



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint no. 2502 of 2022

Date of Institution: 16.09.2022

Date of Decision: 02.05.2023

Uma Khanna w/o Rakesh Khanna r/o House no. K-18/10, DLF Phase-2, Gurgaon,
Haryana-122002.

....COMPLAINANT

VERSUS

Movish Realtech Pvt. Ltd. (Earlier known as Ashiana Realtech Pvt. Ltd.), through
its Managing Director, Directors and Authorized Representative, 203-205,
Proressive Chamber, D-3 Block Commercial Complex, Prashant Vihar, North
West Delhi - 110085

....RESPONDENT

Hearing: 13th

Present: - Mr. Kunal Thapa, Advocate, Counsel for complainant
Mr. Kamaljeet Dhaiya, Advocate, Counsel for respondent

S Anita Gupta

JUDGEMENT:

Complaint no. 2502 of 2022

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

1. The complainant Uma Khanna and her relative Arti Arora had booked a unit in the respondent's project namely "The Cubix" in Dharuhera, Haryana on 18.03.2013. On 04.06.2013, the respondent had allotted Unit no. A2, 1104 in the project 'The Cubix' in Dharuhera, Haryana and issued allotment letter. At the time of allotment it was conveyed to the complainant by the respondent that it possesses all the requisite clearances and certificates from the concerned Authorities for constructing and developing said project. In fact the respondent was not having any of the requisite approvals for developing and constructing the project. The respondent had falsely represented that it had all the approvals and the same constitutes an unfair trade practice under Section 7(1)(c) of Real Estate (Regulation and Development) Act, 2016. On 01.08.2013, the complainant and respondent had entered into a Builder Buyer Agreement. As per Clause 6 of the said agreement, the possession of unit was to be handed over within 42 months i.e. by 01.02.2017 but the respondent failed to handover the possession within stipulated period of time. As per Clause 6 of Builder Buyer Agreement, the respondent was granted grace period of six months to handover the possession i.e. by 01.08.2017. Even by that time the respondent failed to handover possession of the unit to the complainant. Meanwhile Arti Arora, relative of the complainant who had booked a unit alongwith the complainant was

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allotted Unit no. A-2, 1108 was unhappy with construction/services of respondent, had decided to cancel her allotment and allocate all her funds in favour of the complainant vide agreement dated 18.11.2014. Respondent had taken signatures of Arti Arora on a blank format of settlement deed and assured that all the amount deposited by Arti Arora shall be transferred to the account of complainant i.e. Uma Khanna. As per deed total amount which Arti Arora had paid was to be transferred towards the unit of the complainant. Respondent mischievously deducted ₹1,35,087/- from the amount deposited by Arti Arora without giving any prior information or notice to the complainant or Arti Arora. It was explicitly told by representative of respondent company that no amount shall be deducted but it was deducted by respondent. The said deduction is illegal, arbitrary and against the principles of natural justice. The complainant had opted for construction linked plan wherein the payment of instalments was based on the developer attaining construction milestone as determined by builder himself. The complainant had paid the entire amount when it was demanded by the respondent. After sometime, the respondent was demanding unprecedented amount without achieving any milestone as per the plan. After visiting and inspection of the site in the last quarter of 2019, it was revealed that the construction of Tower A-2 in which the complainant was allotted unit, was ceased and no development works were carried out. Only a concrete construction structure was erected with all raw material scattered. The said area is still under-developed and no completion certificate has been granted to the respondent from competent Authority. Complainant had been deeply traumatized by inactions of the respondent and her

hard-earned money has been siphoned by the respondent, leaving the complainant financially, mentally and physically harassed. The respondent had applied before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula for registration of the project 'The Cubix'. As per information furnished on 23.10.2019, the respondent itself admitted that internal roads and pavements, water supply system, storm water drainage, electricity supply system, sewage treatment & garbage disposal, street lights, security and firefighting, playgrounds and parks, club house, community centre, shopping area, renewable energy system, hospital/dispensary and solid waste collection were yet to be prepared. Till date none of the facilities have been constructed. At the time of issuance of brochure, the project would comprise of convenient shopping, jogging and walking trails, parks and play areas, club house, rain water harvesting, state of the art gymnasium, yoga and meditation center, cafeteria, basketball court, badminton court and swimming pool, which are not present and it was also projected that whole of the township will be surrounded by lush green area. Despite passing of seven years from the date of booking, none of the aforementioned facilities have been provided by the respondent. At the time of purchasing of the flat, it was explicitly stated by the respondent that these facilities would be available at the time of committed date of possession i.e. 01.08.2017, but with no result. Since possession of flat alongwith all the amenities has not been handed over, the complainant feels cheated. The complainant used to visit the site office of respondent time and again to check the progress of the project as well as talk to the representative of the project. They assured that same shall be constructed

within stipulated time. The respondent is liable to compensate the complainant for deficiency in services, unfair trade practice and delay in offer of possession to the complainant with all requisite facilities/amenities. On 08.09.2018, the respondent had issued a letter that the project was heading near completion, in fact the respondent had applied for revision of complete building plans and had received the approval of revised building plans for the said project on 30.10.2018 i.e. more than one year after the due date of possession. The respondent has revised the building plans of the project in the year 2018 without any intimation/approval from the allottees. As per Section 14 of the Act the respondent was bound to take approval of at least 2/3 of allottees before any alteration or addition is made in already sanctioned plan. From the revision of building plans of the project in the year 2018 by the respondent, two things are quite evident that the necessary approvals and construction of the project was halted till 2018 as the respondent was not having requisite sanctions from the competent Authority to continue with construction. It is direct violation of provisions of the Act. Respondent had arbitrarily and without giving any information to the allottees about the change in the building plans continued to handover demand letters to the complainant when neither any construction nor sanctions were approved by competent Authority which is grave violation of the Act as well as statutory provisions of law. Due to inactions by the respondent, the complainant had suffered immensely as the veracity of the information provided at the inception on the basis of said unit was booked, was false and misleading. The complainant needs to be compensated for the same. The respondent had

offered possession to the complainant after four years from the stipulated period of 10.11.2021 with a demand letter qua unit booked by the complainant. The total amount demanded by the respondent is over ₹10,00,000/-, over and above price at which respondent is currently selling the same unit in open market. Such malpractice and fraudulent practice adopted by the respondent is against the statutory provisions of law and also against the principles of natural justice. It is settled principle of law that an allottee cannot be made to wait indefinitely for possession of the unit and the amount deposited by the complainant shall be refunded to him if the builder fails to handover the possession within stipulated period of time. The amount deposited by the complainant way back in 2013 was in continuous possession of respondent, it was reaping benefits of the said amounts taking unfair advantage over the complainant and disproportionate gain in favour of respondent. If amount deposited by the complainant would have been invested/deposited in other avenues, she would have gained some substantial returns. To the surprise of complainant, the respondent is now demanding more amount from the complainant qua the unit booked and compared to the actual cost of the unit at present. By way of the present complaint, the complainant has sought compensation to the tune of ₹1,00,000/- under Section 12 of the Real Estate (Regulation & Development) Act, 2016 for furnishing false information with respect to licenses, possessed amenities in brochure which were never materialized till date, compensation in the sum of ₹1,00,000/- under Section 14 of the Act as at the time of booking in 2013, the complainant requested the respondent to supply copy of approved plan but the same were denied. The

respondent has assured that project will be developed as per approved plans but the building plans were approved in the year 2018 and no approval was taken or intimation was given to the complainant with respect to the revised building plans. The complainant has also sought ₹1,00,000/- as compensation from the respondent for keeping the complainant in dark with respect to unit, causing mental, physical and financial harassment to the complainant. The respondent did not bother to notify the complainant about the status of the project and kept on demanding and accepting money. The complainant has also sought ₹50,000/- as cost of litigation.

