

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

Complaint no. : 5341of2022
Date of decision : 05.05.2023

Lalit Mohan Srivastava and Shruti Tiwari
ADDRESS: M-52-A, Adani Samsara, Sector-60,
Gurgaon - 122101

Complainants

Versus

1.M/S. Achaleshwar Infrastructure Pvt. Ltd.
ADDRESS: Adani House, Plot No. 83, Sector-
32, Institutional Area, Gurugram-122001
2.M/s. Adani Brahma Synergy Pvt. Ltd.
Address: Adani House, Plot No. 83, Sector-
32, Institutional Area, Gurugram-122001

Respondents

APPEARANCE:

For Complainants: Mr. Rahul Bhardwaj Advocate

For Respondent No.2: Mr. Parshant Sheoran Advocate

ORDER

1. This is a complaint filed by Lalit Mohan Srivastava and Shruti Tiwari` under section 31 read with section 72 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer. As per complainants, on 24.11.2017 they booked a residential flat in project namely "Adani Samsara", being developed by the respondents, situated at sector -60 in Gurgaon. They were allotted unit bearing no. M52-A admeasuring 425.33 sq. ft. for a total sale consideration of Rs. 3,16,33,287/-. On 25.06.2018, agreement for sale was

executed between the parties. As per clause 7.1 of the agreement, possession of the unit was to be handed over within 27 months from the registration of the agreement.

2. That prior to taking possession of the unit, the basement was completely flooded with rainwater, due poor infrastructure and execution of the project. They (complainants) vide email dated 15.09.2020 raised issue of water logging. They (complainants) approached GM and CEO of the company (respondent) also in this regard but did not receive any response. They (complainants) conducted an investigation in order to find out the root cause of the flooding of the basement and even provided with a solution. After number of emails and calls, the respondents gave assurance to solve the issue and came up with a plan to mitigate the problem.
3. That on 12.02.2021, they (complainants) took possession of their unit, under the belief and assurance that the issue will be resolved. When they (complainants) moved into their apartment, COVID-19 was at its peak. In fear of covid, they kept their belongings in the basement, to follow safety measures. Within few days of moving in, they again witnessed basement having been flooded after heavy rainfall. They got no chance to move their items from the basement. In this way, they suffered severe loss of household items.
4. That the respondents served a notice to them (complainants) asking them to remove their belongings from the basement. Even a fine of Rs. 25,000/- per day was imposed upon them, for not removing items. The respondents did not provide any solution of flooding the basement rather threatened them (complainants) with hefty and unreasonable fines. They made numerous representations through emails like dated 29.11.2021 and 04.12.2021 and expressed their anguish.
5. That the respondents have failed to fulfil their obligation. As per builder-buyer agreement, the respondents were required to provide a toilet on the undivided share of the ground floor. they (respondents) failed again to provide solar water heating system for the kitchen.

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6. Feeling aggrieved, in this manner, the complainants have approached the authority by filing complaint in hands, and sought following reliefs:
- an order to the respondents to complete all the civil work and to repair basement.
 - Order for replacement of doors, painting of walls, ventilation, underground water tanks which are soaked at the time of flooding.
 - an order to the respondents to provide compensation of Rs. 22,96,020/- for the loss, incurred due to non-usage of basement until 15.07.2022 and further Rs. 1,35,060/- per month until all civil work and repair of the basement is done.
 - an order to provide compensation of Rs. 15,00,000/- for the loss, they have suffered due to flooding in the basement.
 - an order to provide compensation of Rs. 6,84,800/- for not providing bathroom on the undivided share ground floor and for causing financial loss by not providing solar water heating system for the kitchen.
 - an order to the respondents to provide compensation of Rs. 20,00,000/- on account for irreplaceable loss, mental agony, and continuous harassment.
 - an order to pay litigation cost of Rs. 5,00,000/-.
 - an order to provide protection against future losses, due to any incident of flooding for 10 years.
 - to pass such other order as Adjudicating Officer may deem fit and proper, in the facts and circumstances of the present case.
7. The respondent no. 2 contested the complaint by filing a written reply. It is averred by said respondent that all the allegations made in complaint are false and frivolous. According to it (respondent no.2) basement is built with air vents/ windows for cross ventilation, which open above the ground level for proper ventilation. Any prudent person would close those windows

during rainy days. It was duty of allottees to keep their air vent closed, to avoid any loss to goods stored in basement.

8. That it(respondent no.2) has tried its level best to stop flow of water by adopting various means. Further, at the time of taking over possession, the complainants executed affidavit cum indemnity bond and admitted the fact that they had visited and inspected the apartment including material used, specification etc. They had no objection.

Citing all this, respondent no.2 prayed for dismissal of complaint.

9. Respondent no. 2 is shown by complainants as promoter/colonizer in their complaint. No explanation is given as to why same impleaded respondent no. 1 also as a party in this matter. BBA, copy of which has been put on file, shows that, there was no privity of contractor between the complainants and respondent no. 1. Said respondent appears an unnecessary party. No relief has been prayed against said respondent, specifically. Complaint against said respondent is thus dismissed.

10. I heard learned counsels for both of the parties. The fact that complainants purchased residential flat in the project of respondent No. 2 as described above, remained undisputed.

During course of arguments, it was contended by the counsel for complainants that there ^{an} is structural defect[^] and deficiency in construction.

Section 14(3) of the act provides as under:

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Complainants, who were present in court submitted that the windows as claimed by the respondent having been installed in the basement, are actually not windows, which can be opened or shut.

Same is a permanent structure, having louvers affixed to it. These louvers are found in a manner, which allow water to enter inside, in case of rain. According to them, it was not within their power to close such windows (having been louvers) and hence despite due efforts, they could not stop rainwater from flooding basement.

11. The respondent in its written reply submitted that windows of the basement are at the height of proximately four inches which from the grounds in case flood like situation, it is not within control of anyone to stop water-from entering the basement. Considering the historical data of rains in Gurugram City, the height of windows of basement was fixed ^{at height} more than sufficient to enter the water. On many occasions, rainfall has broken all the records, which was not within its control. Rain-water entered into the basement, due to unprecedented rainfall. All this was act of God and same (respondent) was not responsible for it.

12. Even the respondent did not deny the fact that basement was flooded due to rainwaters, and again that household goods stored by complainants there-in were damaged. Some photographs relied upon by complainants verify the fact that the windows installed in the basement are not such type of windows which had doors, to open or shut. There appear strip type fixtures, like louvers as claimed by complainants. In this way, I do not find any substance in the plea of the respondent claiming that if basement was flooded with rainwater, it was due to negligence of complainants for not shutting doors.

13. It is ridiculous to blame God for rains. May or may not, an act of God, rains are natural phenomena. There is nothing on the record to prove that there occurred unprecedentedly heavy rainfalls during the period, complainants allege that basement under their unit was flooded. Admittedly, being promoter/developer, respondent No.2 was responsible for defect in structure i.e for installing windows, having louvers in such a way, that allowed rain waters to come inside the basement. The right of complainants to put their goods in the basement, is not denied on behalf of the respondent.

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Considering the facts mentioned above, it is well established that the goods of the complainants were spoiled due to rainwater, flooded in the basement of building, and same due to negligence of respondent No.2.

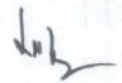
Section 72 of the Act of 2016 prescribes the factors which are to be taken into consideration by this forum, to determine the amount of compensation.

14. Although, the complainants have asked for compensation of Rs. 15 lakhs for loss of goods, they have suffered due to flooding of basement. Same failed to give details of articles perished due to water or their value/price. Despite all this, as it is not denied on behalf of the respondent during arguments that goods of the complainants were destroyed/perished due water, in basement. The complainants gave details of some of their goods while arguing the case. Respondent no.2 is directed to pay a sum of Rs. 5 lakhs (in lumpsum) to the complainants, on this count.

The complainants have prayed for compensation of Rs. 22,96,020/- for loss incurred due non-uses of basement until 15.07.2022 i.e. for 17 months and a sum of Rs 1,35,060/- per month until all civil work and repair of the basement is done.

During arguments, it was pointed out that all the civil work/repairs have already been done. It is not proved that the complainants were not allowed use of basement until 15.07.2022, prayer for compensation in these regards is thus declined.

15. It is not denied by the respondent that same undertook to provide bathroom on undivided share of ground floor and again facility of hot water from solar geyser. Schedule D7, which is put on file also mentions about the hot water supply through solar water heater system. Defence of the respondent remained that the building, in which floor of complainants is located, consists of three independent floors. Single unit of solar water heater of sufficient capacity for all three floors was to be installed. A solar water heater system of good quality including installation comes at the cost of


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Rs. 1 lakh. No evidence is adduced to verify this fact. Even complainants could not tell as what is cost of such solar water heating system. In the opinion of the undersigned, sum of Rs. 50,000 will be appropriate compensation in this regard. Same is thus allowed to the complainants, to be paid by respondent No.2 .


16. About providing toilet on undivided ground floor is concerned, according to respondent, same was not constructed as co-owners/ co-allottees in said project were not in favour of constructing such toilet on ground floor. There is nothing on record to verify that rest of allottees were not in favour of constructing such toilets. When it is not denied on behalf of the respondent no.2 that the latter undertook to provide such toilet, it created a right in favour of allottee i.e., complainants. It is not explained as how complainants have assessed amount of Rs, 6,84,800/- as compensation for not providing common toilet. Keeping in view the importance of facility of toilet, complainants are allowed as sum Rs. 1 lac on this count, to be paid by respondent. no 2.

Apparently, the complainants suffered harassment and mental agony, when their goods stored in basement were spoiled and respondent failed to do necessary repairs, despite being requested again and again complainants are entitled for compensation in this regard. A sum of Rs. 1 lac is allowed as compensation for harassment, mental agony, suffered by complainants.

Although no certificate of fee by advocate is put on record by the complainants, it is evident that same were represented by an advocate during trial of this case, same are allowed a sum of Rs. 50,000/- as cost of litigation, to be paid by the respondent.

As noted above, civil work/repairs are stated to have already been done to prevent re-occurrence of such incidents. I see no reason to pass any order for protection of goods belonging to complainants against future losses. Even otherwise, none can predict future losses (if any).

Complaint in the hands is thus allowed. Respondent no.2 is directed to pay the amounts of compensation as detailed above, within 30


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days of this order, otherwise, same will be liable to pay interest at rate 10 percent per annum on amount of compensation till realization of same.

Sub
5-05-23

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



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