

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

Complaint no. : 5473 of 2022
Date of decision : 18.08.2023

Sh. Sanjay Goel
Address: Flat no. J 501, Bestech Park View Spa Next, Sector
67, Gurugram -122001.

Complainant

Versus

Silverglades Infrastructure Pvt. Ltd.
Address: C8/1A, Vasant Vihar, New Delhi - 110057

Respondent

APPEARANCE:

For Complainant:

For Respondent:

Mr. Kuldeep Kumar Kohli Advocate
Mr. Ashwarya Sinha Advocate and
Ms. Shubhi Sharma Advocate

ORDER

1. This is a complaint filed by Sanjay Goel under section 31 read with section 72 of The Real Estate (Regulation and Development) Act 2016, against respondent viz. Silverglades Infrastructure Pvt. Ltd.
2. It is averred that being impressed by presentation of the respondent, he (complainant) purchased one shop at Merchant Plaza, Sector 88, Gurgaon, admeasuring 719 sq. ft. bearing shop no, GF - 12 in the project, being developed by the respondent and paid Rs. 20,04,070/- as booking amount. An allotment letter was given by respondent on 25.07.2013.

The shop was purchased under construction linked plan, for a total sale consideration of Rs.76,89,373/-.

3. An Apartment Buyer Agreement (ABA) was executed between the parties on 23.07.2014, after many requests made by him (complainant). As per clause no. 11.1 of the agreement, respondent had agreed to give possession of the shop within a period of 4 years from the date of approval of the building plans for the project. It was further agreed that even after the expiry of the commitment period, the company shall be further entitled to a grace period of a maximum of 180 days for issuing possession notice. Town and Country Planning Department, Haryana approved building plan for this project vide its approval memo no. ZP-867/SD(BS)/2013/41292 dated 30.05.2013. Therefore, the due date of possession was 30.05.2017 (30.11.2017 with grace period).
4. That he (complainant) paid a total sum of Rs. 71,42,195.10 i.e. 92% of the total sale consideration of Rs. 76,89,373/- towards the said apartment from 30.04.2013 till 24.05.2017, as per demands raised by respondent.
5. That on 03.06.2019 and on 04.03.2020, he (complainant) sent a letter to the respondent and told that after the site visit, he found that the infrastructure in and around the project was far from completion, as the access roads to the project are also not complete/constructed and club (alleged as USP of the Project) for which respondent was demanding Rs. 3,50,000/- was also not constructed.
6. That the respondent received conditional occupation certificate from the Town & Country Planning Department for ground floor to 2nd floor, 4th floor (Part), 5th floor (Part), and 6th floor to 11th floor, dated 11.02.2020 The said OC had conditions i.e., "that you shall be fully

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responsible for the supply of water, disposal of sewerage and storm water of your colony till these services are made available by HSVP/State Government as per their scheme as project did not have adequate provision of water supply and disposal of sewerage and storm water etc". Moreover, there is no supply of electricity in the project from DHBVNL. No OC for the 3rd floor and part area of the 4th and 5th floor was given.

7. That on 20.02.2020, the respondent issued a letter of offer of possession of the unit and demanded Rs 7,32,515/- mentioning that the super area of shop has been decreased by 719 Sq. Ft .to 705.69 Sq. Ft. The respondent illegally demanded holding charges, advance monthly maintenance, delayed payment charges etc.
8. That being aggrieved by said acts of the respondent, he (complainant) filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram bearing Complaint No. RERA-GRG-2819-2020, which was disposed of vide judgment/order dated 28.09.2021. The Authority directed the respondent to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 30.05.2017 till 20.04.2020 i.e. date of offer of possession (20.02.2020) + 2 months and the respondent was restrained from charging anything from him (complainant) which was not part of the buyer's agreement. Holding charges could not be charged by the promoter at any point of time despite being part of agreement as per law settled by the hon'ble Supreme Court in civil appeal nos. 3864-3899/2020.
9. That he (complainant) is suffering from mental agony, mental harassment, financial losses^{etc.} He is paying property tax on the said property from last three years and has to operate his business from



rental premises and paying their rental dues even after investing his hard-earned money in the respondent company's project and not getting the possession of the said unit till date.

10. Citing all this, the complainant has sought following reliefs :
- That the letter of possession has been given on 20.02.2020, whereas actual date of possession ought to be 30.05.2017 but actual possession has not yet been given.
 - To compensate for the loss of Rs. 15,00,000/- p.a. or Rs.1,25,000 p.m. for investment of Rs.1,00,00,000/-.
 - To compensate the amount of Rs.24,769 paid as property tax for the property mentioned above from the year 2020 to 2023.
 - To compensate with Rs.5,00,000 as harassment for pain and mental agony.
 - To compensate with Rs.3,00,000 as litigation charges.

The respondent contested the complaint by filing a written reply. It is alleged that :-

11. ² That the complainant had agreed to the payment plan as mentioned in ABA. However, he (complainant) had miserably failed to make payment of outstanding for about 42 days i.e. about 1.5 months as on 30.11.2020.
12. It (respondent) has obtained license from Town and Country Planning Department, Haryana for development of the project vide license no. 01 of 2013 dated 04.01.2013. The entire project had been registered under the Act of 2016 vide registration certificate no. 340 of 2017 dated 10.10.2017 and same is valid upto 20.12.2020, further 6 months extension has been provided by HARERA through order no. 9/3-2020

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dated 26.05.2020. Therefore, the registration certificate is valid upto 20.06.2021.

13. That OC was obtained from the competent Authority vide memo no. ZP-867/ AD(RA)/2020/3936 dated 20.02.2020 and offer of possession was given to complainant through letter dated 20.02.2020. As per HARERA registration, completion of project was allowed upto 20.06.2021 and offer of possession was made well in time i.e. on 20.02.2020.
14. That according to section 18 of the Act of 2016, an allottee can only be allowed for compensation if allottee wishes to withdraw from project by seeking refund. So, the complainant is not entitled for compensation, he can only ask for interest on delayed period. As the complainant is asking for compensation in the present petition without withdrawing from the unit, so the present complaint is not maintainable. Moreover, the Authority in its judgement dated 28.09.2021 in complaint no 2819/2020, filed by present complainant has already given him relief of DPC. The Authority further held that the respondent can charge advance maintenance charges and club charges.
15. It (respondent) has already filed an appeal bearing no 282/2022 titled Silverglades Infrastructure Pvt. Ltd Vs Sanjay Goel, before the Hon'ble Appellate Tribunal against aforesaid order dated 28.09.2021, passed by the Authority and the same is pending. On the basis of all this, respondent prayed for dismissal of complaint.

I heard learned counsels representing both of the parties and went through record on file.

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16. It is not denied that as per clause 11.1 of Apartment Buyer's Agreement, the respondent was obliged to handover possession of the subject shop to the complainant within a period of 4 years from the date of approval of building plan for the project. It was also agreed between the parties that after expiry of said period, the respondent was also entitled for a further grace period for maximum of 180 days for issuing possession notice. As per complainant, the building plan was approved by DTCP through letter/memo no. ZP-867/SD(BS)/2013/41292 dated 30.05.2013. In this way, due date of possession came to be 30.11.2017 (including grace period). Even as per respondent, it send offer of possession through letter dated 20.02.2020, in this way, the respondent delayed handing over possession for about 2 years and 3 months.
17. As described above, respondent claims that same offered possession well within time. Completion date of project was allowed to be extended upto 20.06.2021. Even if the said fact is true, simply to say that, the authority has allowed extension of time to complete the project, it does not debar an allottee to claim possession, as per contract (ABA) entered between the parties. I do not find much substance in this plea of the respondent.
18. Similarly, according to respondent, Section 18 of the Act of 2016 allows compensation to that allottee only who wishes to withdraw from the project, and sought refund, while present is not a case of refund. In my opinion, the respondent has misconstrued provision of law. Section 18 of the Act of 2016, prescribes that if a promoter fails to complete or unable to give possession as per agreement than promoter shall be

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liable to refund the amount to the allottee if demanded by later. As per section 18(3) of the act, if promoter fails to discharge any other obligation imposed upon him under this act, or as per ABA, same (promoter) shall be liable to pay compensation. As mentioned above, the promoter failed to hand over the possession in agreed time, same is thus legally bound to compensate the allottee/ complainant, in this case. Section 19(4) of the act, reminds about the rights of the allottee to claim refund of the amount and also the compensation, in the manner as prescribed under this act, when promoter fails to give possession in agreed time.

19. Section 72 of the act prescribes the factors which have to be taken into account by the Adjudicating Officer to adjudge quantum of the compensation, same are namely :
- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - The amount of loss caused as a result of the default.
 - The repetitive nature of the default.
 - Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
20. As per complainant, although OC was received to respondent ^{from} by DTCP through letter dated 11.02.2020, for some floors including ground floor, where unit in question is situated. Said OC was conditional that respondent will be fully responsible for supply of water, disposal of sewerage and storm water of it's colony till these services are made

available by HSVP/ State Government. There was not adequate provision for the water supply and disposal of sewage. Moreover, there was no supply of electricity in the project from DHBVN. The respondent is also slammed for not constructing club house for which the same has already agreed. Respondent issued letter of possession but demanded a sum of Rs.7,32,515/- as outstanding dues. Respondent did not dispute the fact that the same could not provide water facility, sewerage disposal, electricity connection to the unit. It is also not ^{refuted} by respondent that club house was not constructed, despite agreement. In these circumstances, even if letter of possession was issued by the respondent, same was not a valid offer of the possession.

21. Although, there is no evidence to prove as what disproportionate gain or unfair advantage has been received by the respondent, by not handing over possession of the subject unit to the complainant in time, apparently, the respondent used money paid by the complainant, collected to raise construction, which was not completed as per agreement. The complainant claims to have suffered loss of his earning for not getting possession of his shop in time. The complainant has put on file a document (Annexure C/12), where, same has compared rentals in and around Merchant Plaza, Sector 88, Gurugram. The same has referred 99Acre.com, showing rental of a shop measuring 128 sq. ft. in the project Godrej Oasis, Sector 88A, Gurugram having rental value of Rs.23,000/- p.m. Another shop in same project and in same sector measuring 100 sq. ft is having rental of Rs.18,000/- p.m. It is worth mentioning that the shop allotted to the complainant was measuring 719.00 Sq. Ft which was later decreased to 705.69 Sq. Ft. Considering, the comparison as done by the complainant, In my opinion,



- Rs.1,00,000/- p.m. will be an appropriate amount as compensation as loss of income to complainant. Same is allowed to the complainant, to be paid by respondent, till actual handing over the possession or valid offer of possession.
22. The complainant has prayed for the compensation of Rs.3,00,000/- as legal expenses. A certificate from Kohli and Kohli Law Associates has been put on file, ^hVerifying total legal expenses as of Rs. 3,00,000/-. This amount appears unreasonable. A sum of Rs.1,00,000/- is awarded in favour of complainant as cost of litigation including fee of advocate, to be paid by the respondent.
23. Although a complainant has claimed compensation of Rs.5,00,000/- for mental agony and suffering. Apparently for not getting the possession of his shop, the complainant suffered mental harassment. Rs.5,00,000/- appears to be excessive amount. A sum of Rs.1,00,000/- is awarded to the complainant as compensation for mental agony and harassment, suffered in this matter, to be paid by the respondent.
24. As described above, the complainant has claimed compensation for payment of Property Tax. Apparently being owner, it is the responsibility of complainant to pay property tax. Same is not entitled for any compensation in this regard, even if same has already paid property tax. Request in this regard is declined.
25. Complaint stand disposed of. Respondent is directed to pay amount of compensation well mentioned above within 30 days of this order, otherwise same will be liable to pay interest @10% p.a till realisation of amount.
26. File be consigned to the Registry.

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dnb *18-08-23*
(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram



HARERA