2. Upon notice, the respondent had appeared through counsel and filed reply taking preliminary objections that respondent is entitled to benefit of force majeure period and should be exempted from charge of delay interest from March 2020 to 08.11.2021 as Covid period is also one of the major reasons for delay in receiving occupation certificate. On one hand, respondent has made arduous effort to complete the project despite adversities and on the other hand, it will be burdened with payment of huge amount as interest and also have the period of force majeure, respondent must not be held responsible for such period of delay. On merits, it is admitted that the complainant was allotted Flat no. A2-1104, Sector-23, Dharuhera, Rewari. The complainant had not adhered to the payment plan and committed various Act and defaults. Despite receipt of offer of possession and various reminders, the complainant is not interested in taking possession but her only intention is to enrich herself wrongfully under the garb of delay possession interest. The complainant is herself a defaulter, she never

turned to pay single penny after making the payment of first instalments despite several requests and reminders. Complainant is liable for breach of payment clause. As per terms of agreement, the respondent could have cancelled the allotment upon each of the defaults and forfeit the earnest amount. On each occasion respondent had chosen not to cancel the allotment. Despite several adversities, the respondent had completed the project and moved an application on 07.12.2020 before Hon'ble Director, Town and Country Planning, Haryana for grant of part occupation certificate of towers. The respondent had submitted quarterly progress report for compliance of phase 1 of the project with regard to stage of construction till 31.12.2020 to show its bonafide. Respondent had offered possession of the flat to the complainant on 10.11.2021 after receipt of occupation certificate from the concerned Department. Respondent is suffering badly for no fault of it, firstly by incurring cost of completion of the project from its own resources, secondly by not getting the amount outstanding against the allottees, thirdly by getting burdened of false and frivolous litigations and fourthly for the time taken by Town and Country Planning Department for the grant of Occupation Certificate. Due to outburst of COVID-19 Occupation Certificate was received in the year 2021. Complainant is herself liable to pay interest on every default of payment. She is also liable to pay holding charges and penalty for not taking possession even after receipt of legitimate offer of possession. The complainant should not be allowed to take advantage of her own wrongs. The complainant is living in a residential property and has invested her money in the project for future gain also. The unreasonable claims submitted by the claimant

are mere counterblasts for her breaches and defaults. Respondent has not adopted any unfair trade practice. The complainant has not turned to pay single penny even after receipt of offer of possession despite repeated requests and reminders. Because of defaults committed by the complainant, the respondent could have cancelled the allotment upon each of the defaults and could have forfeited the earnest money. Even then, respondent had chosen not to cancel the allotment. The complainant is liable to pay interest on the outstanding dues. The complainant did not take possession without any just cause. The complainant has not approached the Court with clean hands and trying to suppress material facts. It seems that the complainant is misusing this forum for quick gains. It is denied that Ms. Arti Arora has cancelled her allotment due to her unhappiness with the construction/services of the project. Rather, Ms. Arti Arora showed her incapacity to pay the instalments of the unit booked by her. She requested the respondent to cancel her booking and adjust the payment made by her against unit no. A-2, 1108 in the unit of the complainant i.e. A-2, 1104. The booking of Ms. Arti Arora had been cancelled due to non-payment by Ms. Arti Arora and as per terms of settlement deed. The cancellation of the unit was subject to forfeiture of earnest money and deduction of EDC, IDC, Taxes etc. As such the amount paid by Ms. Arti Arora had been transferred in the account of complainant as per terms mentioned under cancellation clause after legitimate and requisite deductions. It is denied that the respondent had mischievously deducted ₹1,35,087/- from the amount deposited by Ms. Arti Arora. The complainant had paid only first instalment after the booking of unit and never paid a single penny after the

payment of meagre amount of ₹6,06,880/- and never came forward to discharge her own part of obligations. The complainant did not pay after 04.06.2013 i.e. first instalment despite repeated reminders. The complainant has refused to take possession and has not cleared outstanding amount against her till date which shows that the complainant's only interest in getting wrongful enrichment by filing the present complaint. Occupation Certificate was received by respondent way back in the year 2021. As per statement of account dated 07.02.2023 and also as per demand letters, complainant is liable to pay an amount of ₹48,12,771/- alongwith holding charges. The present complaint is based on false and frivolous facts only to take wrongful benefit of useful provisions of the Act and is liable to be dismissed after imposing exemplary costs.

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

4. The present complaint seeking compensation has been filed by the complainant on the ground that she had booked a unit in 'The Cubix' apartment, Dharuhera on 18.03.2013. ₹3,00,000/- on 18.03.2013 and on 04.06.2013 ₹3,06,880/- was paid by her and unit A-2, 1104 was allotted to her. 01.08.2013 Builder Buyer Agreement was executed between the parties. As per Builder Buyer Agreement, possession was to be delivered by the respondent to the complainant on 01.08.2017. There was another allottee Ms. Arti Arora who had been allotted unit no. A-2, 1108. She had deposited ₹3,00,000/- on 19.03.2013, ₹1,50,000/- on 19.09.2013 and ₹1,50,000/- on 18.10.2013, total of ₹6,00,000/-, copies of receipts have been placed on record. Ms. Arti Arora got cancelled her

allotment and an agreement was executed between the parties on 18.11.2014 vide which the amount deposited by Ms. Arti Arora had been agreed to be adjusted in the amount paid by the present complainant. The present complainant had paid ₹6,06,880/- and Ms. Arti Arora had paid ₹6,00,000/- total of which comes to ₹12,06,880/-. As per version of the complainant, amount of ₹1,35,087/- was illegally deducted from the amount of Ms. Arti Arora whereas version of the respondent is that this amount was deducted legally as per agreement. At this stage, this Court is not to go into the observation as to whether amount of ₹1,35,087/- was deducted legally or not. The fact remains the same that after deduction of this amount, the remaining amount of (₹6,00,000/- - ₹1,35,087/-) has been adjusted in the account of the present complainant, which comes to ₹4,64,913/-. As per Builder Buyer Agreement, the possession was to be delivered on 01.08.2017 and offer of possession has been made by the respondent on 10.11.2021. It has been argued by learned counsel for respondent that because of COVID-19 in March 2020 to 30.06.2021, completion of the project was delayed and the respondent is entitled to receive benefit of this period.

5. Though vide resolution dated 26.05.2020 and 02.08.2021 benefit of COVID-19 period has been given from 25.03.2020 to 03.05.2020 and from 01.04.2021 to 30.06.2021 by Hon'ble Authority, yet it is related to registered projects only and the present project is unregistered. Because of being unregistered project, the benefit of COVID-19 period cannot be extended to the present project. Hence, this argument of learned counsel for respondent is hereby rejected.

6. It is proved on the record that the possession has been offered on 10.11.2021, which was to be handed over on 01.08.2017. The complainant has suffered mental agony and harassment during this period and the amount of ₹10,71,793/- was being utilized by the respondent.

7. The calculation of compensation is tabulated below:

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹10,71,793/-	01.08.2017 to 10.11.2021	6%	₹2,75,377/-
₹10,71,793/-			₹2,75,377/-

8. Though the compensation under head of mental agony and harassment comes to ₹2,75,377/-, yet the complainant has sought ₹1,00,000/- for causing mental, physical and financial harassment. Hence, this amount of compensation under the head of mental agony and harassment is restricted to ₹1,00,000/- only.

9. The complainant has sought compensation under relief no.1 to the extent of 1,00,000/- under Section 12 of Act for furnishing false information with respect to licences possessed and amenities in the brochure. This relief cannot be granted by this Court. Under relief no.2 the complainant has sought compensation of ₹1,00,000/- under Section 14 of the Act on the ground that the copy of approved plans were not supplied to the complainant. For both these reliefs, the complainant is at liberty to move to Hon'ble Authority.


10. ₹25,000/- is granted as cost of litigation to the complainant.

11. The total compensation comes to ₹1,00,000/- + ₹25,000 = ₹1,25,000/- (Rupees One Lakh and Twenty Five Thousand only).


13. In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

14. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

02.05.2023


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 13 pages and all the pages have been checked and signed by me.


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER