



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 2883 of 2022

Date of Institution: - 11.11.2022

Date of Decision: - 11.05.2023

Seema Mehta w/o Sunil Dutt, r/o H. No.1150, Sector-4, Urban Estate,
Kurukshetra-136118 ...COMPLAINANT

VERSUS

Green Space Infraheights Pvt. Ltd., office at 306, 3rd Floor, Indraprakash
Building, 21-Barkhamaba Road, New Delhi – 110001

....RESPONDENT

Hearing:- 8th

Present:- Mr. Ripudaman Singh, Advocate, Counsel for the complainant
Mr. Vikas Singh, Advocate, Counsel for the respondent through
video conferencing

Seema Mehta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. The complainant had booked a residential flat in the project namely 'Shree Vardhman Green Space' situated at NH-73, Sector-14, Panchkula, Extension-II, Panchkula, Haryana. The complainant paid an amount of ₹1,01,131/- through cheque to the respondent. It was informed that a lucky draw for the allotment of the flat is to be held in the September, 2015. Before booking of said flat, respondent had assured that it has already received all the approvals for the development of the project. It was assured by the respondent that there would be a majestic entrance, well designed beautiful pathways, community hall, swings and sand pits for kids, central park and play ground, yoga and meditation area, wide roads with peripheral vehicular access tree lines avenues and walkways, spacious balcony, well lit and ventilated apartments, RCC structure, fire alarm and firefighting system, elevators for each block, shopping complex, grocery stores and hyper market, multi cuisine restaurant, fast food joints, banks and ATMs, sports facilities like badminton, table tennis, round the clock security, crèche etc. Allured by the assurances given by the respondent, the complainant decided to book the said flat. The respondent vide its letter dated 13.08.2015 informed the complainant that the draw of the flats is scheduled to be held on 25.08.2015. On 26.08.2015, the respondent had allotted a residential unit bearing

no. 305, Tower-F, Floor-3rd, measuring 730 sq. ft. and raised demand of ₹4,06,134/- in order to complete 25% of the Basic Sale Price. The total sale consideration was fixed as ₹19,62,000/-. The complainant paid the said amount of ₹4,06,134/- vide cheque dated 08.09.2015. On 04.02.2016 agreement was executed between both the parties and a payment plan was also incorporated in the said agreement. As per clause 8(b) of the said agreement, the respondent was bound to handover the possession of the said flat within a period of 4 years from the date of approval of building plans or grant of environment clearances, whichever is later. The respondent never informed the complainant about the date of approval of building plan and environmental clearances. As per the information mentioned in HRERA website the environmental clearance was granted to the respondent on 15.03.2016. The respondent vide its demand letter dated 01.03.2016 demanded an amount of ₹2,54,140/- inclusive of service tax towards 12.5% of sale consideration, which was due within 6 months of the allotment. The complainant had paid the said amount to the respondent vide cheque dated 03.03.2016. Vide letter dated 15.03.2016, the respondent had informed the complainant that it had obtained all the approvals of sanctions from competent Authorities and Bhoomi Poojan shall be held on 10.04.2016. The respondent never disclosed to the complainant that some of approvals were still pending and it continued to collect money from the complainant without having all the approvals. The complainant continued to pay the instalments as per payment plan without any default. Till date the complainant has paid entire

