

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

**Complaint no. : 2419 of 2022**  
**Date of decision : 17.08.2023**

Sh. Nitin Singhal and  
Sh. Surendra Kumar Singhal  
Both resident of : A-43, Shivalik, New Delhi 100017.

**Complainants**

**Versus**

Tata Housing Development Co. Ltd.  
ADDRESS: TRIL Commercial Centre, Intellion Edge,  
Tower A, First Floor, Sector 72, Gurugram 122001

**Respondent**

**APPEARANCE:**

For Complainants:

Mr. R.N. Dixit Advocate

For Respondent:

Mr. Arun Yadav Advocate

**ORDER**

1. This complaint is filed by Nitin Singhal and Surender Kumar Singhal under section 31 read with section 72 of The Real Estate (Regulation and Development) Act 2016, against respondent viz. Tata Housing Development Co. Ltd.

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2. According to complainants, they booked a flat no. T-7-904. in the Project TATA Primanti of TATA Housing Development Co. Limited, Sector-72, Gurgaon on 04.12.2012 by depositing Rs.20,00,000/- out of total sales consideration of Rs. 3,17,48,900/- ( Plus Rs.9,50,000 for car parking Charges). An allotment letter dated 31.03.2013 was issued by the respondent. A builder buyer agreement(BBA) was signed on 16.11.2013. First offer of possession letter was given by the respondent on 19.03.2018, whereas, as per BBA, the possession of complete flat was to be handed over in the month of October 2017.
3. They(complainants) did not take possession of the flat as it was incomplete. The respondent also accepted that a lot of work was to be done. Same(respondent) issued a revised Possession letter on 23.08.2018 stating therein that flat will be ready for possession as on 20.09.2018, after completing required work. They(complainants) have paid Rs.3,17,00,829/- till 02.06.2018 against total sales consideration of Rs.3,17,48,900/-(complainant deposited 3,12,44,549/-, rest are credits given by the builder. Rs.4,56,280 - Rs.1,40,910/- is GST offset and Rs.3,15,370/- is EDC credit from TATA)
4. That the builder/respondent has charged interest on delayed instalments @18%p.a of Rs.8,60,925/- which is contrary to the RERA guidelines.

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5. That after getting revised letter of possession, they(complainants) sent several mails to the respondent for recalculation/waiver of the interest charged on higher side, so that they(complainants) may pay the remaining amount, if any, from their side and can take the possession of the flat but no concrete response was received from the builder.
6. They(complainants) continuously followed up with the builder/respondent for waiver of extra Interest charged/interest for delayed possession but no positive response was received from their side. The respondent every time kept on replying that management is not allowing any waiver. After receiving the final demand letter vide mail dated 27.06.2018, they(complainants) informed respondent that some payments deposited by them are missing in the statement of account but no reply was received. In the absence of correct statement, they(complainants) could not release the due payment of Rs.13,94,937/- to be made through Citi Bank against outstanding amount of Rs.14,06,282/- as on 16.03.2019.
7. At the same time, respondent arrived with an amnesty scheme w.e.f. 20.03.2019 valid up to 30.04.2019 in which some waivers/relief/ benefits were offered by them. Due to wrong statement of account supplied by respondent, they(complainants) could not get the amount released from Citi

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Bank. However, on getting statement of account corrected from the builder on 23.07.2019, they once again approached the builder/respondent to consider their case under the amnesty scheme as the delay was caused due to the wrong statement supplied by it(respondent), but respondent refused to accept their request.

8. In the year 2020, they(complainants) approached Ld. Authority by filling a complaint no. 3322 of 2020, in which the Hon'ble Authority awarded decree in their favour on 09.07.2021. The respondent was directed to pay a delayed period interest from the due date of possession i.e. 30.10.2017 till the expiry of two months from the date of offer of possession (22.05.2019), which comes out to be 22.07.2019. Respondent was directed to pay delayed period interest @9.30% p.a. from 30.11.2017 to 22.07.2019 on the amount deposited by them(complainants) within 90 days from the date of order. The respondent was directed not to charge anything, which is not the part of BBA. The Authority also directed that the interest payable shall be adjusted towards the dues if any pending against them(complainant) to the builder.
9. Citing all this, complainants have sought following reliefs:
  - i. Compensation of Rs.75000/- p.m. from due date of possession i.e. 30.11.2017 to till date.

