



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. - 2647 of 2022

Date of Institution: - 30.09.2022

Date of Decision: - 24.01.2023

1. Ms. Rashmi Verma w/o Mr. Varinder Verma, r/o 14, M.S. Enclave Dhakoli, Zirakpur, Mohali, Punjab-140603.
2. Mr. Varinder Verma s/o Sh. Krishan Dev, r/o 14, M.S. Enclave Dhakoli, Zirakpur, Mohali, Punjab-140603.

....COMPLAINANTS

VERSUS

1. Global Land Masters Infratech Private Limited (Erstwhile M/s Bhoomi Infrastructure Co.) through its Directors, H. no. 1411, Sector 21, Panchkula-134112.
2. Punjab and Sind Bank, Bhankherpur, office at B-182, Derabassi, District Mohali-140201.

....RESPONDENTS

Hearing:- 3rd

Present:- Mr. Himanshu Monga Advocate, Counsel for the Complainants
Ms. Rashmi Verma, Complainant no.1 through video conferencing
Mr. Varinder Verma, Complainant no.2
Respondent no.1 already ex-parte
Mr. Vansh Chawla Advocate, Counsel for Respondent no.2 through video conferencing

Sanita Gupta

JUDGEMENT:

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

1. The complainants had applied for purchasing of 3 BHK flat measuring 1590 sq. ft. Type (B) in 'Amazon The Defence County', the project of respondent situated at Sector-30, Panchkula. On 21.10.2010, the complainants had paid booking amount of ₹1,00,000/- to respondent no.1. Construction based installment was opted by the complainants. Respondent no.1 allotted Flat no.B3/206, Type B, 3 BHK, measuring 1590 sq. ft. to the complainants for a total sale consideration of ₹29,01,240/-. Payment plan was also provided to the complainants. On 20.05.2014 respondent no.1 had entered into a Flat Buyer Agreement with the complainants against the booked unit. As per the said agreement, the possession of the unit was to be handed over to the complainants by 19.05.2018 i.e. within a period of 36 months + 12 months. The complainants borrowed an amount of ₹13,00,000/- on simple interest rate of 11.75% alongwith penal interest @ 2% from Punjab & Sind Bank, respondent no.2. Before sanctioning the said loan, the concerned bank applied to get permission to mortgage the said flat from respondent no.1. On 30.05.2011, respondent no.1 confirmed that it has no objection if the flat booked by the complainants is mortgaged with the bank by way of security for repayment of loan. A tripartite agreement was executed between the complainants, respondent no.1 and

respondent no.2 on 23.06.2011, whereby respondent no.2 Punjab & Sind Bank agreed to sanction loan of ₹13,00,000/- to the complainants subject to terms and conditions applicable to housing loan scheme by mortgaging the flat. Respondent no.1 also agreed to render all assistance to the complainant as well as bank to comply with terms and conditions. The respondent no.1 also undertook to execute the sale deed/lease deed and conveyance deed after delivery of possession to the complainants. Loan of ₹13,00,000/- was approved by respondent no.2 @ 11.75% alongwith penal rate of interest @ 2% to the complainants towards the said flat for paying installments. On 14.03.2014, respondent no.1 issued a demand notice to the complainants for payment of next installment towards the booked unit without complying the payment plan. The complainants also got insured the flat from New India Assurance Company Ltd. by paying a premium of ₹6,742/- wherein Punjab & Sind Bank, Dera bassi respondent no.2 was named as financier. The said insurance was covered for a sum of ₹30,00,000/- which would operate from 20.05.2015 to 19.05.2025. The policy is still in operation. The complainants have already paid an amount of ₹3,00,000/- vide cheque drawn on Punjab & Sind bank which was advanced to Global Land Master Company, Sector-2, sister concern company and the same was transferred in the said project towards the said flat by respondent no.1. It was acknowledged by issuing receipts by respondent no.1. Respondent no.1 issued receipt to the complainants on account of advance payment towards said flat in the sum of ₹10,00,000/-. On 24.06.2011, respondent no.1 issued receipt in the sum of ₹5,00,000/-. On the same day,

