

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

Complaint no. : 534 of 2022

Date of decision : 07.06.2023

Parvin Goel and Meeny Goel,
R/O: House No. P-20, 1ST Floor,
Uppal Southend, Sohna Road, Gurugram,
Haryana.

Complainant

Versus

M/S. Vatika Ltd.

Registered office at: Plot No. 621-A,
6TH Floor, Devika Tower 7, Nehru Place,
New Delhi-110019.

Corporate office at: Vatika Triangle,
4th Floor, Shushant Lok Phase-I, Block-A
Mehrauli-Gurugram Road, Gurugram,
Haryana-122002.

Respondent

APPEARANCE:

For Complainant:

Mr. Parvin Goel
(one of complainants)

For Respondent:

Mr. Pankaj Chandola
Advocate

ORDER



1. This is a complaint filed by Mr. Parvin Goel and Mrs. Meenu Goel (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. According to complainants, after going through advertisement published by the respondent in newspapers and as per the brochure/prospect provided by same (respondent) they (complainants) booked a "residential Plot" bearing No. 17, 3rd Court Street, measuring 240 sq. yards, situated in Sector-85-B, Gurugram, Haryana being developed by respondent for a total sale consideration of Rs. 59,67,840/- (Rupees Fifty-Nine Lakh Sixty-Seven Thousand Eight Hundred and Eighty- Four only).
3. That, relying upon the Respondent's representation and believing those to be true, they paid Rs. 36,55,688/- (Rupees Thirty-Six Lakhs Fifty-Five Thousand Six-Hundred and Eighty-Eight only) at the first instance. As per the Clause-10 of the Builder Buyer's Agreement (BBA) dated 20.07.2010, the possession of the plot was to be delivered within 36 months from the date of execution of the BBA.
4. They (Complainants) received a letter dated 11.06.2013 from the respondent regarding the re-allotment of the plot booked by them and subsequently, on 18.06.2013, plot No. 31 Street No. R-6.1 Sector-85, Gurugram measuring 240 sq. yards was re-allotted to them. An addendum to the BBA was executed on 08.07.2013 between the parties. Leaving aside the modified terms mentioned within it, all the other terms and conditions



including the possession date (20.06.2013) of the BBA remained unaltered and unaffected.

5. That, even as per terms of re-allocation of the plot, the possession was not delivered to the Complainants/Allottees. That, vide e-mail dated 11.03.2017, the respondent/developer informed them that the plot has to be reallocated, again due to reasons beyond the control of it (developer).
6. That when despite their repeated requests, the respondent did not deliver possession of the plot, finding no other option, and being aggrieved by the unfair trade practice of the respondent, they filed a complaint before The Real Estate Regulatory Authority, Gurugram vide complaint No. 2252 of 2019 and the same was decided to vide Order dated 03.11.2020. The respondent was directed to pay interest at the prescribed rate i.e 9.30% per annum for every month of delay on the amount paid by them (complainants) from the due date of possession i.e 20.07.2013 till the date of the actual offer of possession, along with a grace period of 6 months. The arrears of interest accrued till date of decision were to be paid within 90 days from the date of order and thereafter monthly payment of interest till the offer of possession was be paid on or before 10th of each subsequent month.
7. That, despite repeated requests made by Complainants, the respondent did not deliver possession of the plot, due to which they (complainants/allottees) went through lot of mental, physical, and financial agony and harassment.
8. Contending that the Respondent has acted in a very deficient (defiant), unfair, wrongful, and fraudulent manner, by not



delivering the said Plot within the timelines agreed in the BBA the complainants by filing the complaint in hands, have sought following reliefs:-

- (i) Compensation of Rs. 30,00,000/- (Rupees Thirty Lakhs only) on account of physical harassment, mental agony, monetary loss, and suffering because of the respondent's act.
- (ii) An amount of Rs. 1,00,000/- as cost of the present litigation.
- (iii) Any other relief/order or direction, which this Hon'ble Adjudicating Officer may deem fit and proper, considering the facts and circumstances of the present complaint.

9. The respondent contested the complaint by filing reply. It is averred that the present complaint has been filed by Mr. Pravin Goel alone without making Mrs. Meenu Goel (co-allottee) a party in the proforma B for the complaint. The complaint is signed by Mr. Parvin Goel only and thus, in absence of the co-allottee as a party in the present complaint, no relief can be granted in favour of Mr. Pravin Goel along, as that will hamper the rights of Mrs. Meenu Goel, in the plot. Further, in absence of an affidavit of co-allottee, no relief can be granted in favor of the complainant (Pravin Goel) for the entire plot. In light of this fact, present complaint is not maintainable.

10. The Respondent further contended that the project was hindered due to many reasons beyond its control such as laying of the GAIL pipeline, loss of land in the ROU alignment

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of GAIL corridor, acquisition of sector road land parcels in the township, acquisition of sector roads by governmental orders. Development of the project was also hampered by the ban invoked by the National Green Tribunal, and lockdown on account of covid-19 pandemic.

11. The respondent pointed out that the Hon'ble authority vide order dated 21.12.2020 had directed it (respondent) to handover the possession of the plot in question along with interest on delayed possession at the rate of 9.30% p.a. from 20.07.2013, till the actual date of the offer of possession. Same (respondent) had to pay an amount of Rs. 25,49,837/- (Rupees Twenty-Five Lakh Forty-Nine Thousand Eight-Hundred Thirty-Seven Only) to the complainants, as delay possession interest, for the delay so caused in handing over the possession of the said plot. Delay possession charges granted by the authority itself amounts, to compensation, which the complainants have already been granted.

12. That, due to circumstances beyond the control of the respondent, it is not in a position to offer possession of the said plot but is ready to refund the amount paid by the complainants along with the interest.

13. I heard complainant in person and counsel for respondent. So far as contention of the respondent that the complaint should be dismissed on the ground of the non-inclusion of Mrs. Meenu Goel (co-allottee) as a party in the complaint is concerned, it is apparent that in form-"CAO" under the rule 29(1) of Haryana Real Estate (Regulation and Development) Rules, 2017, both Mr. Pravin Goel and Mrs. Meenu Goel have



been shown as complainants. Relief is claimed in favour of both of allottees. Even if complaint is signed by only one of allottees, affidavit in support of complaint has also been signed by one of allottees i.e Mr. Pravin Goel, the latter is stated to be husband of Meenu Goel, having no adverse interest. It appears merely a mistake, not to get signature of both. If complaint in hands is dismissed on this ground, same may cause injustice to complainant. It is well settled that a party should not suffer injustice merely due to some negligence of mistake.

14. It is not denied that, as per Clause-10 of the BBA, possession of subject plot was to be delivered within 36 months from the date of execution of the paid agreement i.e. 20.07.2013. Admittedly, the respondent has failed to deliver possession of said plot of land not only up to this date rather till now. All this has resulted in anxiety, mental trauma, harassment, and agony of trial for the complainants.
15. Explanation about delay in handing over possession of subject unit, as given by the respondent is that due to unforeseen cause (well described above) possession could not be given to the complainant, does not hold ground. It has been more than dozen of years since the signing of the BBA, between the parties that the respondent is unable to fulfil the promises made by it in this regard. A buyer cannot be made to wait indefinitely for his/her dream house, purchased by sacrificing life savings.
16. Admittedly relief of delayed possession charges has already been granted by the authority to complainants vide order



dated 03.11.2020 in complaint number 2252 of 2019. The provision to grant compensation is a separate and independent remedy that emanates from section 31,71 of The Haryana Real Estate (Regulation and Development) Act, 2016 r/w rule 29 of Haryana Real Estate (Regulation and Development) rules, 2017. Where the purpose of delayed possession charges is to provide interest on the amount paid by the buyer, the provision to award compensation is to compensate the buyer for violation of his/her right by the promoter/builder and also for the inconvenience, wrong, trauma, harassment, etc. meted to him/her on account of non-fulfillment of its obligations by latter (promoter) under the agreement.

The complainants have asked for Rs. 30 lacs as compensation for anxiety, mental trauma, harassment, etc. Section 72 of the Act of 2016 tells the factors, which this forum is obliged to take into consideration for deciding amount of compensation. The respondent can be presumed to have gained by using money paid by complainants/allottee. Similarly, the complainants have been deprived of use of their house for several years or their money i.e., Rs. 36,55,688/- which they paid to respondent as sale consideration.

Keeping in view the facts of this case, this forum (AO) allows a sum of Rs. 5 lacs as compensation to the complainants for harassment, mental agony and monetary loss etc. to be paid by the respondent.

The complainants did not file any receipt etc. of payments of fees to their advocates but it is fact that the same

AO



HARERA
GURUGRAM

Complaint No. 534-2022

were represented by an advocate, during proceedings of this matter . The complainants are allowed Rs. 50,000/- as the cost of litigation.

The respondent is directed to pay the entire amount of compensation as detailed above, within 30 days of this order, otherwise, same will be liable to pay interest @10% P.A, till realization of the amount. Complaint is thus disposed of.

File be consigned to the records.

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority
Gurugram

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