



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 531 of 2018

Date of Institution: - 11.09.2018

Date of Decision: 21.09.2023

1. Sumit Tarneja s/o Raj Kumar Tarneja, r/o 5E/47, Banglow Plot NIT Faridabad, Haryana – 121001
2. Gunjan Tarneja w/o Sumit Tarneja, r/o 5E/47, Banglow Plot NIT Faridabad, Haryana – 121001

...COMPLAINANTS

VERSUS

1. BPTP Ltd., through its Managing Director/ Directors/ Authorized Representative, office at M-11, Middle Circle Connaught Circus New Delhi – 110001
2. BPTP Parklands Pride Ltd., through its Managing Director/ Directors/ Authorized Representative, office at M-11, Middle Circle Connaught Circus New Delhi – 110001
3. Countrywide Promoters Pvt. Ltd., through its Managing Director/ Directors/ Authorized Representative, office at M-11, Middle Circle Connaught Circus New Delhi – 110001
4. Business Park Maintenance Services Pvt. Ltd., through its Managing Director/ Directors/ Authorized Representative, office at M-11, Middle Circle Connaught Circus New Delhi – 110001

....RESPONDENTS

Hearing:- 64th

Present:- Mr. Himanshu Raj, Advocate, counsel for the complainants with Mr. Sumit Tarneja, complainant no.1,
Mr. Hemant Saini, Advocate with Mr. Himanshu Monga, Advocate,
Counsel for the respondents

Sumit Tarneja

JUDGEMENT:

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

1. On 08.06.2009, the complainants booked a unit measuring 876 sq. ft. in the project 'Park Elite Floors' situated in Parkland, Faridabad, a project jointly launched by the respondents, allured by the false promises and assurances of respondents. The total sale consideration of unit was ₹15,36,000/-. Respondent no.1, 2 and 3 are sister companies. On 24.12.2009 Unit no.E41-08(GF) measuring 876 sq. ft. @ ₹1,835.62/- per sq. ft. was allotted to the complainants. The complainants are aggrieved due to deficiency in service and unfair trade practice by respondents no.1 to 4. The complainants had opted for construction linked plan, but without even complying with the payment plan and achieving the said milestone of the construction, the respondents kept on demanding extra amount from the complainants, which was deposited by the complainants under duress and protest. After gap of long four years from the date of booking i.e. on 29.04.2013, the respondents arbitrarily re-allotted and changed the unit of the complainants from Unit no.E-41-08(GF) to Unit no.PE-53(GF) and also increased area from 876 sq. ft. to 1024 sq. ft. The re-allotment of unit to the complainants after four years from the date of booking is in itself an unfair trade practice. Without taking any consent from the complainants, the respondent had increased the area as well as price of the unit, which is direct violation of Section

14 of RERA Act. The complainants have already paid 60-70% of the total sale consideration. Despite that the respondents kept on demanding more money from the complainants without entering into Floor Buyer Agreement, which is violation of Section 13(1) of RERA Act. The complainants were unable to get home loan in the absence of Floor Buyer Agreement. The complainants had to mortgage the family's gold in order to avail loan to complete the legal obligation to pay to the respondents. Despite various enquires no positive response was received from the respondents. On 16.07.2013 i.e. after four years from the date of booking, respondents no.1 and 2 entered into Floor Buyer Agreement with the complainants against re-allotted unit and revised area. As per the said agreement possession of the unit was to be handed over to the complainants by 16.01.2016 i.e. 24 months + 6 months grace period. No Objection Certificate against change in area and the price was got signed by the respondents under duress, as there was no other option left with the complainants as considerable amount was already paid by the complainants and without signing the No Objection Certificate, the respondents refused to execute the Floor Buyers Agreement with the complainants. The respondents failed to handover the unit to the complainants within stipulated period of time i.e. by 16.01.2016 and offer of possession was made by the respondents on 19.06.2018 i.e. 9 years after the date of booking. The respondents had again arbitrarily increased the area of unit from 1024 sq. ft. to 1145 sq. ft. without obtaining any consent from the complainants and without furnishing any prior information about the same to the complainants. The offer