demanded amount of ₹20,47,435/- to the respondent. The condition mentioned in the agreement that possession of the said flat will be delivered within a period of 4 years from the date of approval of building plans or grant of environment clearances, whichever is later, is arbitrary and one sided. The respondent ought to have given the firm date of delivery of possession. The building plan was approved on 09.12.2014, thus the respondent was bound to handover the possession of the apartment on 08.12.2018 i.e. within 4 years from the date of approval of building plan. The respondent intentionally did not disclose about the date of approval of building plan and environmental clearances. The respondent has indulged into unfair trade practices by not disclosing the dates of approvals. Till date the respondent has failed to deliver the possession of the apartment which it was supposed to handover by 08.12.2018. Many a times, the complainant visited the office of respondent to enquire about the exact period within which possession of the flat would be handed over but the respondent kept on assuring the complainant that possession would be handed over very soon. The complainant had filed a Complaint bearing no.RERA-PKL-939-2021 before Hon'ble Authority, Panchkula for claiming refund of amount of ₹20,47,435/- alongwith interest as per Rule 15 of RERA Rules. Vide order dated 28.09.2022, the complaint was allowed. Respondent was directed to refund the paid amount alongwith interest. Since the respondent has failed to handover the actual physical possession of the flat till date, the complainant is entitled to compensation for causing delay in handing over the possession. The complainant had to engage

advocates for filing complaint before Hon'ble Authority and the present complaint before Adjudicating Officer. The complainant has paid around ₹1,50,000/- to the advocates for filing cases before RERA Haryana and Adjudicating Officer. Respondent has miserably failed to construct the project and deliver possession to the complainant. The complainant has not been able to enjoy the property for which she had paid substantial amount of sale consideration. She has not been able to get any return from the apartment. If possession would had been delivered, she would have get the return on the investment made by her. She is entitled to compensation to the tune of ₹20,00,000/- on account of financial loss, physical and mental harassment, deficiency in service, unfair trade practice, discomfort and undue hardship. She has also sought ₹2,00,000/- towards litigation cost.

2. Upon notice respondent appeared and filed reply taking preliminary submission that on 29.05.2015 the complainant had submitted an application to the respondent for booking of flat alongwith one open parking space for two wheeler in the said colony/scheme. The complainant had understood the terms and conditions of Flat Buyer Agreement. The application form also contained payment plan in accordance to which the complainant was to make due instalment. 5% of the basic price was to be paid at the time of booking, 20% at the time of allotment i.e. 12.09.2015, 12.5% of basic price + service tax within 6 months from allotment i.e. 12.03.2016, 12.5% of basic price + service tax within 12 months from allotment i.e. 12.09.2016, 12.5% of basic price + service tax

within 18 months from allotment i.e. 12.03.2017, 12.5% of basic price + service tax within 24 months from the allotment i.e. 12.09.2017, 12.5% of basic price + service tax within 30 months from the allotment i.e. 12.03.2018, 12.5% of basic price + service tax within 36 months from the allotment i.e. 12.09.2018, stamp duty + other charges + service tax at the time of offer of possession was to be paid respectively. The allotment was required to be made through draw of lots to be held in the presence of committee consisting of Deputy Commissioner or his representative (at least of the cadre of Haryana Civil Service), Senior Town Planner (Circle Officer), DTP of concerned District. It was transparent procedure for allotment of flats in affordable housing project which included advertisements for booking of apartments by the developer on two occasions in one week interval to ensure adequate publicity of the project, submission of applications by interested persons, scrutiny of all the applications by developer by overall monitoring by concerned DTP within a period of three months from the last date of receipt of applications, publication of advertisement by colonizer informing the applicants about the details regarding date, time and venue of draw of lots in the newspaper. The said procedure was duly followed by the respondent. In the said draw of lots the complainant was successful. Vide its letter dated 26.08.2017, the respondent intimated the complainant that he had been allotted Flat no.305, 3rd Floor, Tower-F having super built up area of 730 sq. feet, carpet area 478 sq. feet, balcony area 100 sq. feet. Agreement dated 04.02.2016 was signed by the complainant and handed over to the respondent. As per clause 4(a) of Flat Buyer

Agreement, the timely payment of instalments of basic price and other charges are the essence of agreement. The complainant had undertaken to pay municipal tax, property tax, service tax, VAT, GST and any other enhancement. If such charges are increased with retrospective or prospective effect after execution of conveyance deed, the allottee/complainant undertakes to pay the same. The date of delivery of possession is tentative and subject to force majeure conditions. The respondent has neither indulged in any unfair trade practice nor committed any deficiency in service. It is the complainant who breached her obligation to make the entire and timely payment of instalments and caused losses to the respondent, as respondent kept reserved one of the flats for the complainant for a considerable period of time without payment of agreed instalments on time. The respondent had sent various reminders on 01.03.2016, 10.02.2017, 19.08.2017, 15.02.2018, 23.03.2018, 11.09.2018 and 17.12.2018 vide which the respondent had granted opportunities to the complainant for paying the remaining instalments. The complainant cannot be allowed to reap the benefits out of her breaches. She cannot be allowed to commit breaches of her obligations, cause losses to the respondent and then walk out of the same at any time as per her sweet will and desire and that too with benefits. The complainant was fully aware of the fact that the project in question was a project under Affordable Housing Policy, 2013 of Government of Haryana which contained strict check and balances to protect the interest of all stake holders with special emphasis on the protection of rights of the purchasers of the flats. Almost each and every aspect of transaction was

governed by the policy. Draw of lots of flats was to be held after the permission of Government and in the presence of Government officials. Permission to conduct draw of lots was to be granted only after all necessary approvals were in order. The Flat Buyer Agreement contained provisions which were in consonance with the guidelines of Government Policy. As per agreement, the respondent was to start construction of the project from the date of environmental clearances which were granted on 15.03.2016. The complainant had filed Complaint bearing no.939 of 2021 before Haryana Real Estate Regulatory Authority, Panchkula in which the complainant had sought ₹5,00,000/- as compensation for deficiency in service, unfair trade practice and mental harassment alongwith 2,00,000/- as litigation charges. In the present complaint, the complainant has exorbitantly increased the compensation amount for mental harassment and agony, for deficiency in service, unfair trade practice of ₹20,00,000/- and ₹2,00,000/- as litigation charges. From January 2020 onwards things have started moving out of control of respondent because of nationwide lock-down of COVID-19, massive nationwide migration of labour from constructions sites to their native villages, creating an acute shortage of labourers on the project site region, disruption of supply chains for construction materials, ban for non-essential services which included real estate and construction sector, closure/restricted functioning of private/public Government offices, disrupting the various approvals required for real estate projects, resultant sudden financial distress, repeated and continuous

bans forcing migrant laborers to return to their native villages and complete lockdown w.e.f. March 25, 2020, April 2021 to June 2021.

3. The respondent has taken preliminary objections that the complainant has not approached the Court with clean hands and has admitted to mislead by putting incorrect, incomplete and distorted version of the facts. On this ground alone the complainant does not deserve any indulgence from this Court and complaint is liable to be dismissed on this ground. The purpose of RERA Act is to balance the interest and protect the rights of allottees. If Hon'ble Court allows the plea of refund, the respondent will suffer financially which directly affects the progress of the project. The delay in construction of the project due to refund further affects the right of other allottees who wants possession of their flats. The RERA Act is not enacted to protect the interest of investors. The objects and reasons of RERA Act clearly states to protect the interest of allottees. The exorbitant amount of compensation which the complainant has sought is not justifiable. The complainant has received the amount for delayed period from the Hon'ble Authority, still he is claiming compensation the only intention of the complainant is to harass the respondent. Neither the complainant has proved the losses against which compensation has been sought in the previous complaint nor in the present complaint again seeking compensation. The timelines in the agreement were agreed between the parties, keeping into consideration the normal and reasonable prevailing circumstances and conditions at all times. It was agreed between the parties that in case there will occur any unforeseen or

uncontrolled circumstances beyond the reach of the respondent, the timelines might not be adhered to. It was also in tune with force majeure conditions stipulated in the agreement. The relief sought by the complainant appears to be misconceived and erroneous. The complainant is estopped from raising the plea, being illegal and erroneous. On merits of the averments raised by the complainant are denied. It has further been added that to prove the averments and contents made in the complaint, the complainant be put to strict proof. The complainant has complied with clause 4(a) of Flat Buyer Agreement and fails to pay timely payment as per agreement dated 04.02.2016 made between the parties. Dismissal of the complaint has been prayed for.

4. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

5. Perusal of file shows that complainant had booked a flat in the year 2015 and after draw of lots, allotment letter for unit no.305, Tower-F, Floor-3rd, measuring 730 sq. ft. was issued on 26.08.2015. Flat Buyer Agreement was executed between the parties on 04.02.2016. It is also admitted by both the parties that basic sale price was fixed as ₹19,62,000/- against which the total amount paid by the complainant is ₹20,47,435/-. The complainant had paid ₹1,01,131/- on 15.05.2015, ₹4,06,134/- on 08.09.2015, ₹2,54,140/- on 03.03.2016, ₹2,36,360/- on 05.09.2016, ₹2,45,250/- on 19.04.2017, ₹2,75,000/- on 11.10.2017, ₹2,64,550/- on 18.04.2018 and ₹2,64,870/- on 14.12.2018, copies of receipts have been placed on record by learned counsel for complainant, which are admitted by

both the parties. It was agreed in Flat Buyer Agreement vide clause 8(b) that the possession of the unit will be handed over after four years from the date of approval of building plans or grant of environmental clearances, whichever is later. As per record, environmental clearances were received by the respondent on 15.03.2016. Four years have to be calculated from 15.03.2016, which comes to 14.03.2020. The possession was to be handed over by the respondent on or before 14.03.2020. At this stage, it was argument of learned counsel for respondent that concession of time period be given for outbreak of COVID-19, massive nationwide migration of labour from the constructions sites to their native villages. Disruption of supply chains for construction material, ban on essential services, restricted functioning of private and Government offices.

6. So far as outbreak of COVID is concerned, there was closure/lockdown after 20.03.2020. The respondent was to handover possession of the unit till 14.03.2020. With regard to remaining grounds of force majeure, they were also after the outbreak of COVID-19. Hence this argument of learned counsel for respondent is not accepted. The complainant had filed Complaint no.939 of 2021 before Hon'ble Authority seeking refund of paid amount which was allowed vide order dated 28.09.2022 passed by Hon'ble Authority. Respondent was directed to give refund of the paid amount alongwith interest.

7. So far as harassment and mental agony of complainant is concerned, it had started after due date for delivery of possession i.e. 14.03.2020. Though, the complainant had paid amount starting from May 2015 till December 2018,

yet it is pertinent to mention here that as per clause 8(b) of Flat Buyer Agreement 04.02.2016, possession was to be handed over after four years from the date of approval of building plans or grant of environmental clearances, whichever is later. Four year have to be calculated from the date 15.03.2016 when the respondent received environmental clearances. Till that time the complainant was mentally prepared that possession would be delivered on 14.03.2020. The period for which the mental agony and harassment of complainant took place started w.e.f. 15.03.2020. It would be in the interest of justice that the quantum of compensation be calculated w.e.f. 15.03.2020 till the date of passing of this order. Since, the amount of compensation is quantifiable and it is proved on the record that possession of the unit was not handed over by the respondent and the complainant has decree for refund in his favour, compensation @ 6% per annum on the amount paid by the complainant i.e. ₹20,47,435/- be calculated.

7. The calculation of compensation is tabulated below:

| Amount Paid (in ₹) | Time period | Rate | Compensation Amount (in ₹) |
|-----------------------|--------------------------|------|-------------------------------|
| ₹20,47,435/- | 15.03.2020 to 11.05.2023 | 6% | ₹3,88,059/- |

13. The total compensation comes to ₹3,88,059/- + ₹25,000/- = ₹4,13,059/- (Rupees Four Lakh Thirteen Thousand and Fifty Nine only).

14. In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹4,13,059/- (Rupees Four Lakh Thirteen

Thousand Three Thousand and Fifty Nine only) within 90 days to the complainants. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

15. The present complaint stands **disposed of**. File be consigned to record room after uploading of this order on the website of the Authority.

11.05.2023

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 13 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER