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

Complaint no. : **5620 of 2022**
Date of decision : **24.07.2023**

Anita Sharma
R/O : House No. 8298, Sector- C,
Pocket-8, Vasant Kunj, South West Delhi. **Complainant**

Versus

M/S Almond Infrabuild Pvt. Ltd.
ADDRESS: 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

APPEARANCE:

For Complainant: Kshitiz Vaibhav Advocate
For Respondent: Mr. Vivek Sethi Advocate

ORDER

1. According to complainant, she is a retired teacher, She spent her hard-earned money in purchase of a commercial unit bearing no. 9, ATS Tourmaline, sector-109 Gurugram, Haryana for livelihood of her two unemployed major

children, said project has been developed by the respondent. An agreement to sell /builder-buyer agreement was entered between the parties on 11.07.2018. She was given assurance by the respondent that from said unit, she can easily earn Rs. 1-1.5 lakh per month. She paid entire sale consideration of Rs. 32,88,298/- partly on her own account and partly by taking loan from a bank. She has been paying Rs. 23,138/- per month to her bank as EMI, since July 2018.

2. In view of clause 7.1 of the BBA, possession of the unit was to be handed over by the respondent on or before 31.03.2019. As per Clause 7.6, 9.1 & 9.2 of the BBA, if promoter/respondent defaults in giving possession in time, same will be liable to pay compensation and interest at rate prescribed in the rules. The respondent offered possession of subject unit through letter dated 09.08.2019. She visited the property but found that the construction had not been completed, in her commercial unit. Even the gates were not installed. The letter offering possession had been issued by respondent with sole intent to evade any penal liability.

3. Constrained in this manner, she (complainant) approached this forum, with prayer for direction to respondent to pay compensation for 30 months and 8 days delay at rate Rs.1,00,000/- per month, in lieu of not giving possession in time. The complainant further sought grant of Rs. 10,00,000/- for harassment and mental agony, caused to her and again any other relief, which the authority deems fit and proper.

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4. No written reply has been filed on behalf of the respondent. Defence of same was struck of, vide order of this forum dated 18.10.2022. Both of parties filed their written submissions, apart from advancing oral arguments.
5. During arguments, it was pointed out that the complainant has sought delay payment compensation (DPC) by filing separate complaint before the authority and same has already been allowed by the authority, vide order dated 30.03.2022.
6. It is contended by learned counsel for the complainant that as per Clause 7.1 of the BBA, possession was to be handed over by the respondent to complainant on or before 31.03.2019. Although, the respondent issued an offer of the possession through letter dated 09.08.2019, when his client visited the spot, she found that construction was not complete, even gates had not been installed. She was forced to file a complaint before the authority, seeking possession of her unit. Vide order dated 24.09.2021, the authority directed the respondent to hand over possession, within a week of the order. In this way, the respondent was compelled to hand over possession. The complainant took a loan from the bank and has been paying EMI to her banker amounting Rs. 23,138/- since July 2018.

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7. It is not disputed by the respondent in its written submissions that in view of Clause 7.1 of BBA, possession of unit in question was to be handed over on or before 31.03.2019, but according to same, said term was subject to delay due to force majeure, court orders, Govt Policy, guidelines etc. Due to some orders passed by SDM Kapasehra, notification regarding demonetization of some currency notes by the Central Government, orders passed by National Green Tribunal and again because of bad weather conditions, same(respondent) could not complete construction in time. The respondent denied its liability for delay in handing over possession of unit in time.

8. The respondent prayed for dismissal of complaint, stating that relief sought by the complainant was incorrect and based on concocted facts.

9. As mentioned above, delay payment compensation has already been granted to the complainant by the authority. Even otherwise, same was not within jurisdiction of this forum, relief in this regard is thus declined.

10. Admittedly, the respondent was obliged under the BBA to hand over possession till 31.03.2019, which same failed to handover. The complainant claims to have paid entire sale consideration till 29.08.2018, from her own funds and also by taking loan from a bank. Possession is

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stated to have been given to the complainant after order passed by the authority, on 08.10.2021.

11. As per Section 71 of the Act Adjudicating Officer is appointed by the Authority for the purpose of adjudging compensation under Section 12,14, 18 and Section 19 of the Act. The Apex Court of India in case tilted as ***M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. Etc. Civil Appeal No. 6745-6749 of 2021*** referring its earlier judgments rendered in case ***M/s Imperia Structures Ltd. Vs. Anil Patni and Another 2020 (10) SCC 783*** mandated that jurisdiction to award delay possession charges (DPC) lies with the authority, while jurisdiction to grant compensation under Section 12,14,18, and 19 of the Act with the Adjudicating Officer. In case of failure of promoter to deliver possession in time, the allottee is entitled to both of reliefs i.e., refund of amount paid, and also the compensation, in manner as provided under the Act.

12. Considering all this, in my opinion, even if the complainant has been granted compensation for delay in handing over possession, same is not debarred from claiming compensation for harassment and mental agony, by filing separate complaint. It is clarified by learned counsel for complainant that his client i.e., complainant had

prayed for similar relief i.e. compensation for harassment from the authority apart from compensation for delay possession but the authority did not pass any order in this regard.

13. In the facts as discussed above, complainant is entitled for compensation. Section 71 of the Act prescribes the factors which are to be taken into account by the Adjudicating Officer, while adjudging quantum of compensation. Same are reproduced here as under: -

a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.

b. The amount of loss caused as a result of the default.

c. The repetitive nature of the default.

d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

14. There is no denial that unit allotted to complainant was a commercial unit and at the cost of repetition, it is mentioned here that according to complainant, after her retirement, she invested the amount for gain i.e., to earn money for herself, as well as for her two unemployed children. The respondent failed to deliver possession of unit for more than 30 months, despite agreement. In this way,

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the complainant can be presumed to have suffered loss of her income, for said period, which she and her children could have earned by use/renting out of such commercial unit. The complainant has not adduced any evidence to prove as what is rate of rent in locality where said unit is situated. The complainant is stated to have been paying EMI of Rs. 23,138/- on the loan taken by her. It is not clear if the complainant has already repaid the loan or till when she has to pay EMIs. Unit in question is stated to be a commercial space having carpet area of 19.04 sq. meter, in project of respondent situated at Sector 109, Gurugram, Haryana. Considering the size of unit and also locality, which is in the process of developing, it is presumed that complainant suffered loss of income at rate Rs. 20,000/- per month. She(complainant) is thus awarded a sum of Rs. 6,000,00/- as loss of income. Further, keeping in mind circumstances of complainant and other factors as described above, she is allowed Rs. 1,00,000/- as compensation mental agony/ harassment. Although, the complainant did not file any receipt of payment to her advocate, during trial of this case, she was represented by an advocate, she is awarded Rs. 50,000/- as cost of litigation all payable by the respondent,

15. Complainant in hands is thus allowed. The respondent is directed to pay aforesaid amounts within 30

days from the date of this order, Otherwise, same will be liable to pay interest at rate 10% per annum, till realization of the amount.

16. Announced in open court today i.e., 24.07.2023.

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