of possession is a mere paper possession as the respondents do not possess Occupation Certificate or the Completion Certificate of the project from the competent Authority. It is settled principle of law that possession without Occupation Certificate and Completion Certificate is no possession at all in the eyes of law. As per brochure, the complainants had opted for a unit which was having basic price of ₹15,36,000/- and the highest amount of unit available in the brochure was ₹24,42,000/-. The complainants have already paid ₹27,19,593/-, as per latest account statement dated 08.06.2018 furnished by respondents. Due to false representation of information provided by the respondents against the said unit, the complainants have suffered irreparable loss, monetary as well as mentally for the past 10 years and the respondents are liable to compensate the complainants against such misrepresentation of information under Section 12 of RERA Act. As per final statement of account, annexed as Annexure C-13, the area of unit was 1024 sq. ft. and no amount was due from the side of the complainants. Only after 11 days, the respondents sent offer of possession on 19.06.2018 where the respondents had increased the area of unit by 121 sq. ft. and also increased the balance due from the complainants from zero to around ₹6,00,000/-. The respondents are trying to extort hard earned money of the complainants by indulging in unfair trade practices. Such anomaly must be rectified by directing the respondents to waive off the extra amount charged from the complainants as per offer of possession dated 19.06.2018. This is unfair trade practice included under Section 7(1)(c) of RERA Act. As per offer of possession

annexed as Annexure C-11, the respondents have illegally charged the complainants under the head of basic sale price as ₹22,60,328/-. The extra amount of ₹3,33,874/- must be waived off. Due to deficiency in services and incompetency in completing project within the stipulated time, the respondents cannot charge the complainants for escalation of the cost of construction. GST has been levied by the respondents on the area as per 1145 sq. ft., it should have been calculated at 1024 sq. ft. The complainants are not obligated to pay stamp duty charges and the said amount of ₹1,55,000/- must be waived off. Since Occupation Certificate and completion certificate have not been received by the respondents, the complainants cannot take possession of the unit without Occupation Certificate and completion certificate. The maintenance agency i.e. respondent no.4, which has been appointed by respondents to maintain the said project has charged maintenance charges from the complainants even though no possession is taken by the complainants. In connivance with respondent no.4, respondents 1 to 3 are trying to extort hard earned money from the complainants. Respondent no.4 must be directed to waive off maintenance charges till actual possession is taken by the complainants. By way of the present complainant, the complainants have sought relief of compensation @ ₹18,000/- per month under Section 12 of RERA Act for false information being provided by the respondents in the shape of brochure due to which the complainants have sustained several financial losses, compensation @ ₹20,000/- per month under Section 14 of RERA Act for arbitrarily increasing the area of unit without taking any consent from any

of the allottee and charges against the said 'increased area, compensation @ ₹15,000/- per month under Section 18(3) of the RERA Act for demanding and accepting more than 10% of the total cost of property without entering into Floor Buyer Agreement, compensation @ ₹20,000/- per month under Section 18(3) of RERA Act for not handing over the possession within the stipulated time, compensation @ ₹11,000/- per month under Section 18(3) of the RERA Act for not getting Completion Certificate/ Occupation Certificate which was mandatory under Section 11(4)(b) of RERA Act, compensation in the sum of ₹3,00,000/- for causing mental and physical harassment for not handing over possession of the unit even after 10 years from the date of booking, compensation in the shape of reimbursement of gold loan and bank settlements that the complainants had to do under duress as the Floor Buyer Agreement was not executed and compensation in the shape of reimbursement of the interest on the home loan from the deemed date of possession i.e. 16.01.2016 till date as legal possession of the unit is yet to be offered to the complainants and they are bearing interest on the said loan.

2. Upon notice, respondent appeared and initially filed reply on 25.01.2019. Application dated 11.01.2020 for amendment of complaint was filed on 07.08.2020. After taking reply and hearing arguments, the said application for amendment of complaint was allowed vide order dated 09.12.2020 and amended complaint was already filed on 07.08.2020 along with application for amendment of complaint. After amendment of complaint, amended reply was filed by the respondent on 13.09.2022. Preliminary objections have been taken that the

complaint is attracted by principle of mis-joinder of necessary parties as respondent no.3 and 4 are neither privy to application for booking nor to Floor Buyer Agreement. The present complaint has been filed merely to drag the company into unnecessary litigation and to malign the hard earned reput of the company. Respondent no.3 reserves its right to take appropriate legal action. The complaint is liable to be dismissed as the unit in question is an independent floor being constructed over plot area admeasuring 167.22 sq. mtrs. and the same does not require registration under RERA Act. As per Memo no. 2733-34 dated 27.03.2009 issued by Financial Commissioner & Principal Secretary to Government Haryana, Town & Country Planning Department, registration of independent floors shall be allowed in case of residential plots of sizes 180 sq. yards or above. Complainants are defaulters under Section 19(6), 19(7) and 19(10) of RERA Act. The complainants have themselves abstained from paying the outstanding amount and taking the possession for 2 years. The complainants cannot seek any relief under the provisions of RERA Act or Rules framed thereunder. Respondents after completing the unit and receiving all the necessary approvals from concerned Authority offered the possession to the complainants. The complainants were duty bound to accept the possession of unit within 2 months of grant of Occupation Certificate / offer of possession. Since, the complainants failed to make the payment of the demand within the stipulated time, the respondents issued reminders to the complainants on 31.07.2018, 14.09.2018, 31.07.2019 and 10.12.2019. Last and final opportunity was given to

the complainants to take possession after payment of requisite amount vide letter dated 19.02.2020. The agreement was executed with the complainants prior to coming into force of RERA Act. Agreement entered into between the parties shall be binding on the parties and cannot be reopened. The Floor Buyer Agreement dated 16.07.2013 executed between the complainants and the respondents is valid and both the parties are bound by its terms and conditions. RERA Act is not retrospective in nature. Vide clause 5.3 of Floor Buyer Agreement duly agreed between the parties, it was agreed that in case of delay in offering possession, the complainants would be entitled to seek penalty @ ₹5/- per sq. ft. and super built up area per month. The complaint is liable to be dismissed for suppression, concealment and misrepresentation of material facts and documents. It is wrong that the complainant had booked the floor based on publicity. Rather, the complainants had their own volition to book the floor. After availing timely payment discount, the complainants have only made payment of ₹26,63,687/- till date. The complainants have also concealed the fact that possession has already been offered to the complainants on 19.06.2018 along with demand of balance amount to be paid by the complainants. The complainants have misrepresented that super built up area of unit has been unilaterally increased by the respondents twice. After having chosen for re-allotment as against refund with 9% interest the complainants had chosen a unit bearing no. PE-53 on ground floor having tentative area of 1024 sq. ft. It was clearly stated in the consent form that area of Unit no.PE-53-GF was tentatively 1024 sq. ft. The complainant had chosen re-

allotment of their own and accepted a unit tentatively measuring 1024 sq. ft. super built up area. On completion of construction the area of floor was communicated at the stage of offering possession to be 1145 sq. ft. On getting physical measurement of the unit the final super built up area is 1151 sq. ft. The complainants vide clause 2.6 of Floor Buyer Agreement duly agreed to make the payment of cost escalations of statutory dues and all the payments incidentally thereto like GST, VAT etc. With regard to delay in offering possession of the floor to the complainants, it was voluntarily agreed, accepted and acknowledged that there may be delay in handing over the possession of the floor due to reasons beyond control of the respondents and thus especially dedicated clauses were kept in Floor Buyer Agreement. Delay penalty in the form of loyalty bonus of ₹57,387/- was also given to the complainants. Respondents, at the stage of offer of possession, have also given an offer to the complainants to make the payment by 19.07.2018 so as to avail timely payment discount of ₹21,939.13/-. Respondents have already completed construction of the unit and after taking all necessary approvals, have offered possession to the complainants. The respondents have accepted the booking of unit based on self certification policy issued by DTCP, Haryana. The respondents applied for approval of building plans and initiated development/construction work. The building plans were withheld by DTCP, Haryana despite the fact that building plans were within ambit of building norms and policy. Approvals under regular scheme were received from the department but neither approval nor non-approval of the department was

received against application under self certification scheme. Thus the respondents continued internal development work and simultaneously raised construction on the plots. Vide notice dated 08.01.2014, the department granted 90 days' time to submit request for regularization of construction and the respondents had again submitted building plans for approval. Due to ambiguities in the various policy of the Government/department, the construction of the project was delayed time and again. After carrying out construction of independent floor, respondents informed the allottees including the complainants by issuing regular construction linked payment demands along with uploading photographs for construction progress. Delay in offer of possession of the unit to the complainants has been occasioned due to inaction of Government agencies which can be termed as force majeure circumstances beyond control of the respondents.

