

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

Complaint no. : 8112 of 2022

Date of order : 05.01.2024

M/s Neeleshwari Diagnostics Pvt. Ltd.
Thru Mr. Atul Kishore Raizada (Director)
ADDRESS: L-32/7, DLF City Ph. 2, Gurugram

Complainant

Versus

M/s Raheja Developers Limited
ADDRESS: W4D, 204/5, Keshav Kunj, Western
Avenue, Cariappa Marg, Sainik Farms, New
Delhi, 110062

Respondent

APPEARANCE:

For Complainant:

Mr. Manish Yadav Advocate

For Respondent:

None

ORDER

1. This is a complaint filed by M/s Neeleshwari Diagnostics Pvt. Ltd.(allottee), through it's Director, Mr. Atul Kishore Raizada under section 31 and section 71 of The Real Estate (Regulation and Development) Act of 2016(in brief the Act, 2016) and rule 29 of The Real Estate (Regulation and



- Development) Rules, 2017 against M/s Raheja Developers Limited(promoter/ respondent).
2. As per complainant, it(complainant) booked a residential apartment in the project namely "Raheja Revanta" Sec. 78, Gurugram by paying cheque dated 14.05.2012 for an amount of Rs.10,82,230/-. Unit no. C-124 admeasuring 1621.39 sq.ft. was allotted to it, vide allotment letter dated 18.06.2012 for a total consideration of Rs. 1,18,84,874/-. It(complainant) obtained loan from Piramal Capital and Housing Finance Ltd., hereinafter referred to as "DHFL (Now "PCHFL)"] and approved for a sanctioned amount of Rs.80,00,000/- vide their Loan Offer Letter dated 28.06.2012 for Loan Application ID 278989 with assigned Loan A/c No.: DEL/034700.
 3. Apartment Buyer's Agreement(ABA) was executed between both the parties on 29.06.2012. As per Para No. 4.2 of ABA, respondent had agreed to deliver the possession of the apartment unit within 48 months from the date of execution buyer agreement plus 06 months grace period i.e. by 29.12.2016, but respondent failed to give the same by due date. Even after payment of Rs.1,15,44,095/-, the respondent, neither completed construction of the project nor even applied for completion certificate. Same(respondent) is unable to give any definite commitment which can be relied upon as till when they will be able to offer possession.
 4. Complainant filled complaint no. 1037 of 2019 before The Real Estate Regulatory Authority, Gurugram(in brief the



Authority) which was decided on 18.02.2020, in which, respondent was ordered to pay DPC @ 10.20% from due date of possession i.e.30.12.2016 till actual handing over of the possession. For the execution of this order, complainant filled execution no. RERA-GRG-2878-2020 which was adjourned sine die vide order dated 03.08.2021, as respondent went to Appellate Tribunal against this order vide H-REAT-Appeal No. 100 of 2021. Hon'ble Appellate Tribunal passed order dated 12.07.2021, dismissing the appeal. It gave respondent 30 days time to comply with mandatory pre-deposit of 100% of decretal amount. The appeal was dismissed as no such amount was deposited.

5. Respondent filed appeal in the Hon'ble Punjab and Haryana High Court, Chandigarh, against Appellate Tribunal's Order dt. 12.07.2021 in H-REAT Appeal No. 100 of 2021 and against the order dt.18.02.2020 of Gurugram Authority in complaint no. 1037-2019 and obtained stay against the proceedings and consequent sine-die adjournment orders in the respective cases of the Hon'ble Authority dt. 03.08.2021 and the Hon'ble Appellate Tribunal dt.24.09.2021. Upon the final pronouncement of order by Hon'ble Supreme Court of India, in the case of *Newtech Promoters and Developers Pvt. Ltd. vs State of U.P. & Others* in November 2021 and then reiterated in May 2022 in the case of *M/s Sana Realtors Pvt. Ltd. & Others vs Union of India & Others SLP (Civil) No. 13005 of 2020*, respondent was forced to withdraw their case of RERA Appeal No. 81 of 2021 from the Hon'ble High Court on 20.04.2022 and then revived their H-REAT Appeal No. 100



of 2021 at the forum of the Hon'ble Appellate Tribunal, which was duly dismissed by Appellate Tribunal vide order dt. 04.07.2022.

6. Consequently, complainants filed for revival of their execution case no. RERA-GRG-2878-2020 on 03.08.2022 which was finally listed for hearing before Adjudicating Officer on 05.12.2022 and was duly ordered to be revived with directions to the directors preferably the Managing Director of the respondent / JD to file their list of assets under oath in the form of an affidavit. However, respondent continues with its conduct of utter disregard for all due processes of law and failed to even appear on 05.12.2022, despite notice being duly served, of the revival application.
7. Citing all this, complainant has sought following reliefs:
 - a. To direct the respondent to pay Rs.10,00,000/- as compensation for the mental harassment and agony suffered by the complainant at the hand of the respondent.
 - b. To direct the respondent to pay Rs. 5,00,000/- as legal fee and expenses borne by the complainant.
 - c. Any other order which this Hon'ble Court may deem fit and proper be also passed in the interest of justice.
8. Notice of complaint is shown to have been served upon respondent through email as well as by speed post. Tracking report from postal department shows, notice having been served on 04.01.2023. The respondent was thus proceeded ex parte.

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I heard learned counsel of the complainant and went through record on file.

9. As disclosed by complainant, same filled a complaint before the Authority, Gurugram, seeking Delay Possession Compensation and same has been allowed by the Authority vide order dated 18.02.2020. According to complainant, the respondent challenged the aforesaid order by filling appeal before the Appellate Tribunal and then before The High Court of Punjab and Haryana, but did not get any relief from any of said courts. Appeals filed by same, have already been dismissed.

10. Section 18 of Act of 2016, prescribes for liability of the promoter to refund the amount, in case same i.e. promoter fails to complete the unit or is unable to give possession in agreed time. But, in case, allottee does not intend to withdraw from the project, proviso added to Section 18(1) prescribes for payment of interest every month till handing over of the possession.

11. Section 18(3) of the Act, mentions that if the promoter fails to discharge any other obligation imposed on him under this Act or, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

12. I find weight in the submissions of the learned counsel for complainant, stating that the promoter ^{through BBA} agreed to complete the project and to hand over possession within

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certain period, but same failed to adhere to the agreement and hence liable to pay compensation.

13. Section 72 of the act enumerates the factors which are to be taken into account by the Adjudicating Officer, to adjudge quantum of the compensation, same are namely :
 - a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - b. The amount of loss caused as a result of the default.
 - c. The repetitive nature of the default.
 - d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
14. Respondent/ builder used money paid by the complainant and failed to fulfil its obligation. Apparently, all this caused unfair advantage/ undue enrichment to the respondent and loss to the allottee/ complainant. The latter also suffered mental harassment and agony.
15. Complainant is thus entitled for compensation in this regard. Complainant has claimed, a sum of Rs.10 Lakhs on account of mental agony, torture and harassment. It appears to be excessive. As per it(complainant), the respondent had agreed to handover possession of the subject unit till 29.12.2016 but failed to handover possession till now.
16. Considering facts of this case and circumstances of the complainant, same is awarded a compensation of Rs.2,00,000/- for mental agony and harassment to be paid by the respondent.

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17. Although complainant has not filed any receipt/ certificate about fees paid by it to its counsel, apparently, it was represented by an advocate during proceedings of this case. Same is awarded a sum of Rs.50,000/- as cost of litigation to be paid by respondent.
18. Complaint in hands is thus disposed of. Respondent is directed to pay amounts of compensation as described above, within 90 days of this order, otherwise same will be liable to pay said amounts along with interest @10.5% p.a. till realisation of amounts.
19. Announce in open court today.
20. File be consigned to records.


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