respondent no.1 again issued receipt no.927 to the complainants for receiving an amount of ₹1,00,000/-. On 10.05.2014 receipt no.1249 was issued in the sum of ₹2,00,000/-, on 30.05.2014, the complainants again received receipt no.1250 from the respondent no.1 having received an amount of ₹8,50,000/-. A total amount of ₹20,50,000/- has been paid by the complainants towards the said flat to respondent no.1 till 30.05.2014. The complainants have paid an amount of ₹7,00,000/- to respondent no.1 by way of cheque drawn on Punjab & Sind Bank. Despite having received the amount of ₹20,50,000/- for personal use by the complainants, respondent no.1 remained deficient in providing services. The respondent no.1 has illegally collected the money from the complainants but not handing over possession of the flat in accordance with terms and conditions within stipulated period of time. The complainants had filed Complaint no.351 of 2020 before Hon'ble Authority in which the factual position was revealed that respondent no.1 has failed to complete the project, in Complaint no.559 of 2018 Hon'ble Authority has already handed over the project to GLM Buyer Welfare Association for completion. Vide order dated 22.04.2022, it reveals that the non-completion of the project has resulted in breach of contract executed between the parties and respondent no.1 was directed to refund the entire principal amount of ₹20,50,000/- alongwith interest of ₹18,24,605/-. The complainants were paying rent of ₹7,500/- per month, which is apparent from order dated 16.04.2021 passed by learned Rent Controller, Dera bassi in Rent petition titled as Sujata Sharma v/s Varinder Verma and Anr. The complainants have sought compensation of

₹5,00,000/- towards mental harassment, ₹1,00,000/- towards litigation cost, ₹4,90,500/- on account of rent paid by them and interest @ 9% on the total amount of ₹20,50,000/- paid by the complainants to respondent no.1.

2. Despite notice, respondent no.1 Global Land Masters Infratech Private Limited did not appear and vide order dated 10.01.2023, it was ordered to be proceeded against ex-parte.

3. Respondent no.2 has appeared through counsel and filed reply submitting preliminary objections that the complainants have filed complaint seeking compensation on account of mental harassment, also seeking litigation cost and rent paid by the complainant and interest with regard to the inter se dispute amongst the complainants and respondent no.1 builder. All the reliefs sought by the complainants are against respondent no.1 and no relief has been sought against respondent no.2. Earlier, the complainants had filed Complaint no.351 of 2020 titled as Rashmi Verma and Anr v/s Global Land Masters Infratech Private Limited and Anr before Hon'ble Authority which was allowed vide order dated 24.02.2020 directing respondent no.1 to refund the principal amount of ₹20,50,000/- alongwith interest in the sum of ₹18,24,605/-. Now the present complaint has been filed seeking relief of compensation and rent payable by the complainants in respect of same housing unit is barred by provisions of law. The complainants could have sought the relief of compensation in the earlier complaint. On merits, it has been admitted that a tripartite agreement dated 23.06.2011 was executed between the complainants, respondent no.1 Global

Land Masters Infratech Private Limited and Respondent no.2 Punjab and Sind Bank, whereby respondent no.2 had agreed to sanction loan of ₹13,00,000/- to the complainants subject to terms and conditions applicable to the housing loan scheme by mortgaging the said flat. After disbursement of the loan amount, the loan account of the complainants became irregular in the year 2018 and was declared as non-performing asset on 29.05.2018. Smt. Poonam Sapra and Sunil Sapra, guarantors of the loan account agreed to settle the said loan account and dues of the bank were finally settled by said guarantors. Those guarantors have also filed a Civil Suit for declaration to declare them as mortgagees of flat in dispute i.e. Flat no.206, Type-B-3, Amazon, Defence Colony, Bhoomi Green, Sector-30, Panchkula which is pending adjudication before learned Civil Court at Panchkula against the complainants and also respondent no.2. The complaint has sought to be dismissed with cost qua respondent no.2.

4. Arguments of learned counsel for the complainants and respondent no.2 have been heard carefully alongwith meticulous examination of records of the case.

5. Perusal of the file reveals that the basic sale price of the flat was ₹29,01,240/-, out of which the complainants had paid ₹27,50,000/-, out of which ₹7,00,000/- has been paid back by respondent no.1 to the complainants. Now the total paid amount comes to ₹20,50,000/-. Breakup of the said paid amount is as: ₹3,00,000/- on 02.11.2010, ₹1,00,000/- on 02.11.2010, ₹5,00,000/- on 24.06.2011, ₹1,00,000/- on 24.06.2011, ₹2,00,000/- on 10.05.2014 and

₹8,50,000/- on 30.05.2014. Flat Buyer Agreement was executed between the parties on 20.05.2014. As per the said Flat Buyer Agreement, possession was to be delivered within a period of 36 months + 12 months (extension of additional period) i.e. 48 months and the deemed date of handing over possession comes to 20.05.2018. Admittedly possession has not been handed over by the respondent to the complainants. The complainants had filed Complaint no.351 of 2020 on 24.02.2020. Vide order dated 22.04.2022 passed by Hon'ble Authority, respondent no.1 was directed to refund entire principal amount of ₹20,50,000/- to the complainants and interest was calculated at ₹18,24,605/- and the total payable amount comes to ₹38,74,605/-. Out of this amount nothing has been paid by the respondent no.1 company to the complainants and execution for the same is pending.

6. It is the averment of learned counsel of respondent no.2 that the complainants had taken a loan of ₹13,00,000/- from respondent no.2 and a tripartite agreement was executed between the complainants, Global Land Masters Infratech Private Limited respondent no.1 and Punjab and Sind Bank respondent no.2. It is also averment of counsel for respondent no.2 that since the amount of loan was not repaid by the complainants, Smt. Poonam Sapra and Sunil Sapra who were the guarantors for the said loan, had paid the amount to the bank and later on civil suit was filed against the present complainants and bank for incorporating the name of guarantors as mortgagees in place of the bank. The said civil suit is pending.

7. When the compensation is awarded, it is calculated @ 6% per annum on the amount paid by the complainant till the date of order, if refund is allowed by Hon'ble Authority or till the date of valid offer of possession if the possession is ordered by Hon'ble Authority. In the present case, refund amount of ₹20,50,000/- alongwith interest ₹18,24,605/- has been awarded by Hon'ble Authority vide order dated 24.02.2020. In the present case, respondent no.2 has stated that a loan of ₹13,00,000/- was taken by the complainants from Punjab & Sind Bank. The loan account became irregular in the year 2018 and after that the amount of loan was repaid by Smt. Poonam Sapra and Sh. Sunil Sapra, guarantors of the loan amount. Later on, the amount of loan was not paid back by the complainants to the guarantors. The guarantors had no option but to file civil suit substituting them as mortgagees for the flat in place of Bank, which is pending before learned Civil Court. If out of principle amount, a sum of ₹13,00,000/- was taken as loan from Punjab & Sind Bank and was paid to the respondent no.1, it cannot be said that the amount of the complainants was being used by the respondent company which amounted to wrongful loss to the complainants and wrongful gain to the respondent. In fact the amount was paid by the bank, which in turn was repaid by the guarantors. When the complainants were not honest in repayment to the bank or to the guarantors, they cannot be said to be entitled to any compensation on account of mental harassment and agony. In fact the mental harassment and agony is being faced by the guarantors who are pursuing their

legal remedy before the Civil Court. The complainants have put the guarantors into litigation, who had helped them in their crises.

8. By way of compensation, the complainants have also claimed rent for the house in which they have been residing. Copy of order dated 16.04.2021 passed by learned Rent Controller in Rent Petition no.39 of 2020 titled as Sujata Sharma and Anr. v/s Varinder Verma and Anr. has placed on record. On reading the entire order running into three pages, it shows that the specifications of the house in which the complainants are allegedly residing on rent have not been mentioned. Rather the word 'demised' premises has been used. Without the particulars of the house under rent, it cannot be presumed that which house was on rent with the present complainants. The rent deed is unregistered document, copy of which has not been placed on record. Neither there is copy of petition nor the reply. The order dated 16.04.2021 passed by learned Rent Controller, Dera bassi shows that the petition was adjourned to 28.05.2021 for tender of provisional rent including interest and cost. Without any order on the record, it cannot be inferred that the rent, cost and interest were paid by the present complainants to their landlord. In the absence of any particulars of the rented house, this Court constraints to give any compensation to the complainants under the head of rent paid by the complainants.

9. Since no compensation is being awarded either on account of mental harassment and agony or rent paid by the complainants, no amount for cost of litigation is awarded in favour of the complainants.

10. Finding no merit, the present complaint is ordered to be **dismissed** with no order as to costs. File be consigned to record room after uploading of this order on the website of the Authority.

24.01.2023

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 10 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER