

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

**GURUGRAM**

**Complaint no. : 5473 of 2021**  
**Date of decision : 17.05.2023**

Dishant Tyagi  
ADDRESS: 76, Shanti Vihar, Delhi-110092

**Complainant**

Versus

1.M/S Forever Buildtech Private Limited  
ADDRESS: 12<sup>th</sup> floor, Dr. Gopal Dass Bhawan, 28,  
Barakhamba Road, New Delhi-110001

**Respondent**

**APPEARANCE:**

For Complainant:

Mr. A.K Tyagi Advocate

For Respondent:

Mr Minto Kumar Advocate

**ORDER**

1. This is a complaint filed by Dishant Tyagi under section 31 read with sections 35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.
2. According to the complainant, after going through an advertisement dated 24.10.2018 he booked a residential flat in the project namely "Roselia -2", sector-95-A, Gurugram, Haryana. He (complainant) paid an amount of Rs. 1,04,852/- and was allotted a flat bearing no. J-1603

*dnk*  
A.O.



- admeasuring 514.272 sq. ft. for a total sale consideration of Rs. 20,97,050/-. An amount of Rs.1,25,000/- was again paid by him to the respondent, making total of Rs. 2,29,852/- which was 10% of the total sale consideration. Thereafter he requested the respondent to execute builder buyer agreement (BBA) in his favour.
3. On 20.05.2019 vide email he (complainant) sent a cancellation request to the respondent due to non-execution of the builder buyer agreement. In spite of executing BBA, the respondent sent various demand letters like letters dated 10.06.2019 and 09.08.2019. He (complainant) sent a notice dated 23.08.2019, requesting refund of the amount paid by him.
  4. It is further pleaded that the advertisement published in Dainisk Jagran dated 24.10.2018 was misleading, as Roselia -2 was already amalgamated to Roselia -1 having RERA registration no. 05/2017 with approved building plan dated 06.07.2018, while the advertisement was published in newspaper on 24.10.2018.
  5. Citing all this, complainant prayed for:-
    - a. Refund of Rs. 229852.00 with 15% (interest) from the respective date of payments.
    - b. Action against the respondent under Sections 12,14, and 18 of the Act.
  6. On 08.04.2022, when it was pointed to the learned counsel for the complainant that in view of mandate given by the Apex Court in *M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors.*

A.O.



*Etc.* jurisdiction to grant relief of 'refund' lies with the authority and not with the Adjudicating Officer, learned counsel filed an application with a prayer to amend relief clause. It is clarified that the complainant, wanted following reliefs:-


- a. to award compensation of Rs. 5,00,000/- (five lacs) from respondent for mental and physical harassment.
  - b. to award compensation as damages for disproportionate gain or unfair advantage by respondent amounting Rs. 1,04,852/- + 1,25,000/- w.e.f 18.03.2019 till date (of complainant) with interest @ 15% p.m. against the respondent.
  - c. Award cost of litigation of Rs.1,00,000/- (one lac).
7. As mentioned above, according to mandate given by the Apex Court in Newtech Promoters and Developers Pvt Ltd. case (supra) jurisdiction to grant relief of refund is vested with the Haryana Real Estate Regulatory Authority, ~~Gurugram~~ (the 'authority') and not with Adjudicating Officer. The complainant may approach the authority, if <sup>Gurugram</sup> the same wants relief of refund.
8. I heard learned counsels for both of the parties, and went through written submissions filed by the complainant. It is contended by learned counsel for the complainant that his client was misled by the Advertisement done by the respondent in 'Dainik Jagran' (Hindi) Newspaper. A copy of which is filed as Annexure 1. According to him, his client (complainant) had applied for flat in "Roselia 2" and paid part of sale consideration. He was allotted flat no. J-1603, through said

*Ad*  
A.O.



advertisement, respondent had claimed that project of "Roselia 2" was near completion. It was known that "Roselia 2" was an extension of "Roselia 1" and one tower i.e., Tower L was a separate tower of "Roselia 2". The respondent amalgamated license no. 63 of 2017 with license no. 13 of 2016 and got approval of Chief Town Planner, Haryana - cum- chairman, Building Planning Committee. Said fact was concealed by respondent from the Haryana Real Estate Regulatory Authority, Gurugram.

9. Both of said projects were amalgamated on 06.07.2018, while RERA registration was obtained on 12.10.2018, i.e. after three months of amalgamation. Afore said publication was advertised in newspaper on 24.10.2018.
10. Even if, "Roselia 2" and "Roselia 1" were amalgamated, as per complainant, respondent has got approval of Chief Town Planner Haryana in this regard. If information about this amalgamation was not given to the Authority, it is for the authority to take any action for violation of condition of registration. There is no reason to come to conclusion that the complainant was misled in any way by that advertisement. No reason for awarding for compensation in this regard.
11. When it is not proved on file that advertisement given by respondent was misleading, there is no question of getting any disproportionate gain or unfair advantage for the same. No reason to award any compensation on this count also.

  
A.D.



**HARERA**  
**GURUGRAM**

12. On the above discussion, I do not find any reason to award any compensation to the complainant. Complaint in hands is thus dismissed. Both of parties to bear their own costs.
13. File be consigned to the records.

*R.K.*

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