

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

Complaint no. : 1999 of 2023
Date of order : 11.12.2023

Mr. Mohinder Kumar Jain **Complainant**
R/O: 360,Udyog Vihar,Phase IV,Gurugram-122001

Versus

Pioneer Urban Land & Infrastructure Ltd.
ADDRESS: Pioneer Square, Ground Floor, Golf **Respondent**
Course Road, Sector 62, Gurgaon, Haryana

APPEARANCE:

For Complainant: Mr. Sukhbir Yadav Advocate

For Respondent: Mr. Mohit Arura Advocate

ORDER

1. This is a complaint filed by Mr. Mohinder Kumar Jain alias M.K Jain(allottee) 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 Pioneer Urban Land & Infrastructure Ltd.



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2. As per complainant, on 16.01.2010, he(complainant) booked a residential apartment, in a project of respondent and remitted Rs.10,00,000/- as booking amount through cheque. The respondent issued a payment receipt and allotment letter on 22.01.2010 against the allotted unit/ flat no. TE-902, 9th floor, admeasuring 2279 sq. ft., in Pioneer Park -Presidia, Sector-62, Gurugram. The said flat was purchased under the Construction Link payment for a sale consideration of Rs.1,15,80,498/-. It was represented by the office bearers/marketing staff of the respondent at the time of receiving the application money that the unit will be handover to the complainant within 36 months from the date of booking. On 16.05.2010, he(complainant) made a payment of Rs. 12,16,100/- through cheque.
3. That BBA was executed and signed between parties on 05.08.2010. As per clause no. 9.2 of the BBA, respondent has to give possession of the unit within 36 months from signing of the BBA, with a grace period of 180 days, therefore the due date of possession was 05.02.2014. It is pertinent to mention here that Hon'ble Authority upheld the due date of possession vide order dated 05.11.2020 in CRN 2340 of 2019.
4. That the complainant continued to pay the remaining installments as per the payment schedule and has already paid more than 90% of the sale consideration i.e., Rs.1,08,15,767/- till 01.04.2014 along with all the interest and other allied charges as demanded by the respondent. On 20.11.2018, respondent issued a Credit Note of

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Rs.11,06,000/- in lieu of the penalty against delay in possession.

5. On 20.11.2018, respondent issued a letter of intimation of possession to the complainant in which super area of the unit was increased by 161 sq.ft., without any intimation or approval by complainant. Super area of the unit increased from 2279 sq. ft to 2440 sq. ft. Respondent also raised 3 demands of Rs.16,32,470/-, Rs.5,98,145/- and Rs.1,56,940/- on account of arrears, due to change in the super area, on receipt of occupation certificate and other charges. Various other charges were also charged by the respondent. Respondent arbitrarily and without obtaining the consent of the complainant, increased the super area, therefore, the complainant is not obligated to pay the same.
6. That on 03.12.2018 and 12.12.2018, complainant sent grievance letters pertaining to the maintenance charges being charged by the respondent from 20.11.2018 to next 12 months. As respondent asked for "Advance Common Area Maintenance Charges" for 12 months @ 3.40 per Sq. Ft. in the demand notice dated 20.11.2018, which is illegal demand and not in consonance with the terms of BBA. Furthermore, the maintenance charges can only be charged after taking possession of the flat by the allottee not prior to that, but respondent never replied to it.
7. On 14.05.2019, respondent sent an email to the complainant, stating that, "We hereby confirm that you have now cleared all the dues including stamp duty charges for your apartment in

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Presidia." As per the statement of account dated 16.05.2019, issued by the respondent, complainant had paid Rs.1,02,48,288/- which is acknowledged by the respondent too.

8. That aggrieved by the acts, conducts, and deficiencies of the builder/respondent, complainant filed a complaint before the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, against respondent vide complaint No. 2340 of 2019 for the delayed possession which is decided on 05.11.2020. It is germane to mention here that the respondent has given possession during the pendency of the case and the conveyance deed was also got executed on 03.12.2019.

9. That the Hon'ble Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016, issued the following directions to the respondent:

(i) *The respondents is directed to pay interest at prescribed rate of interest 9.30% p.a. for every month of delay from the due date of possession i.e., 05.02.2014 till the offer of possession i.e. 20.11.2018.*

(ii) *The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*

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- (iii) *Interest on due payments from the complainant shall be charged at the prescribed rate @ 9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.*
- (iv) *The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- (v) *The respondent shall not charge anything from the Complainant which are not the part of the agreement.*

10. That the main grievance of the complainant in the present complaint is that due date of possession was 05.02.2014, but physical possession of the flat was delivered on 03.12.2019 after almost 6 years. He(complainant) is suffering from acute financial losses since Feb 2014. Complainant had purchased the flat with the intention that after purchase, the burden of the rental would go off and he will live in his own home. But there is a clear unfair trade practices, breach of contract and deficiency of service on the part of respondent and as such, same is liable to be punished and to compensate the complainant.

11. That relying on information downloaded from 99 Acres.com, the rental value of 3 BHK apartments in the same



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project is Rs. 1,00,000/- to 1,10,000/- per month. Since the respondent failed to handover the physical possession of the flat on or before the due date of possession, therefore, there is a rental loss to the complainant i.e., Rs. 1,10,000/- per month, therefore, the loss of Rs. 77,00,000/- is accrued from Feb 2014 (due date of possession) to December 2019(handing over of possession). Respondent is liable to compensate the complainant for every month of loss. It is further pertinent to mention here that the average life of a residential building is 50 years and the superstructure of the said building was completed in 2018 and now the building is deteriorating/deprecating @ 2% per year, therefore the deprecating amount of the building per year is Rs. 2,31,610/- and till 03.12.2019 the depreciation amount is Rs. 12,73,855/-

12. That respondent had approached Appellate Tribunal Chandigarh and filed an appeal no. 25/2021 against the order/judgment dated 05.11.2020 passed by the Hon'ble HARERA, Gurugram, which was dismissed by the appellate tribunal. Consequently, the complainant had to bear the unnecessary litigation cost of Rs. 55,000/- for appearing

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before the appellate tribunal in Chandigarh as well. It is pertinent to mention here that the total litigation cost paid by the complainant is Rs. 1,40,000/- and the litigation cost of the present case is Rs. 60,000/-.

13. That as per findings given in cases, viz., M/s Newtech Promoters and Developers Private Limited Vs. State of UP and other etc. decided by Hon'ble Supreme Court; Sunil Pal Vs. Parsavnath Ltd.; Anil Kumar Vs. Tashee Lands & KNS decided by Authority, Gurugram; complainant is entitled to be compensated under section 31, section 18(1), section 18(3), section 19(1) and on failure of respondent's obligation under section 12 of the Act of 2016. Complainant does not want to withdraw from the project, the promoter has not fulfilled its obligation, same(promoter/ respondent) is obligated to compensate the complainant.

14. Constrained in this manner, complainant has approached this forum seeking following directions to respondent :

- i. To grant compensation of the rental cost/loss of Rs. 77,00,000/-from June 2015 to December 2019.
- ii. To grant compensation on account of depreciation of Rs.12,73,855/-.

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- iii. To grant compensation of Rs. 10,00,000/- for causing mental agony.
- iv. To grant a compensation of Rs. 1,00,000/- for travel expenses and loss of work as the complainant had to appear before the Hon'ble authority/Appellate Tribunal (for complaint, appeal, and execution) for about 20 times on their working days. (Justification: Per day traveling cost and loss of work is Rs. 5,000/- per day).
- v. To grant the litigation cost of Rs. 2,00,000/-.
- vi. Any other relief/direction that the Adjudicating Officer deems fit and proper in the facts & circumstances of the present complaint.
- vii. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

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

15. That complainant expressed his desire to purchase a unit in the Project "Presidia", at Pioneer Park, Sector 62, Gurugram

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(hereinafter called project) launched by the respondent and paid Rs. 10,00,000/- as earnest money. Further, the parties entered into a Builder Buyer Agreement dated 05.08.2010 whereby the complainant agreed to pay an amount of Rs.1,15,80,498/- towards the sale consideration.

16. That due to force majeure circumstances, there was a delay in the completion of the project and respondent received occupation certificate for Tower E of the project on 20.11.2018. That on 20.11.2018, respondent offered possession of the apartment to the complainant, requesting him to take possession of the apartment and granted via a credit note, amount of Rs.11,07,600/- as delay penalty. Further, the Conveyance Deed has been executed and physical possession of the suit property was transferred to the complainant on 03.12.2019.

17. That aggrieved by the delay, the complainant filed a complaint before the Hon'ble Authority vide Complaint No. 2340 of 2019. That vide order dated 05.11.2020, the RERA, Gurugram passed an order in favour of the complainant. However, aggrieved by the order passed by the Ld. RERA, Gurugram, respondent preferred an Appeal bearing No. 26 of 2021 before the Ld. HREAT, Chandigarh, which was dismissed on 28.10.2013 and directed the respondent to submit Rs.34,64,625/-. Respondent deposited a sum of Rs.34,64,625/- in compliance of Section 43(5) of the RERA, Act, and accordingly the abovementioned amount was disbursed and

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given to the complainant, thereby discharging the respondent from it's duty.

18. That the complainant preferred an execution petition bearing no. 1463 of 2021 which is still pending before the Adjudicating Officer.

19. That section 18 of the Act of 2016, expressly provides interest and compensation both, but in cases where the allottee tends to stay in the project, the allottee is only entitled for interest of every month till the handing over of the possession.

20. That present complaint is devoid of any merit and ought to be rejected with heavy costs.

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

21. As mentioned above, in complainant no. 2341/2019, complainant has been allowed by the Authority, interest at prescribed rate i.e. 9.30% p.m. for every month of delay from due date of possession i.e. 03.02.2014 till offer of possession i.e. 20.11.2018. The polemic question to be answered here is, when complainant has been granted said relief of interest, whether, same is still entitled for compensation by way of loss of rental income etc. or not ?

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22. As per learned counsel for respondent, "Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month of delay, till the handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature. Learned counsel relied upon cases titled as, *Suman Lata Pandey vs Ansal Properties & Infrastructure Ltd. 2022 SCC OnLine RERA (UP) 123*; *Anurag Verma vs Parsvnath Developers Ltd. 2021 SCC OnLine UP RERA 41*; *Aakash Bhartiya vs Shreesri Buildtech Pvt. Ltd. 2023 SCC OnLine UP RERA 44*; *Alok Kumar vs Paarth Infrabuild Pvt. Ltd. 2023 SCC OnLine UP RERA 56.*

23. On the other hand, learned counsel for complainant submits that even if his client has been allowed interest by the Authority, as described above, same is entitled for compensation also. As per BBA, respondent was obliged to hand over the physical possession of the unit till 03.02.2014 but same was delivered on 03.12.2019 i.e. after about almost 6 years. He purchased said flat thinking that burden of rental would go off and he will live in his own house. Amount of

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interest is not enough to compensate him. Despite paying entire sale consideration, he remained deprived of possession of his house. Learned counsel referred a case, titled as, Ramprastha Promoters and Developers Pvt. Ltd. and others Vs Union of India and others, decided by Punjab and Haryana High Court and reported in (2022) 2 RCR (Civil) 652. Commenting upon, the scheme of compensation envisaged in Act of 2016, Hon'ble High Court held that, "compensatory relief under the scheme of the Act has been kept separate and distinct and accrues in the event of occurrence of certain pre-requisites and for which the determination is to be done by the Adjudicating Officer. Per contra, the entitlement of the allottee to claim interest on the payment made in the event of his withdrawal from the project or for the period of delay in handing over the possession, is a part of the statutory scheme and is not part of interest by way of compensation".

24. Proviso added to sub section 1 of sub section 18 of the Act, provides for payment of interest by promoter for every month of delay till handing over of possession, where an allottee does not intend to withdraw from the project. Although, this proviso does not mention specifically about awarding of compensation (apart from payment of interest), also, Section 18(3) of the Act, makes it clear that, if promoter fails to discharge any other obligation imposed upon him under the Act or Rules or Regulations made there under or in

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accordance with the terms and condition for agreement to sale, he shall be liable to pay compensation.

25. It is not denied that at this stage that, as per agreement entered between the parties(BBA), the respondent undertook to deliver possession till 03.02.2014 but same was delivered on 03.12.2019, despite having received amount of sale consideration from the complainant/ allottee. The promoter/ JD apparently failed to discharge its obligation towards allottee/ DH. In such a circumstance, in my opinion, the complainant is well within his right to claim compensation, apart from amount of interest, which is allowed by the Authority.

26. Interest and compensation are not synonymous. As per Rule 15 of Rules of 2017, interest at the prescribed rate means, State Bank Of India highest marginal cost of lending rate(MCLR) + 2% . All this is not applicable in case of compensation. Amount of compensation is to be ascertained on the basis of several factors, which will be reproduced later. Provision to award interest is an effort to save the payer(allottee in this case) from inflation or from depreciation of value of currency i.e. rupee. It is not necessary that amount of interest is able all the time, to beat inflation. Parties have legal right to prove that amount of interest was either less than the loss suffered by payer or more than such tentative loss.



Perhaps keeping all this in mind, provision is made to grant compensation.

27. Section 72 of the Act of 2016, tells about the factors, which Adjudicating Officer has to take into consideration while deciding quantum of the compensation. Same are as under :
- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - The amount of loss caused as a result of the default.
 - The repetitive nature of the default.
 - Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
28. As described earlier, complainant has sought Rs.77,00,000/- for rental loss, stating that a 3BHK house in that locality had rental value of Rs.1,10,000/- p.m. It is apparent that promoter/ JD used money paid by allottee/ DH and thus got unfair gain. On the other hand, the allottee suffered loss for not getting his unit despite making payment of sale consideration. It is established that allottee/DH was deprived of his unit i.e. flat in Pioneer Park – Presidia, sector 62, Gurugram admeasuring 2279 sq.ft. It was purchased for a consideration of Rs.1,15,80,498/-. Sector 62 is a developing area of Gurugram. Considering same, and size of unit, tentative rental value of same is taken as Rs.20,000/-p.m. Complainant is thus awarded compensation of Rs.20,000 p.m.

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from due date of possession i.e. 03.02.2014 till offer of possession i.e. 20.11.2018, to be paid by respondent.

29. Complainant also claimed compensation on account of depreciation (in value of property) of Rs. 13,49,661. As per learned counsel for complainant, life of a building is limited and thus value of unit in question has been depreciated due to lapse of time. On the other hand, it is contented by learned counsel for respondent that prices of land /property are constantly increasing. Complainant did not adduce any evidence to prove ^{that s} he suffered any loss due to depreciation of property/ unit. Prayer in this regard is thus declined.

30. It is not in dispute that the respondent undertook to deliver possession till 03.02.2014 but same was delivered on 03.12.2019. Despite paying amount of sale consideration to respondent, complainant got possession of his unit after approx. 5 years and 10 months. All this caused mental harassment and agony to him. The complainant is allowed a sum of Rs.1,00,000/- for mental agony and harassment in this regard.

31. Complainant has claimed, a compensation of Rs.2,00,000/- as cost of litigation. Complainant has also filled receipts of fees of his counsel, which seem to be excessive. Complainant is allowed a sum of Rs.50,000/- as cost of litigation.

32. Complainant also claimed compensation of Rs.1,00,000/- as travel expenses and loss of work. All this is remotely



connected to claim of compensation. Prayer in this regard is thus declined.

33. 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 @10.5% p.a. till realisation of same.

34. Announced in open court today.

35. File be consigned to records.



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