3. On merits, it has been denied that complainants are aggrieved due to deficiency in service or unfair trade practice by the respondents. Despite offering possession of the unit on 19.06.2018, the complainants neither approached the respondents for taking possession of the unit nor to make the payment of outstanding dues. Respondents have received Occupation Certificate on 21.06.2018. It is denied that total sale consideration of the unit was ₹15,36,000/- . The total sale consideration of the unit can be determined at the time of offer of possession only. Due to reasons beyond the control of respondents, the complainants were given an exit option of refund of their amount with interest @ 9% per annum or allotment of alternate unit in lieu of E-41-06-GF the area of

which was 1024 sq. ft. The complainants vide consent form dated 29.04.2013 willingly and consciously had chosen re-allotment. After the said confirmation, Unit no. PE-53-GF was allotted to the complainants on 30.04.2013. Floor Buyer Agreement was executed on 16.07.2013 between the parties. It was understanding between the parties that the area of the unit allotted was tentative in nature and would only be finalized after completion of construction. As per clause 5.3 of Floor Buyer Agreement, the complainants were duly compensated at the time of offer of possession. Till date the complainants have not made payment of ₹27,19,593.66/-. It is denied that without execution of Floor Buyer Agreement in violation of Section 13(1) of RERA Act, the complainants had deposited 60-70% of the total cost of unit as demanded and accepted by the respondents. The agreement entered into between the parties shall be binding on both of them and cannot be re-opened. It is denied that possession of re-allotted unit was to be handed over by 16.01.2015. The respondents had offered possession of the re-allotted unit on 19.06.2018 along with delay compensation as mentioned in clause 6.1 of Floor Buyer Agreement. Despite that the complainants had failed to take the possession of the unit with a view to wriggle out of agreement and to unduly enrich themselves. It is denied that the complainants had executed NOC under protest. Since no financial loss was incurred due to incompetency of the respondents, there is no ground to compensate the complainants. It is also denied that due to false representation of information provided by the respondents against the said unit, complainants have suffered irreparable loss, monetary and

mentally from the last 10 years and the respondents are liable to be compensated against such misrepresentation under Section 12 of RERA Act. The price mentioned in the brochure is based on tentative area of the unit and without taxes. Service Tax, VAT and GST being indirect taxes are payable by the customer over and above the sale consideration. EDC, IDC and other charges are also payable by the allottee as per their applicability. Complainants have wrongly included the payment of taxes, timely payment discount and pass through charges in sale consideration. It is denied that final statement of account was issued on 08.07.2018. Rather that statement was showing the status at that time only. The balance was never increased from zero to ₹6,00,000/-. It is denied that the respondents have illegally and arbitrarily charged extra amount of ₹3,33,874/-. The stamp duty charges are to be paid by the complainants and the said amount cannot be waived off. Cost escalation was raised as per agreed terms of Floor Buyer Agreement. Detailed explanation about computation of escalation cost was duly provided in Annexure F in offer of possession letter dated 19.08.2018. Cost escalation was computed till April 2014 as per Floor Buyer Agreement while the possession was offered in the year 2018. The complainants have wrongly demanded to waive off the maintenance charges. Despite offer of possession letter dated 19.06.2018, possession has not been taken by the complainants and necessary documents have not been completed. As per clause 9.4 of the agreement, the complainants have to pay maintenance charges within 30 days of notice of offer of possession. Maintenance charges are necessary to be paid to

maintain the colony, which are to be paid by the allottee w.e.f. the date of receipt of Occupation Certificate irrespective of fact whether actual possession has been taken over by the allottee or not. It is denied that respondents are increasing the price or the area of the unit without any intimation to the complainants or are unable to handover actual physical possession along with requisite amenities. The complainants are raising such false and defamatory pleas in order to prejudice the Court. The respondents have prayed for dismissal of the complaint.

