alleged request of refund of complainant. Hence request of refund of the complainant without any justification was untenable as per policy issued by Haryana Government, Town and Country Planning Department. As per para 7(iii) of application under the head of special dispensation categorically mandates that once an apartment is allowed through the procedure as specified, the same cannot be transferred by the coloniser to any other person by documentation. Such apartments shall be prohibited for transfer upto one year after getting the possession of the flat. Hence, it can be safely construed that the cancellation of the unit was not under control and free will of the respondent as the same has to be done strictly as per policy issued by Haryana Government, Town and Country Planning Department. The complainant kept harassing the respondent by breaching the terms of policy. The complainant has caused harassment to the respondent in terms of money and mental harassment

by taking various legal recourses against the respondent since 2017. Complainant got issued the bailable warrants against the respondent in execution of order against which the respondent filed an appeal bearing no. AT/23/2021, wherein Hon'ble Appellate Tribunal vide order dated 05.02.2021 stayed the operation of impugned order and directed the respondent to file objections against execution with Hon'ble HARERA, Gurugram. The complainant is himself a defaulter who did not pay any instalment after July 2017 that put adverse effect on the completion of the project in question. Through the present complaint, the complainant is trying to create liability towards the respondent and intentionally wants to grab the wrongful amount from the respondent. As per clause 5.4 of Agreement to Sell, the complainant has agreed that he shall not claim any compensation for delay due to non-providing of infrastructure facilities or consequent delay in handing offer of possession of the flat in the project since external infrastructure facilities are to be provided by the Government Authorities and beyond the scope and control of the company. Complainant is now demanding delayed interest who shows that the present complaint has been filed with intent to misuse the beneficial provision of RERA Act with ulterior motives. The construction of the project is subject to force majeure conditions beyond the control of respondent. As per clause 5.5 of agreement to sell, the respondent shall be entitled to reasonable extension of time for delivery of possession of the unit when the situation is beyond the control of respondent. The said terms and conditions have been agreed, consented and duly signed by the complainant at

the time of allotment of the said flat. The project has been delayed due to delay in sanction of necessary approvals from the Competent Authorities from the State/ Central Government. Dismissal of the complaint has been prayed for.

3. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

4. It is not disputed that the complainant had got booked residential unit on payment of ₹80,725/- in December 2014. Provisional allotment was made to the complainant vide allotment letter dated 10.07.2015 of One Bedroom flat bearing no.2005, 1st Floor, Tower 12 having super area of 414.37 sq. ft. in 'Krishna Housing' project of the respondent. The total sale consideration of the unit was ₹15,24,022/-. Till 25.02.2017, total amount of ₹9,72,435/- was paid by the complainant to the respondent. The complainant has himself admitted in his complaint that the due date for handing over possession comes to 08.03.2019, counting 48 months w.e.f. 09.03.2015. It is admitted case of the parties that the complainant applied for cancellation of booking vide letter dated 24.07.2017. At this stage, it is pertinent to mention here that due date for handing over possession of the booking unit was 08.03.2019 and much prior to that, vide letter dated 24.07.2017, the complainant applied for cancellation of the booking. The compensation was to be paid to the complainant for harassment and mental agony, which he might have faced for the period after expiry of time for handing over of possession of the booked unit, till the date of either actual offer of possession or offer of possession. That time had not come. It is not disputed that

the complainant had paid total amount of ₹9,72,435/- to the respondent. At the same time, it is apparent on the record that the complainant had filed Complaint no.96 of 2018 at HARERA, Gurugram which was allowed vide order dated 05.06.2018. The complainant had filed execution before HARERA, Gurugram in which part payment of ₹3,00,000/- was made by the respondent. Later on issue of jurisdiction had cropped in. At this stage, it is not relevant as to what amount out of total paid amount alongwith interest has been paid back to the complainant. At this stage, it is relevant as to whether the complainant had suffered harassment and mental agony due to non-handing over of possession of booked unit to the complainant or delay in handing over the possession. The complainant had withdrawn from the booking even before due date for handing over of possession. He does not become entitled to compensation on the ground of mental harassment and agony, as before the date of handing over of possession of the booking unit comes, there is no harassment of the complainant/allottee. Hence no compensation is being paid to the complainant on the ground of harassment and mental agony.

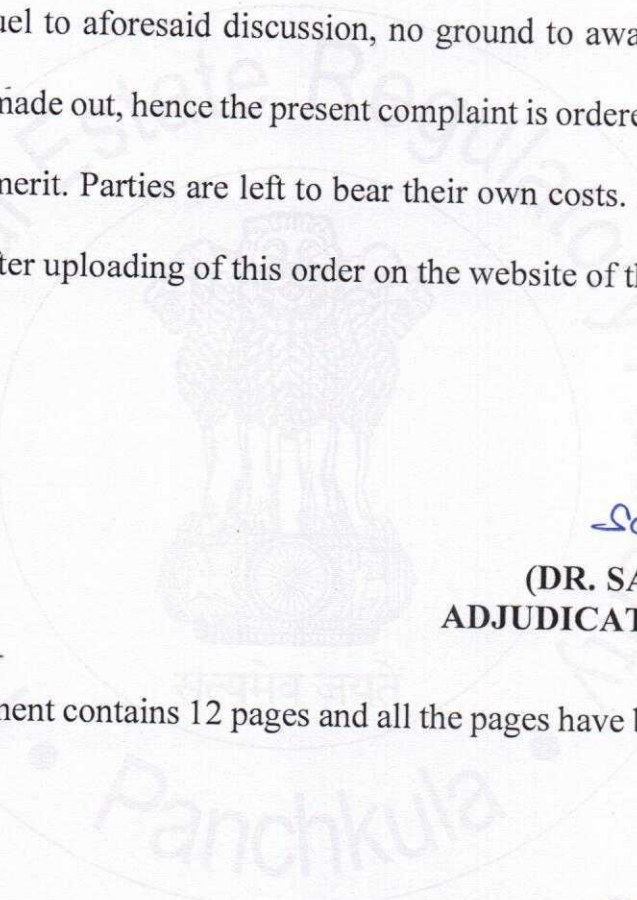
5. So far as relief of compensatory interest @20% per annum compounded monthly on the entire amount deposited by the complainant is concerned, the order of refund has been made by Hon'ble HARERA, Gurugram alongwith interest. No ground for compensatory interest @ 20% compounded monthly is made out.

6. So far as litigation charges are concerned, since ground for payment of compensation is not made out, litigation charges are also not being awarded.

7. Since the complainant himself had withdrawn from the booking of the unit, no ground is made out to award any compensation on the ground of deficiency in service, unfair trade practice or miserable attitude of the respondent alongwith interest.

8. Sequel to aforesaid discussion, no ground to award any amount of compensation is made out, hence the present complaint is ordered to be **dismissed** being devoid of merit. Parties are left to bear their own costs. File be consigned to record room after uploading of this order on the website of the Authority.

24.03.2023


Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

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

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER