

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

Complaint no. : 292 of 2023
Date of decision : 05.09.2023

1. Anil Kumar and
2. Chhaya Singh

ADDRESS: A-1/118, Vijay Enclave, Dabri-Palam
Road, New Delhi-110045.

Complainants

Versus

1. KNS Infracon Private Limited
Add : 517A, Narain Manzil, 23, Barakhamba
Road, Cannaught Place, New Delhi-110001, &
2. Tashee Land Developers Private Limited
Add : Plot no. 13-29, 3rd floor, Harsha Bhawan,
E Block, Cannaught Place, New Delhi-110001.

Respondents

APPEARANCE:

For Complainants:

Mr. Sukhbir Yadav Advocate

For Respondents:

Mr. Rishabh Jain Advocate

ORDER

1. This is a complaint filed by Anil Kumar and Chhaya Singh
under section 31 of The Real Estate (Regulation and

Development) Act, 2016 read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017, against M/s KNS Infracon Private Limited and Tashee Land Private Limited.

2. As per complainants, in 2011, they (complainants) came across to an advertisement given by the respondents in various leading newspapers about their project i.e. Capital Gateway, Sector-111, Gurugram. They (complainants) chose one unit i.e. Flat No. 903, admeasuring 1695 sq.ft. on 9th floor of Tower – D, in said project. They (complainants) signed an application form and executed an agreement to sell with one Vikash Kumar (representative of respondents) paying Rs.12,82,438/- to him. They (complainants) purchased said flat under construction linked payment plan. Total sale consideration (including BSP, Car Parking, IFMS, and PLC) was agreed as Rs.75,91,064/-.
3. On 30.06.2012, an arbitrary and one-sided flat buyer agreement(FBA) was executed between both parties. As per clause 2.1 of the FBA, possession of the flat was to be delivered within 36 months from the date of sanction of the building plans, which were approved on 07.06.2012. Therefore, the due date of possession was 07.06.2015. They (complainant) paid Rs.65,22,864/- on demand as raised by the respondents i.e.95% of the total sale consideration.

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4. After various queries and repeated visits, respondents promised to deliver the flats to all the home buyers by April 2019 but they failed to do so. Aggrieved by the acts, conducts and deficiencies of the respondents, they (complainants) filed a complaint before Haryana Real Estate Regulatory Authority, Gurugram, under section 31 of the Real Estate (Regulation & Development) Act, against respondents on 19.10.2020 vide complaint no. 3518 of 2020, which was decided through order dated 09.07.2021. The Authority ordered as :

- (i) *The respondents are directed to pay interest @9.30% p.a. for every month of delay from the due date of possession i.e., 07.06.2015 till the date of handing over possession.*
- (ii) *The promoters shall credit DPC in the statement of account or applicant ledger of the unit of the allottees, if the amount outstanding against the allottees is more than the DPC, this will be treated as sufficient compliance of this order.*
- (iii) *If there is no amount outstanding against the allottee then the balance DPC shall be paid after adjustment of the outstanding against the allottees.*
- (iv) *The arrears of such interest accrued from 07.06.2015 till the date of order by the authority shall be paid by the promoters to the allottees within a period of 90 days*

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from the date of this order and interest for every month of delay shall be paid by the promoters to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- (v) *The complainants are directed to pay outstanding dues, if any, after adjustment of interest or delayed period.*
- (vi) *The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent /promoters which is the same rate of interest which the promoter shall be liable to pay to the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.*
- (vii) *The respondent shall not charge anything from the complainants which are not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of the agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3899/2020.*
- (viii) *The promoters are directed to furnish all the allottee statement of account within one month of issue of this order. If there is any objection by the allottees on Statement of accounts, the same be filed with promoters after fifteen days thereafter, In case the grievance of the allottees relating to statement of account is not settled by the promoters within 15 days thereafter, then the*

allottee may approach the authority by filing separate application.

5. Main grievance of complainants in the present complaint is that in spite of them (complainants) having paid more than 95% of the actual sale amount of the flat and are ready and willing to pay the remaining amount but respondents have failed to deliver possession of their flat whereas, the due date of possession was 07.06.2015.

6. As per current market trends, the rental value of 3 BHK apartments in the nearby location of the project is Rs. 45000/- to 50,000/- per month. There is a rental loss to the complainants of Rs.50,000/-p.m. from June 2015 till handing over the physical possession of the unit. Average life of a residential building is 50 years and the superstructure of the said building was completed in 2015. Now the building is deteriorating/depreciating @ 2% per year, therefore the depreciating amount of the building per year is Rs.1,51,821.28/- and till 07.01.2023 the depreciation amount is Rs.11,38,659/-.

7. Citing all this, complainants have sought following reliefs:

- a. To grant compensation of the rental loss of Rs.45,00,000/- from June 2015 to December 2022.

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- b. To grant compensation on account of depreciation of Rs.11,38,659/-.
 - c. To grant the compensation of Rs.10,00,000/- for causing mental agony.
 - d. To grant a compensation of Rs.1,00,000/-for travel expenses and loss of work as the complainants had to appear before the hon'ble authority (for complaint and execution) for about 20 times on their working days.
 - e. To grant the litigation cost of Rs. 2,00,000/-.
 - f. Any other relief/direction which the Adjudicating Officer deems fit and proper in the facts & circumstances of the present complaint.
8. Respondents contested the complaint by filling written reply.
8. Both of respondents filled separate applications for dismissal of this complaint stating that complaint is barred by the principles of res judicata. The complaint has been filed under wrong provisions of law. Complainants have obfuscated the provisions of the Act of 2016 and the Rules of 2017 to their advantage, which is brazen misuse of law. The complainants have not followed the procedure as laid down under Rule 29 of the Rules of 2017. Complainants in the present case are not

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consumers rather investors who fall outside the purview of the Act of 2016.

9. Respondents further pleaded that the project in question consists of two towers for economically weaker sections (EWS), two commercial buildings, one community building and a nursery school. There a total of 551 units in the said project, which includes 538 residential units and 13 commercial units. License no. 34 of 2011 dated 16.04.2011 was granted by the Directorate of Town and Country Planning Haryana for the said project which was renewed from time-to-time and is valid up to 15.04.2024. Respondents have also obtained all requisite permits and approvals for the development of the said project from the competent authorities.

10. Initially, The Haryana Real Estate Regulatory Authority, Panchkula (RERA) issued a Registration Certificate in the form REP-III vide Registration No. 12 of 2018 dated 11.01.2018. The validity of RERA registration for Phase-I (Tower A to G) was up to 31.12.2020 + six months of Covid-19 extension till 30.06.2021 and for Phase II (Tower H to J) was up to 31.12.2021 + six months of Covid-19 extension

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till 30.06.2022. At present, the RERA Registration for the said project is valid up to 30.06.2025 for both the phases. They(respondents) applied for environment clearance on 20.10.2011 and got the environment clearance on 17.06.2013. Owing to this, the construction work of the project itself started late. They(respondents) applied for the revision in building plans of the said project before the appropriate authority, which were approved by the department after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner.

11. That for the reasons beyond the control of them(respondents), the said project has been delayed due to economic meltdown, financial crisis, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the

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environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak, etc.

12. To overcome the obstructions, promoters approached the "SWAMIH Investment Fund I" of SBI Cap Ventures Limited and got approval of rs.107.92 crores on 29.11.2021. After which, they(respondents) were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest. At present more than 319 labourers of different contractors are working at the project site to complete the project 'Capital Gateway'.

13. After the receipt of the SWAMHI Investment Fund, any amount of money received towards the said project is being monitored by the investment committee of the said fund. As a result, the funds cannot be used for compensation purposes in any manner whatsoever and the money so collected has to be utilised for the purposes of construction only. Due to financial crunches, they(respondents) are not in a position to pay money for compensation as their first priority is to

complete said project and to deliver homes to the restive allottees.

14. That Environment Pollution(Prevention and Control) Authority (EPCA) through press issued directions regarding GRAP dated 31.10.2018, 25.10.2019, 1.11.2019, 08.11.2019, 11.11.2019 and 14.02.2020 which hampered the construction of the project. The Ministry of Housing & Urban Affairs, Government of India vide its office memorandum dated 13.05.2020 issued advisory for extension of registration of real estate projects. The Town and Country Planning Department, Government of Haryana issued its notification dated 28.07.2020 regarding approval of moratorium for the period from 01.03.2020 to 30.09.2020 for existing projects. Real estate sector was impacted badly due to Covid 19 as the construction activities were halted for a long time after imposition of lockdown on 24.03.2020 which was extended from time to time till July 2020, whereas cost of construction kept on increasing with time.

15. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Immobilisation of the labour


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caused havoc for the builders too, as there construction sites were abandoned by the exodus of labour. The Hon'ble Supreme Court also took cognizance of the situation in Suo Motu Writ Petition (Civil) No.6 of 2020. Due to exodus of labour the project site was abandoned and mobilising the labour considerably increased the cost of construction and resulted in huge delay.

16. The Hon'ble Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act of 2016 and the Rule of 2017. Complainants have erred in invoking the jurisdiction of the Hon'ble Adjudicating Officer, as the compensation can only be granted in cases, where the Authority so directs.

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

17. It is not in dispute that the complainants were allotted Flat no.903 admeasuring 1695 sq. ft., 9th floor of Tower D in the project viz. Capital Gateway, Sector 111, Gurugram developed by the respondents. It is also not denied that the complainants paid Rs.65,22,864/- i.e it is about the 95% of



the total sale consideration. As per clause 2.1 of the agreement(FBA) entered between the parties, the possession of flat in question was to be delivered within 36 months from the date of sanction of plan which was approved on 07.06.2012. In this way, due date of possession came as 07.06.2015.

18. As described above, present complainants filed a complaint no. 3518 of 2020 seeking delay payment charges from the respondent. Said complaint has been allowed by the Authority through order dated 09.07.2021. The Authority directed respondents to pay interest from due date of possession i.e. 07.06.2015 till date of actual handing over of possession. In this way, the Authority came to conclusion that respondents failed to deliver possession till aforesaid due date, without reasonable excuse.

19. The plea of respondents for delay in completion of construction as detailed above are found not tenable. The promoter could have anticipated the problems as claimed by the same except few like Covid 19 etc. before determining the due date of possession. According to complainants, possession of subject unit has not been handed over till now.

20. I do not find much weight in the plea of respondents claiming that same have got extension of period to complete the project from competent authorities. Even if any extension



has been granted to respondents to complete the project, same can not negate rights accrued in favour of allottees ~~got~~ ^{by the same}, on the basis of contract(FBA) entered between the parties, by their sweet will.

21. As stated above, complainants have already paid 95% of total sale consideration, all this amount is used by the respondents but failed to discharge their obligations. In these circumstances, complainants are well within their rights to claim compensation from the respondents.
22. As mentioned above, complainants have claimed for rental cost/ loss of Rs.45,00,000/- from June 2015 to December 2022 claiming that rental value of 3BHK apartment in nearby area of the project is Rs.45,000 to Rs.50,000 p.m.-. The complainants did not adduce any evidence to verify aforesaid fact. Considering the fact that unit in question is admeasuring 1695 sq. ft. and is situated in project viz. Capital Gateway situated at sector 111, Gurugram, which was not so much inhabited during the relevant period, I find, claim of complainants about rental value as exhorbitant. Considering the size and area of the unit, in my opinion, the rental value of similar unit and consequent loss to the complainants may be Rs.10,000/- p.m. The respondents are directed to pay the said amount of compensation to the complainants from due date of



possession i.e. 07.06.2015 (as determined by the Authority) till actual handing over of possession or valid offer of the possession.

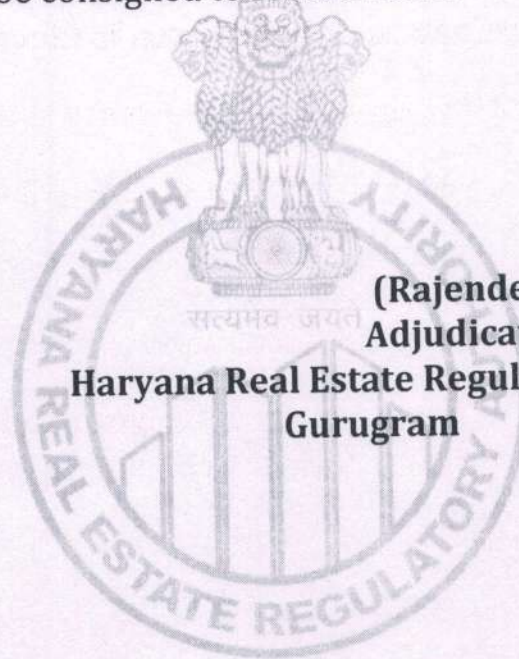
23. When complainants have been allowed rental loss, I do not found any reason to allow compensation in the name of depreciation of the value of their flat. Similarly, no reason to allow travel expenses/ loss of work to the complainants, even if same appeared before this forum to attend their case, particularly when, same have claimed cost of litigation. Separate prayer in this regard is declined.

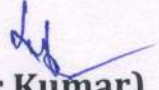
24. Apparently, when respondent failed to deliver possession of subject unit despite receiving 95% of the total sale consideration and used money paid by the complainants, the latter suffered harassment and mental agony. Although, complainants have claimed compensation of Rs. 10 Lakhs in this regard, which appears to be excessive. In the facts and circumstances of the case, complainants are allowed a sum of Rs. 2 Lakhs for mental agony /harassment.

25. Although complainants did not put on file any certificate of their counsel etc. to prove ~~litigation cost~~ ^{fee paid to Lt. Counsel,} Apparently, same were represented by a lawyer during proceedings of this case. Complainants are allowed a sum of Rs.50,000/- as cost of litigation.

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26. Complaint is thus allowed. Respondents are directed to pay amounts of compensation as described above, within 30 days of this order, otherwise same will be liable to pay said amounts along with interest @10.50% p.a. till realisation of amounts.
27. Announce in open court today.
28. File be consigned to record room.




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