  
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- ii. Compensation of Rs.50 Lakhs for mental agony/ continuous stress and fear of loss of complainants and their family.
- iii. The cost of suit.

The respondent contested the complaint by filing a written reply.

It is averred that :

10. The Authority vide order dated 09.07.2021, directed it(respondent) to pay interest @ 9.30% p.a. from 30.10.2017 till 22.07.2019. The complainants have also been directed to pay interest @ 9.3% p.a. to it(respondent) for default in payments and again to pay outstanding dues, after adjustment of interest for the delayed period.
11. It is the pre-requisite for filing a complaint under Rule-29 that violation, if any, by the promoter has to be finally established by the Ld. Authority by way of a judgment and it is only thereafter that a complaint for compensation is maintainable before the Adjudicating Officer. However, when that judgment itself is under challenge before Appellate Tribunal and is still sub-judice present complaint for compensation before the Adjudicating Officer does not lie. It is liable to be dismissed as a premature complaint. Alternatively, it is to be adjourned sine-die till the outcome of the appeal.

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12. Respondent has deposited entire pre-deposit amount before Tribunal vide order dated 23.11.2021. The Tribunal has categorically stated that this fact shall be taken into consideration in a judicious manner by the Authority.

13. Respondent applied for Occupation Certificate vide application dated 22.01.2018 and the Occupation Certificate has been granted on 09.03.2018. The possession has been offered to the complainants vide letter dated 19.03.2018. However, even after receiving the notice of possession and various reminders thereafter, dated 06.08.2018, 21.08.2018, 22.11.2018 and 10.07.2020, the complainants did not make all the payments in the prescribed time. Despite sending Possession Letter dated 22.05.2019, to the complainants, they (complainants) have not come forward till date to take the possession of said unit and have instead filed the Complaint No. 3322/2020 and now present complaint.

14. That the complainants have been defaulters, having deliberately failed to make the payment of various installments within the time prescribed, which resulted in outstanding dues of Rs. 26,13,292/- (Rs. 20,87,764/- + Rs. 3,35,500/- towards IBMS + Rs. 1,90,028/- towards advance maintenance for 1 year), as reflected in the notice of possession and also delay payment charges/interest as reflected in the current statement of account. The complainants are also liable to pay the stamp

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duty, registration and other ancillary charges and are also liable to clear up-to-date maintenance charges. Complainants had never raised any issue as raised in the complaint No. 3322/2020. They (complainants) are now raising false and frivolous issues with the intention to wriggle out from the terms and conditions of the agreement.

15. Contending all this, respondent requested for dismissal of complaint.

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

16. That as per clause 4.2 of Apartment Buyer Agreement, due date of possession was October 2017. During proceedings before the Authority on a complaint filed by present complainant, the respondent failed to explain delay in completion of unit as pleaded.

17. As mentioned above, the Authority has allowed interest to be paid by respondent from 30.10.2017 till 22.07.2019 on amount deposited by complainant. Respondent is stated to have approached the Appellate Tribunal against order passed by the Authority. Wherein, Hon'ble Tribunal vide order dated 21.11.2022 has pleased to modify order of Authority to the extent that offer of possession shall be considered as

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24.09.2018 instead of 25.05.2019. It is also held that delay in not handing over possession after 24.09.2018 is on the part of allottees.

18. It is well settled that relief for DPC and for compensation are two different remedies. An allottee can apply for both of such remedies simultaneously. Admittedly, there is no stay from Hon'ble Appellate Tribunal. No reason to stay proceedings in this case. As described above, the Authority has already decided complaint filed by present complainant and directed respondent to pay interest, finding that respondent failed to explain delay in completion of construction. Rule 27 of The Haryana Real Estate (Regulation and Development) Rules, 2017 is thus no bar in entertaining complaint in hands.

19. It is argued by Ld. Counsel for complainant that the promoter/respondent has asked allottee/complainant through letter, offering possession to pay advance maintenance charges for one year and other maintenance charges, before taking possession but his clients (complainants) are not liable to pay maintenance charges. Similarly, the respondent demanded for payment of stamp duty, registration charges and ancillary charges which his clients are not liable to pay, till the sale deed is being registered. As, respondent was not ready to execute sale deed/ conveyance deed, no such demand could be raised.





20. As per order passed by Authority, due date of possession was 31.10.2017 but as observed by the Appellate Tribunal, present JD offered possession on 24.09.2018. The complainant <sup>- & all</sup> ~~is~~ thus entitled for compensation in this regard from 30.10.2017 till 24.09.2018 only. So far as amount of compensation is concerned, as mentioned above, the complainant <sup>→ have</sup> ~~has~~ claimed compensation @ Rs.75000/- p.m. <sup>They</sup> ~~The~~ (complainant) <sup>have</sup> ~~has~~ put on file copy of lease agreement which is about a residential flat situated in project viz. Tata Primanti, Sector 72, Southern Peripheral Road, Gurgaon admeasuring 3355 sq.ft., same is shown to be leased out at a monthly rent of Rs.61,143/-.

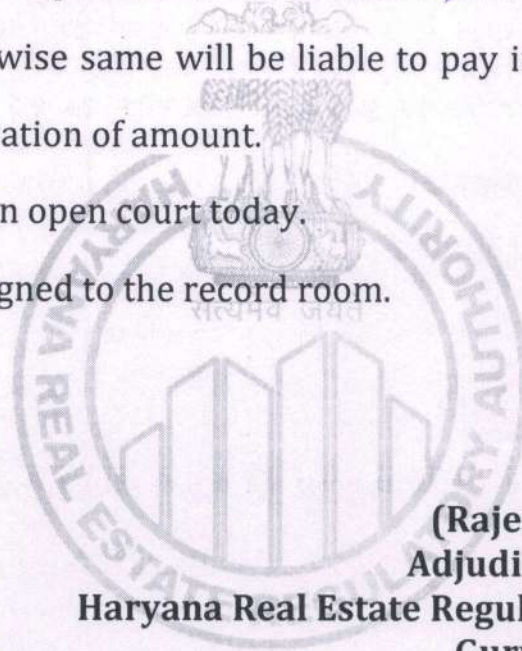
21. Said agreement was executed on 30.09.2021. When in September 2021, rental value of similar unit was Rs.61,143/- p.m., than in the opinion of undersigned, between October 2017 to September 2018, same may be Rs.35,000/- p.m. Complainants <sup>an</sup> ~~is~~ thus allowed a compensation of Rs.35,000/-p.m from 30.10.2017 to 24.09.2018 to be paid by the respondent.

22. As mentioned above, the complainants have claimed, a sum of Rs.50 Lakhs on account of mental agony, torture and harassment. It appears to be excessive amount. Complainants are stated to be senior citizens. Keeping in view facts and circumstances of the case, complainants are awarded a sum of Rs. 2 Lakhs for mental agony, stress and harassment, to be paid by the respondent.

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23. Although complainants have not filed any receipt /certificate about fees paid by them to their counsel, apparently, they were represented by an advocate during proceedings of this case. Same are awarded Rs. 1 Lakh as cost of litigation to be paid by respondent.
24. Complaint stand<sup>l</sup> disposed of. Respondent is directed to pay amounts of compensation detailed above, within 30 days of this order, otherwise same will be liable to pay interest @10.50% p.a. till realisation of amount.
25. Announced in open court today.
26. File be consigned to the record room.



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

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