4. Written arguments have been submitted by both the parties. Oral arguments advanced by both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

5. It is not disputed that on 08.06.2009, the complainants had booked a unit measuring 876 sq. ft. in the project 'Park Elite Floors' situated in Park Land, Faridabad, a project launched by the respondents. The complainants have stated that the total sale consideration of unit was ₹15,36,000/- which has been denied by the respondents. As per record, Unit no. E-41-08 measuring 876 sq. ft. was allotted to the complainants @ 1835.62 sq. ft. on 24.12.2009. It is the averment of the respondents that due to certain unavoidable reasons beyond the control of the respondents, the complainants were given an exit option of refund of their amount along with interest @ 9% per annum or allotment of alternate unit. Vide consent form dated 29.04.2013, the complainants had opted for re-allotment of unit. After the exercise of option by the complainants, Unit no. PE-53-GF was allotted to the complainants on 30.04.2013, a Floor Buyer Agreement was

executed on 16.07.2013. The re-allotment of unit is also not denied by the complainants, though it is the averment of the complainants that the unit was re-allotted without their consent and area was also increased without their consent, yet the fact remains the same that Unit no. PE-53-GF was re-allotted and its area was tentatively 1024 sq. ft. It is admitted case of both the parties that Floor Buyer Agreement with regard to re-allotted unit was entered into between the parties on 16.07.2013. If the re-allotted unit was not acceptable to the complainants or they were objecting the increased area, there was no need to enter into Floor Buyer Agreement by the complainants. At no point of time complainants were compelled to execute Floor Buyer Agreement with the respondents. If the complainants have entered into Floor Buyer Agreement dated 16.07.2013, meaning thereby the delay with regard to offering possession of the unit w.e.f. 2009 to 2013 was condoned by the complainants. As per clause 5.1 of the said Floor Buyer Agreement, possession of the unit was to be handed over to the complainants by 16.01.2016 i.e. within 24 months + 6 months grace period. It is admitted by the respondents that possession of the unit could not be handed over on 16.01.2016, rather it was offered on 19.06.2018. It is the averment of the complainants that till 19.06.2018 the respondents had not received Occupation Certificate and without receipt of Occupation Certificate, the offer of possession is not valid. It has further been argued by learned counsel for the complainants that the respondents themselves have admitted that Occupation Certificate was received by them on 21.06.2018 i.e. after offer of possession was allegedly made

on 19.06.2018. It is the argument of learned counsel for complainants that since at the time of alleged offer of possession, the respondents had not received Occupation Certificate, the offer of possession should not be considered as valid and it can only be termed as paper possession. Learned counsel for the complainants have relied upon observations of Hon'ble Authority in Lalit Kumar Saini v/s BPTP Ltd and another in which it has been observed that since the offer made without having Occupation Certificate was invalid in the eyes of law, the complainant had committed no illegality by refusing to accept it.

6. It has been argued by learned counsel for the complainants that compensation is different from interest as prescribed under RERA Act. He has drawn attention towards the definition of compensation which may legally constitute actual loss or expected loss either physically or mentally or emotional suffering which has been observed in AIR 2004 SC titled as Ghaziabad Development Authority v. Balbir Singh, AIR 2001 SC 1333 titled as Rathi Menon v. Union of India, Appeal No.21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi and Civil Appeal Nos. 6745-6749 of 2021 titled as M/s Newtech Promoters & Developers Pvt. Ltd. VS. State of U.P. & ors.

7. It has further been argued by learned counsel for the complainants that despite statutory right of the allottees to ask for compensation under Section 18(1) read with Section 19(4) of RERA Act, the respondents have caused wrongful loss to the complainants deliberately. Since Floor Buyer Agreement was not executed between the parties, the complainants could not avail home loan and

they had to take gold loan from the bank so as to meet illegal demands of the respondents. They were also forced to pay ₹10,70,855/- in the shape of interest which can be said to be wrongful loss of money to the complainants due to unfair trade practice of the respondents. The respondents have also made wrongful gains from the hard earned money of the complainants. The complainants are also entitled to compensation under Section 12 read with Section 17(a) of RERA Act. Reliance has been placed on, in Civil Appeal Nos. 5743-5744 of 2021 titled as Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another v/s Anil Kanwariya, AIR 1996 SC 1340 titled as Union of India v. Major General Madan Lal Yadav and 2000 6 SCC 224 titled as Lily Thomas v. Union of India. Learned counsel for the complainants has also drawn attention of the Court towards observations of the Authority in Gautam Bathla & Anr VS. Vatika Limited in Complaint no.574 of 2021.

8. On the other hand, it has been argued by learned counsel for respondents that the basic price of the unit was never decided at ₹15,36,000/-. Rather, the price of the unit was to be finalized at the time of the offer of possession after making of the calculations of payables and receivables. Because of certain unavoidable reasons, the respondents were not in a position to complete the project. In that eventuality, the complainants were given offer to take refund along with interest way back in the year 2013 i.e. on 29.04.2013. Alternate offer was also given to them to re-allot Unit no.PE-53-GF instead of Unit no.E-41-08 and the area of the revised unit was 1024 sq. ft. The complainants themselves

admitted to take re-allotted unit. After opting for re-allotted unit, no payment was made by the complainants. It has been denied that possession of re-allotted unit was to be offered on 16.01.2016. Because of unavoidable circumstances, there was some delay in completing the unit and possession of the unit was offered on 19.06.2018. Occupation Certificate was received on 21.06.2018. Despite that till date neither the remaining amount has been paid by the complainants nor possession has been taken. Delay tactics have been adopted by the complainants. By taking 24 adjournments before this Court, immense harassment has been caused by the complainants. The adjournments taken by learned counsel for the complainants runs into 581 days. In Complaint no.728 of 2020 learned counsel for the complainants had taken repeated adjournments running into 373 days. Initially Complaint no. 728 of 2020 was filed before Hon'ble Authority seeking relief of possession along with delay interest. On 18.05.2022, the complainants changed their relief from possession to refund, which had already been offered by the respondent company around 9 years prior i.e. on 29.04.2013. Even on the final day of arguments though the complainants were obligated to take possession in view of observations of Hon'ble Apex Court in Civil Appeal no.5785 of 2019 titled as Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna & Ors., the respondent company accommodated the request of the complainants for refund along with interest. Refund along with interest @ 9% was offered even on 29.04.2013. Since the complainants have made exit from the project by taking refund along with interest, they have given up all the prayers, resultantly they are

estopped from raising any dispute regarding the unit in question from the project in general or claim any compensation qua those issues, which have been given up by them before Hon'ble Authority. Vide order dated 18.05.2022 passed by Hon'ble Authority, refund of principal amount of ₹27,19,593.66/- along with interest of ₹23,85,104/- was allowed to the complainants. It has further been argued by learned counsel for the respondents that the complainants have sought compensation on account of alleged false information provided in the brochure, alleged arbitrary increase in the area of unit, alleged demand and acceptance of more than 10% of total cost without entering into Floor Buyer Agreement, not handing over possession within stipulated time period, not getting Completion Certificate & Occupation Certificate by the respondents, compensation in the shape of reimbursement of gold loan and bank settlements and also in the shape of reimbursement of interest on the home loan from the deemed date of possession till date, which are not within the jurisdiction of this Court. The complainants are estopped from seeking any compensation under any of these heads as none of these affects them in view of relief of refund along with interest. Learned counsel for respondents has placed on record the copies of the interim orders in which the either none is present on behalf of complainants or the adjournments have been sought by the counsel for the complainants. Learned counsel for the respondents has sought dismissal of the complaint.

9. It is not disputed that the complainants had booked a unit measuring 876 sq. ft. in the project 'Park Elite Floors' situated in Park Land, Faridabad on

08.06.2009. On 24.12.2009 Unit no.E-41-08 measuring 876 sq. ft. was allotted to the complainants @ ₹1835.62/- per sq. ft. It is the argument of learned counsel for the complainants that after a gap of 4 years on 29.04.2013, respondents had arbitrarily re-allotted Unit no.PE-53-GF in place of Unit no.E-41-08 which was originally allotted and also increased the area from 876 sq. ft. to 1024 sq. ft. It has been argued by learned counsel for the respondents that due to certain unavoidable reasons, unit allotted to the complainants could not be completed and that is why offer was made to the complainants to take refund along with interest @9% per annum or take alternate unit area which was 1024 sq. ft. It is the complainants themselves who opted for alternate unit. It cannot be presumed that the complainants were compelled to opt for alternate unit. Hence, there is no force in the arguments of learned counsel for the complainants that the re-allotment of the unit was an unfair trade practice. The payment of ₹27,19,593/- is not disputed. The complainants had filed Complaint no.728 of 2020 seeking possession of the re-allotted unit along with interest. After final arguments of both the parties had been heard and the Authority was ready to pronounce its judgement, learned counsel for the complainants had sought time to discuss the matter with the complainants and the case was adjourned to the next day i.e. 18.05.2022, on which date the complainants had changed their stand and converted their relief of possession of the unit along with delay interest to refund along with interest. As a consequence thereof Hon'ble Authority ordered refund of principal amount of ₹27,19,593.66/- along with interest of ₹23,75,104/- to the complainants.

10. By way of the present complaint, the complainants have sought compensation @ ₹18,000/- per month under Section 12 of RERA Act for false information provided by the respondents in the shape of brochure due to which the complainants have sustained severe financial loss. At this stage, it is relevant to point it out here that it is the jurisdiction of the Authority to come to conclusion as to whether the false information was provided by the respondents in the shape of brochure and the complainants have actually suffered loss under Section 12 of RERA Act. Hence, no compensation is being granted under this head.

11. Next ground of compensation is under Section 14 of RERA Act for arbitrarily increasing the area of the unit without taking consent from the allottees and charges against the said increased area. The complainants have sought compensation @ ₹12,000/- per month. This is also jurisdiction of the Authority to come to conclusion as to whether the area was increased arbitrarily by the respondents without consent of the complainants. Hence, no compensation is being granted under this head.

12. The complainants have further sought compensation under Section 18(3) of RERA Act for demanding and accepting more than 10% of the total cost of the unit without entering into Floor Buyer Agreement. The complainants have sought compensation @ ₹15000/- per month for violation of provision of Section 18(3) of RERA Act. This is also within the ambit of the Authority to come to conclusion as to whether the respondents had demanded more than 10% of the total cost of the unit without entering into Floor Buyer Agreement, which was

paid by the complainants. Hence, no compensation is being granted under this head.

13. The next head under which compensation has been sought by the complainants is that the respondents have failed to handover the possession of the unit within stipulated time period and they have committed violation of Section 18(3) of RERA Act. The complainants have sought compensation @ ₹20,000/- per month for violation of provisions of Section 18(3) of RERA Act. It is worthwhile to mention here that the complainants had filed Complaint no. 728 of 2020 before Hon'ble Authority seeking possession of re-allotted unit along with delay interest. After the arguments were heard and order was to be pronounced by the Authority, learned counsel for the complainants took short adjournment and on the next day, the stand was changed and from the relief of possession along with delay interest, the complainants opted for refund along with interest which was allowed. Now the complainants are estopped from claiming compensation on the ground of delay in handing over possession. For this relief, the complainants had to knock the door of Hon'ble Authority. Resultantly, no compensation is being awarded under this head.

14. Under next head, the complainants have sought compensation @ ₹11,000/- per month under Section 18(3) of RERA Act for not getting Completion Certificate/ Occupation Certificate which was mandatory under Section 11(4)(B) of RERA Act read with Section 17(2) of the said Act. For this relief also, the complainants could seek relief from the Authority. All the issues

with regard to Completion Certificate or Occupation Certificate are to be dealt with by the Authority. This Court is unable to grant any compensation under this head.

15. The complainants have also sought compensation in the shape of reimbursement of gold loan and bank settlements that the complainants had to do under duress as the respondents had failed to handover Floor Buyer Agreement on time to the complainants. Under the next head they have also sought compensation in the shape of reimbursement of interest on the home loan from the deemed date of possession i.e. 16.01.2016 till date. It has been argued by learned counsel for the complainants that though offer of possession was made on 19.06.2018, yet it was not a valid offer of possession as the respondents had not obtained Occupation Certificate by that time, which was later on obtained on 21.06.2018. After receiving Occupation Certificate, no valid offer of possession was made to the complainants till date. On this ground, compensation at ₹3,00,000/- has been claimed for causing severe mental and physical harassment for not handing over the legal possession of the unit even after 10 years from the date of booking of the unit. With regard to offer of possession, it is pertinent to mention here that it is not disputed that on 19.06.2018 offer of possession was made to the complainants. It is also admitted by the complainants that offer of possession was made on 19.06.2018 by the respondents but they had disputed and termed it as invalid offer of possession on the ground that Occupation Certificate was not received by the respondents till 19.06.2018 and it was received on

21.06.2018. At the cost of repetition, it is worthwhile to mention here that complainants had filed Complaint no.728 of 2020 seeking possession of the unit along with delay interest. Later on at the final stage when after hearing arguments of both the parties, order was to be pronounced, the complainants has changed their stand and demanded refund along with interest. It was allowed by the Authority vide order dated 18.05.2022. The present complaint has been filed on 11.09.2018. After four years of filing the present complaint, relief of possession before the Authority was changed to refund along with interest. When the relief of possession along with delay interest has been given up by the complainants themselves, they are estopped from claiming reliefs which are relating to possession. The complainants have sought compensation on the ground that the respondents have caused severe mental and physical harassment for not handing over the legal possession of the unit within 10 years from the date of booking of the unit. It is pertinent to mention here that after re-allotment of the unit, Floor Buyer Agreement was executed between the parties on 16.07.2013. Date for handing over possession of the unit comes to 16.01.2016. It is admitted case of both the parties that offer of possession was made by the respondents on 19.06.2018. Though, it is the argument of learned counsel for the respondents that offer of possession was not valid as by that time respondents had not obtained Occupation Certificate, yet at this stage this argument has no value in the eyes of law as the relief of possession has already been given up by the complainants. If Occupation Certificate was received after 2 days of offer of possession, how the

complainants had suffered mental agony and harassment for not taking the possession for another 5 years. This aspect could be taken into consideration had the complainants stayed with the project and relief was to hand over possession along with delay interest. The offer of possession was valid or not, this aspect is not to be considered at the time of computing compensation on the ground of mental agony and harassment. Moreover, the present complaint has been filed on 11.09.2018, when offer of possession was already made to complainant and Occupation Certificate was received by the respondents. Hence, the compensation for mental agony and physical harassment would be calculated w.e.f. 16.01.2016 the deemed date of handing over possession till 19.06.2018 the date when offer of possession was made by the respondents to the complainants. The computation of compensation on the ground of mental and physical harassment is tabulated below:

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹27,19,593/-	16.01.2016 to 19.06.2018	6%	₹3,96,092/-

16. Though as per calculation the amount has been computed as ₹3,96,092/- but under relief no.6, the complainants have claimed compensation at ₹3,00,000/- for causing severe mental and physical harassment. The compensation cannot be granted more than claimed by the complainants. Hence,

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the compensation under head of mental agony and physical harassment is restricted to ₹3,00,000/-

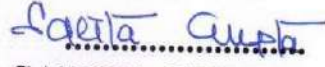
17. So far as compensation in the shape of reimbursement of gold loan, bank settlements and home loan w.e.f. deemed date of possession i.e. 16.01.2016 till date are concerned, for this relief also the complainants have to knock the door of the Authority. Hence no compensation is being granted under these two heads.

18. The complainants are also awarded cost of litigation to the tune of ₹25,000/-. The total compensation to be paid to the complainants comes to ₹3,00,000/- + ₹25,000/- i.e. ₹3,25,000/-.

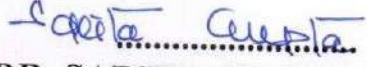
19. In these terms, the complaint is partly allowed. The respondent is directed to pay amount of ₹3,25,000/- (Rupees Three Lakhs and Twenty Five Thousand only) within 90 days to the complainants. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

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

21.09.2023


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 25 pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER