

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

Complaint no. : 4838 of 2022
Date of decision : 10.11.2023

Richi Gadihoke
ADDRESS: 470 Lords CHGS Ltd. Plot no. 7, Sector
19 B, Dwarka, Delhi-110075

Complainant

Versus

M/S Neo Developers Pvt. Ltd.
ADDRESS: 32-B Pusa Road, Delhi-110005

Respondent

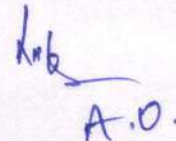
APPEARANCE:

For Complainant: Mr. Hemant Phogat Advocate

For Respondent: Mr. Pankaj Chandola Advocate

ORDER

1. This is a complaint filed by Richi Gadihoke(allottee) under section 31,35,36,37 and 38 of the Real Estate (Regulation and Development) Act, 2016 against M/s. Neo Developers Pvt. Ltd.(promoter)


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2. As per complainant, she booked a shop in the project namely "Neo Square" at sector-109, Dwarka expressway, Gurugram. She was allotted shop no. 53 on second floor, admeasuring 494 sq. ft. for a total sale consideration of Rs. 24,70,000/-. She(complainant) was re- allotted the unit shop no. 7-B on second floor instead of shop no. 53, admeasuring 494 sq. ft. in the same project by it(respondent) through an allotment letter dated 12.11.2021. Thereafter, the builder buyer agreement followed by memorandum of understanding was executed between the parties dated 22.07.2019.
3. According to clause-4 of the MOU dated 22.07.2019, respondent shall pay monthly assured return of Rs.53,846/-, with effect from 23.07.2020 till offer of possession. Not even a single penny has been paid by the respondent till now. She(complainant) has paid Rs.27,66,400/- and despite repeated requests made by her, respondent has failed to deliver the possession and violated the terms and conditions of MOU.
4. That she(complainant) being aggrieved by the unfair trade practice, filed a complaint in the Authority i.e. complaint no. 4679 of 2021, wherein through order dated 25.01.2022, the respondent was directed to pay the assured return from 23.07.2020 till the offer of possession, with interest at the rate of 7.30% per annum.

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5. That the mother of the complainant is suffering from various old aged ailments and was under treatment. Due to which, she(complainant) was suffering from paucity of funds and requested it(respondent) to pay her the assured return citing the above stated reason that, she requires the same for medical bills of her mother. Even after the order dated 25.01.2022, the respondent did not paid even a single penny towards assured return.

6. Citing all this, complainant has prayed for following reliefs:

- a. To compensate Rs. 10,00,000/- on account of physical harassment, mental agony and monetary loss and sufferings by the respondent acts.
- b. To award the cost of litigation of Rs. 1,00,000/-against the respondent.
- c. To pass such other and further order as Adjudicating Officer may deem fit and proper in the facts and circumstances of the present case.

Respondent contested the complaint by filling written reply. It is averred by the respondent, that :

7. The complainant was in search of making investment in the real sector, thus visited its(respondent) sales office and invested in its project. The complainant purchased the unit in question for earning assured return from the same as an investor and not for her personal use.

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8. The respondent raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetisation, GST implications, shortage of labour, various orders passed by NGT, jaat reservation agitation and Covid-19.
9. That the complainant has already duly been compensated by the Authority by ordering payment of assured return (penalty) along with interest. Thus, the complainant is not liable for any further compensation.
10. Citing all this, respondent requested for dismissal of complaint.

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

11. As mentioned above, according to respondent, when present complaint has been allowed payment of assured return by order of RERA, Gurugram, she is not entitled to further compensation. Act of 2016, empowers the Adjudicating Officer to decide matters of compensation in view of Section 12, 14, 18 and 19 of the Act of 2016. While the Authority has jurisdiction to allow refund of amounts paid by allottee. 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.

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12. Keeping in view all this, in my opinion, there is no legal bar in entertaining matter of compensation, even if the Authority, Gurugram has already directed present respondent to pay amount of assured return to the complainant.
13. Apparently a buyer like complainant, invests money in purchase of shop (commercial property) to earn money. There is no denial that respondent failed to pay amount of assured return as agreed by same through BBA. Possession of shop was also not given in agreed period. Complainant is stated to be woman of meagre means. She is in dire need of money, her mother is suffering with senile disease. She can be presumed to have suffered due to failure of respondent in not paying amount of assured return and not giving possession of shop, despite payments, which the respondent was obliged to do. Section 18(3) of the Act of 2016 provides that if the promoter fails to discharge any obligation (other than mentioned in sub section 1 and 2) imposed upon him..... he shall be liable to pay compensation to the allottee.
14. The complainant has claimed a compensation of Rs.10,00,0000/- in this regard. This claim appears to be excessive. Apparently, respondent used money paid by complainant and neither paid assured return nor handed

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over possession of shop, as agreed. Keeping in view facts of this case and circumstances of complainant, latter is allowed a sum of Rs.3,00,000/- as compensation, to be paid by respondent.

15. Although complainant did not put on file any evidence about fee paid to her counsel or other legal expenses incurred by her in this case, it is apparent that she was represented by an advocate during trial of this case. Considering all this, complainant is allowed Rs.50,000/- as cost of litigation.
16. Complaint stand disposed of. Respondent is 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% p.a. till realisation of amounts.
17. File be consigned to the Registry.

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