

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

Complaint no. : 4156 of 2022
Date of order : 26.07.2023

Vinay Gupta
ADDRESS : H.No. 263, Sector-15 -A, Faridabad

Complainant

Versus

1.M/S International Land Developers Pvt. Ltd.
ADDRESS: ILD Trade Centre, 9th floor sector-
47, Sohna Road, Gurugram

Respondent

APPEARANCE:

For Complainant:

Complainant In Person

For Respondent:

Mr. Pankaj Chandola Advocate

ORDER

1. This is a complaint filed by Vinay Gupta under section 31 read with sections 35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.
2. According to complainant, he booked an apartment in the project namely "Arete" on 28.12.2013. An apartment buyer agreement (ABA) was executed between the parties on



HARERA GURUGRAM

- 01.11.2014 for unit no. D-603 admeasuring 1325 sq. ft. on 6th floor in tower-D of the project.
3. That as per ABA, possession of the unit was to be delivered within 48 months from the date of execution of the ABA with grace period of 6 months. He had opted for Construction Linked Payment Plan, as per which, 20% of BSP + 205 of PLC was to be paid before the commencement of the project. Eventually, an amount of Rs.13,00,000/- was paid by him before the start of construction on the project.
 4. That he (complainant) availed home loan from Tata Capital Housing Finance Limited amounting Rs. 49,82,000/- on 13.10.2016. A tripartite agreement was executed among him, respondent and Tata Capital Housing Finance Limited on 14.10.2016. As per said agreement, the respondent was liable to pay PRE- EMI's for a period of 28 months.
 5. First disbursement was made on 25.11.2016 and consequently, it was the obligation of the respondent to make the payment of Pre- EMI from November 2016 to January 2019. However, the same was never paid by the respondent, rather he(complainant) paid an amount of Rs. 4,55,152 for the same. Till 30.05.2019, he(complainant) paid a sum of Rs.47,32,645 to respondent.
 6. On 20.03.2019, an email was sent by the respondent stating that their obligation of the tripartite agreement has ended



and the interest cost will be accumulated till offer of possession of your agreement at time of final demand on offer of possession. As per clause 10 of the agreement, the respondent was to deliver the possession within 4 years of execution of ABA but the same was not delivered within the stipulated time period. The respondent has further demanded illegal amount including club membership charges, utility charges, power backup installation charges, EC/ IDC charges and IFMS total amounting to Rs. 66,250/-.

7. After number of requests, he was left with no option but to approach the authority for refund of amount and filed a complaint no. 2000-20222 which is pending.
8. Citing all this, complainant has sought following reliefs:
- to award compensation of Rs. 5,00,000/- for wrongfully taking a sum of Rs. 13,00,000 before the excavation of the project.
 - to award compensation of Rs. 4,55,152/- for violation of tripartite agreement and not paying Pre-EMI as per the contractual obligation.
 - to award compensation of Rs. 5,00,000/- in favour of the complainant for unfair trade practices.
 - to award cost for mental agony of Rs. 10,00,000/- against the respondent.

(Complainant)
A. D.

- e. To award cost of litigation of Rs. 1,00,000/-.
- f. to pass further order as Adjudicating Officer may deem fit and proper in the facts and circumstances of the present case.

The respondent contested the complaint by filing a written reply on following grounds: -

9. The issue of pre EMI's cannot be raised before this forum(AO), as it is part of refund and complainant had already filed a complaint no. 2000-2022 in authority for refund of amount paid by him.
10. Complainant had not paid instalments on time, which was essence of contract. Even otherwise, project is complete by 40-50%, respondent is not duty bound to send separate notice to complainant for payment of installments.
11. It(respondent) was entitled for grace period on account of force majeure conditions due to demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of installments by different allottees of the project are beyond control of respondent.
12. Contending all this, respondent requested for dismissal of complaint.

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I heard complainant in person and learned counsel for respondent.

13. It is not in dispute that as per clause 10 of Apartment Buyer Agreement, the respondent was obliged to deliver possession of subject unit to complainant within four years of said agreement dated 1.11.2014 with grace period of six months. After counting grace period the due date of possession comes to 1.05.2019. It is not denied that project is still not complete. The complainant has paid substantial amount of sale consideration. As mentioned above, according to respondent, the complainant defaulted in making payment of installments which is denied by the complainant. According to latter, he did not receive any notice for the payment. Complainant opted for construction linked payment plan. In my opinion, in such a case, it was for the builder, to inform the stage of the construction and to ask for payment of installments, otherwise, how a buyer is could have known the status of construction.
14. According to respondent, due to force majeure circumstances, same could not complete the construction. I do not found much substance in this plea. The respondent failed to adduce any evidence in this regard. Moreover, the respondent has already been granted six months time anticipating such circumstances, which were beyond its control.

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A.O.

15. It does not bar the complainant from claiming compensation simply because same has filled a complaint before the Authority seeking refund of his amount. Remedy to claim refund of the amount and compensation are two separate remedies. A buyer can claim both of such remedies at the same time. Trite it to mention here, that jurisdiction to grant relief of refund is invested with the authority, while it is for this forum(AO) to decide matter of compensation under sections 12,14,18 and 19 of Act of 2016. All this is upheld by the Apex Court of India in case titled viz. Newtech Promoters and Developers Pvt. Ltd. vs State of UP & ors. Civil Appeal No(s). 6745-6749 of 2021. Plea of respondent that when complainant has prayed for refund of the amount, same cannot claim compensation is thus without any merit.
16. Admittedly, the respondent used money paid by the complainant and did not complete the construction as per ABA, same is liable to compensate the complainant. When complainant was deprived of his right to have possession of his unit despite making substantial payment, all this caused mental agony and harassment to complainant. Similarly, when respondent was duty bound to pay pre EMI's to the bank as per tripartite agreement entered among allottee(complainant), respondent and bank. The complainant was constrained to take loan, and now repaying

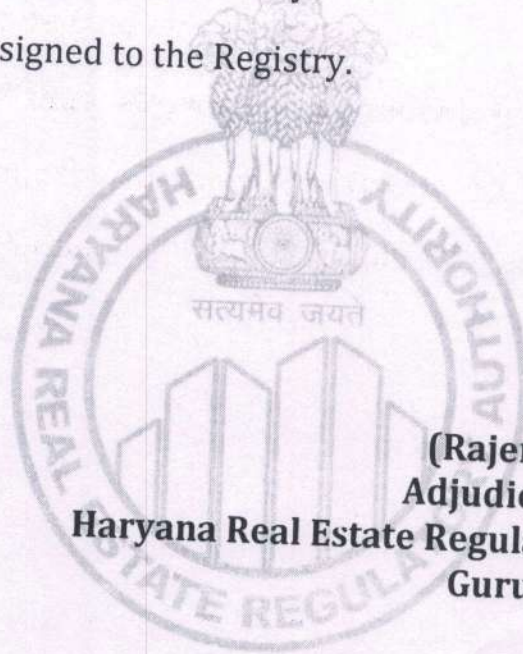
it to the bank without respondent fulfilling it's obligation, the complainant is entitled to be compensated from the respondent.

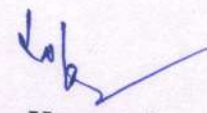
17. Section 72 of the Act of 2016 prescribes the factors which are to be taken into account, for deciding quantum of the compensation. The complainant did not ^{adduce} ~~produce~~ any evidence to verify as what amount same was forced to pay to the bank for default of respondent in ^{paying} ~~making~~ pre EMI's installments to the bank. Complainant failed to prove as how same is entitled for compensation of Rs.4,55,152 for violation of tripartite agreement as claimed by him. Undisputedly, complainant had to take loan to pay to the promoter(respondent). Same is repaying the loan amount and respondent had used the said money but did not fulfill ^{it} its obligation by completing construction even till now. Considering all these facts, respondent is directed to pay a sum of Rs.2,00,000/- to the complainant on this account.
18. As discussed above, for not getting his unit in time, the complainant suffered harassment and mental agony. Same(complainant) is awarded a sum of Rs.1,00,000/ on this account, to be paid by the respondent.
19. Although complainant, did not file certificate etc. about the fees paid by him to his counsel. It is apparent that same was represented by an advocate during trial of this case.

Complainant is awarded a sum of Rs.50,000/- as cost of litigation, to be paid by the respondent.

Complaint is thus allowed. Respondent is directed to pay aforesaid amounts to complainant within 30 days of this order, otherwise same will be liable to pay interest @10.5% p.a. till realisation of amount.

20. Announce in open court today.
21. File be consigned to the Registry.




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

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