



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 908 of 2023

Date of Institution: - 13.04.2023

Date of Decision: - 05.12.2023

Rajendra Prasad Agarwal, s/o Raghubar Dayal r/o D-14/1, Sector – 7, Rohini,
Delhi – 110085

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd., through its Managing Director, office at 10, Shaheed
Bhagat Singh Marg, Gole Market, New Delhi-110001

....RESPONDENT

Hearing:- 7th

Present:- Mr. Kamaljeet Dahiya, Advocate, counsel for the complainant
Mr. Sahil Bansal, Advocate, proxy counsel for the respondent

Smita Gupta

JUDGEMENT:

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

1. The respondent is in the business of Real Estate Development, marketing and sale of residential and commercial projects. 'Rodeo Drive Mall' is a commercial project being developed by respondent in TDI City, Kundli, Haryana. While giving advertisements in the newspapers as well as through its channel partners, it showed a rosy picture about the project. It represented itself as absolute developer of the said land and assured that it was having all the approvals to start the project and valid licences had been granted to it by Director, Town & Country Planning, Haryana. The complainant relied upon the advertisements and visited the project site. Relying upon the facts and assurances given by representative of respondent, the complainant booked a commercial shop in the said project and paid an amount of ₹4,50,000/- as advance against which receipt was issued by the respondent on 15.05.2006. Shop no.FF-96 admeasuring 500 sq. ft. was allotted to complainant in 'Rodeo Drive Mall' in TDI City, Kundli, Sonapat vide allotment letter dated 13.08.2006. Respondent raised further demand of ₹2,25,000/- vide letter dated 12.11.2006 without any proof of construction completed or progress of construction. On 14.12.2006, the complainant had paid a sum of ₹2,25,000/- and receipt was issued by the respondent. More than 90% of basic sale price of the commercial shop was

demanded by the respondent and paid by the complainant. No written agreement between parties was executed in violation of Section 13(1) of RERA Act, 2016. As per provisions of Section 13(1) of the RERA Act, promoter is not entitled to accept a sum more than 10% of the total cost of the shop as advance payment without entering into agreement for sale. The payment plan opted by the complainant was construction linked plan i.e. complainant was supposed to pay as per construction and development work to be carried on by the respondent. The underlying purpose of option of said plan was that complainant would be required to pay only part of sale consideration as per agreed stages of construction provided that such stage wise demand should be raised by the respondent upon furnishing credible evidence of completing various stages of construction to the satisfaction of allottee. Even after receipt of ₹15,75,000/- which is more than 90% of the revised basic sale price of ₹17,19,000/-, respondent kept on demanding payments irrespective of the said payment plan. The respondent had promised to handover possession by the end of 2009. Till 2010 not even the first floor slab was laid by the respondent. Respondent cannot expect the allottee to wait endlessly for possession and respondent needs to complete the project within reasonable time frame, which has not been stipulated. In Fortune Infrastructure and Ors. v/s Trevor D'Lima, it has been observed by Hon'ble Apex Court that a time period of 3 years is reasonable time to complete the project. Since there was no agreement between the parties, reasonable time for completion of the project and to handover the possession to the complainant/allottee comes to 15.05.2009,

counting 3 years from 15.05.2006. The respondent has failed to obtain Occupancy Certificate despite lapse of more than 17 years from the date of booking which is violation of Section 11(4)(b) of RERA Act. The complainant had made several communications and also visited the office of the respondent personally from the year 2010 to 2019 to enquire about the status of construction of the shop allotted to him. Vide letter dated 02.05.2018 fit-out possession was offered by the respondent to the complainant and informed the complainant that the shop was ready for possession and Occupation Certificate would be received by the respondent within short time. The respondent also made demand of further payments from the complainant to take the possession after clearing all dues. Offer of fit-out possession is not a valid offer of possession, as fit-out offer of possession means offering a notional possession without Occupation Certificate. Such fit-out offer of possession is misnomer and could not be termed as offer of possession in the eyes of law. Hence the said offer of possession was only notional possession which is spurious. Respondent has intentionally and illegally not even mentioned any specific date or the year for delivery of possession of the shop. Since, the agreement had not been executed between the parties, it shows mala fide intention of the respondent since beginning. Another offer of possession for fit-out was conveyed to the complainant on 13.07.2019, whereby the respondent in arbitrary and discriminatory manner reduced the area of the project from 500 sq. ft. to 382.2 sq. ft. without any prior declaration and intimation to the complainant which is violation of Section 14(2)(i) of RERA Act. The respondent

intentionally did not mention the area of shop in question in offer of possession for fit-out which was issued on 02.05.2018. Respondent arbitrarily raised demand on 24.05.2018 and another demand on 19.02.2019, where respondent charged huge amount as delay interest on amount outstanding against the shop but did not consider delay of 17 years since the date of booking caused by respondent in completion of the project. The said delay is subsisting as the Occupation Certificate has not been received till date and legitimate offer of possession has not been given to the complainant. The respondent has hidden the decrease in size of the shop from the complainant till July 2019 as is apparent from the Annexures/demands made by the respondent. It is only in final statement of account dated 13.07.2019, the area of shop in question has been mentioned to have decreased from 500 sq. ft. to 382.2 sq. ft. Not mentioning of decreased area shows the mala fide intent of the respondent that such an important factor regarding the shop allotted to the complainant has not been revealed by the respondent since 2006 till 2019 which amounts to violation of Section 14(2)(i) of RERA Act. The area was reduced without proper declaration and intimation to the complainant as a result the actual size of the shop and the corresponding sale consideration need to be re-assessed based on revised area and come out to be ₹17,19,900/- for 382.2 sq. ft. against which the complainant had already paid ₹15,75,000/-. The act and conduct of the respondent comes under suspicion that in the statement of account received on 19.02.2019, the respondent was demanding money for 500 sq. ft. shop whereas within 5 months, the respondent

had sent another offer of possession for fit-out where the respondent reduced the area of the shop to 382.2 sq. ft. The respondent would have known about the actual size of the shop at the time of approval of layout plan. Instead of divulging the crucial fact at initial stage, it misguided and kept the complainant in dark by not disclosing such vital information. In fact the respondent malafidely and with intent to cheat raised demand for 500 sq. ft. area till February 2019. On 10.01.2020, the complainant had received a letter from Capital India Finance Ltd. stating that respondent had mortgaged the project to Capital India Finance Ltd. in October 2018 i.e. after lapse of 12 years from the date of booking and allotment of shop to the complainant after receipt of ₹15,75,000/-. The mortgage of the project is in contravention of provisions of Section 11(4)(h) of RERA Act. When fit-out possession of the shop was offered in the year 2019, it was concealed from the complainant that project was not free from encumbrances, it would have resulted in wrongful loss to the complainant, if the complainant would have taken possession of the shop and proceeded with fit-out possession. In the letter written by Capital India Finance Ltd., it was mentioned that no objection certificate would be required from Capital India Finance Ltd. for registration of the shop in the name of the complainant. Even though the respondent cannot confer a clear transfer of title for the said shop, its offer of possession for fit-out highlights the intention of the respondent to cheat the complainant. Despite inquiry of the complainant about the status of the project and receipt of Occupation Certificate and to clarify its stand regarding the mortgage of the project to Capital India

Finance Ltd., no information or clarification was provided by the respondent. The complainant also requested for giving reasons for levying and demanding maintenance charges before offer of physical possession of the shop and also requested it to correct the basic sale price as per the reduced area of the shop. To take the advantage of its own wrong, the respondent served notice dated 02.01.2020 upon the complainant demanding a sum of ₹9,49,474/- and threatened to cancel allotment of the shop. The respondent had been continuously cheating the complainant by giving wrong hope to fulfill its promise to deliver the possession of allotted shop. The respondent is in continuous breach of trust and misrepresentation. Since the respondent has repeatedly failed to fulfill its promise for timely delivery of shop, the complainant is entitled for compensation under Section 12, 18 and 19 of RERA Act. The complainant had suffered losses and damages due to false and incorrect statement or commitment made by respondent for delivering the possession of the shop within stipulated time. Material information has been suppressed by the respondent. It had willfully played fraud and has been deceiving the complainant showing some other features in the brochure/advertisement. Even after 14 years from the date of commitment and 17 years from the date of booking, the respondent has neither made legitimate offer of possession nor apprised the complainant of receipt of Occupation Certificate. The project of the respondent is not registered under RERA Act, it gave further advertisements and made promises through their channel partners and various other sources, in violation of Section 3 of RERA Act. The respondent has

indulged into unfair trade practice and committed Criminal Breach of Trust. The complainant has sought compensation on the ground that the respondent had booked the shop without obtaining any license with regard to construction of the project, till the year 2010, the respondent had forced the complainant to pay more than 90% of the amount, the respondent has played wilful fraud and has been deceiving the complainant since 2006, the complainant had suffered losses or damages due to false and incorrect statement or commitment made by the respondent for delivery of possession of the shop, due to inactions and misleading information about the project by the respondent, the complainant has gravely suffered monetarily, physical and mental loss. The amount deposited by the complainant way back in the year 2010 is in continuous possession of the respondent and the respondent is reaping the benefits of the said amount, taking unfair advantage to the respondent, the respondent has committed unfair trade practice and criminal breach of trust, the project has been mortgaged with Capital India Finance Ltd., respondent committed fraud with the complainant by reducing size of the shop from 500 sq. ft. to 382.2 sq. ft. The complainant has put in his hard earned money with the respondent and complainant is highly aggrieved and frustrated by entire circumstances. The complainant has suffered financial loss of the considerable amount which had already been paid to the respondent at the time of booking in the year 2010, financial loss of amount in inflation which has taken place in the Real Estate Sector from the date of booking till date. Complainant had to spend his precious time and he has suffered mental agony,

pain and harassment. By way of the present complaint, the complainant has sought compensation as per provisions of Section 18 and 19 of RERA Act, compensation @ ₹20,00,000/- for mental agony, breach of trust, harassment and unlawful trade practice, ₹1,50,000/- towards cost of litigation, penalty be imposed upon the respondent as per provisions of Section 60 and 61 of the RERA Act. Respondent be directed to provide detailed account statement against the amount collected from the complainant along with interest, penalty for delayed payment under Rule 21(3)(e) of the RERA Rules. He has also sought directions to be issued to make liable every officer concerned i.e. Director, Manager, Secretary or any other officer of the respondent company because of whose neglect the said offences have been committed. Complainant also seeks to recommend criminal action against the respondent for criminal offence of cheating, criminal breach of trust under Section 420, 406 and 409 IPC.

2. Upon notice, respondent appeared and filed reply taking preliminary objections that all the allegations raised by the complainant are vehemently denied. The complainant had voluntarily invested in the project of respondent company i.e. Rodeo Drive Mall at TDI City, Kundli, Sonapat, Haryana. The respondent had already received Part Completion Certificate vide memo dated 23.01.2008 for land admeasuring 109.5 acres which are part of Licence no.183-228 of 2004, 153-157 of 2004, 101-144 of 2005. Part Completion Certificate was received vide memo dated 18.11.2013 for land measuring 415 acres in respect of residential plotted colony covered under Licence no.183-228 of 2004, 153-157 of

2004, 101-144 of 2005, 200-285 of 2005, 652-722 of 2006 and 729-872 of 2006. Another Part Completion Certificate was received vide memo dated 22.09.2017 for land measuring 403 acres part of residential plotted colony bearing Licence no.153-167 of 2004, 42-60 of 2005, 101-144 of 2005, 183-228 of 2004, 652-722 of 2006, 200-285 of 2005, 51-2010, 729-759 & 790 -872 of 2006 and 177 of 2007. The respondent company has also received Occupation Certificate in respect of commercial site measuring 6.558 acres which is part of residential plotted colony 1097.894 acres, TDI City vide letter dated 12.06.2019 issued by Director, Town & Country Planning Department, Haryana. When the construction of the project was commenced, RERA Act was not in existence. The respondent company could not have contemplated violations and penalties as stated in RERA Act. The provisions of Act cannot be applied retrospectively. The Act penalizes the developers of the project much more severely than agreed terms between the complainant and respondent company. The said project is not registered with RERA and therefore cannot be adjudicated upon by this Court. If the provisions of Act are given retrospective effect, it would be unjust, unwarranted and arbitrary and will also effect erroneously causing undue grave hardship and will ruin the finances of respondent company. The present complaint falls outside the purview of provisions of RERA Act. The present complaint is liable to be dismissed in limine. The complainant has filed the present complaint seeking various reliefs which are vague and has sought an order to pay the amount to the complainant along with up to date interest as well as

compensation and penalty. The complainant has sought random exaggerated amount without giving any justification for the same. No documentary evidence has been annexed by the complainant along with the complaint to support his averments. In Section 72 of RERA Act, certain factors have been mentioned, which are to be taken into consideration by this Court while adjudging the quantum of compensation. As per Rule 29 of HRERA Rules, in order to adjudicate upon the quantum of compensation under Section 12, 14, 18 and 19, violation by the promoter must have been established by the Authority after inquiry under Section 35 of RERA Act. Complaint no.906 of 2023 was pending before Hon'ble Authority and has not attained finality. Complaint for compensation cannot be entertained or adjudicated upon. Agreement between both the parties was executed much prior to the date when RERA Act came into existence. The agreement between the parties is binding on both the parties. The RERA Act or the Rules do not force to supplant already agreed upon terms and conditions of Flat Buyer Agreement executed between the respondent company and the complainant. The complainant cannot withdraw his consent. He is an educated person and has signed each and every page of the agreement and hence is binding upon the complainant. If at all the complainant deserves compensation, it is only in terms of agreement executed between the parties. Delay cannot be solely attributed to the respondent company as the complainant is himself defaulter in making the payments which directly hits the construction of the project. The respondent company had sent various reminders to the complainant to

clear the dues. The complainant failed to make the payments in time and neglected his obligations to pay the outstanding amount to the respondent company. The complainant is not entitled for the compensation rather it should be the respondent company to whom the compensation must be paid due to delay in making the payments. Complainant is an investor and has accordingly invested in the project of the respondent company for the sole reason of investing and earning profits and speculative gains. No documentary proof has been annexed by the complainant to prove the allegations attributed to respondent company with respect to booking made by the complainant in the said project or to prove any harassment having been caused to the complainant. The complaint is time barred as the complainant has been sleeping his rights all alone 13 years. The present complaint is hit by the principle of delay and laches. This Court is not having jurisdiction to adjudicate the issue.

3. On merits, it has been stated that it is a matter of record that in May 2006, the complainant had booked a shop bearing no.FF-96 at Rodeo Drive Mall, TDI City, Kundli, Sonapat, Haryana. It is denied that till date the title of the land stand defective as respondent has failed to offer physical possession of the property, which in itself amounts to cheating and clearly shows mala fide intentions of the respondent causing mental agony to the complainant. The complainant had signed the agreement after carefully reading and thoroughly examining the details of agreement without any brochure and undue influence of respondent company. Complainant is making contradictory statements, on one

hand the complainant is stating that respondent is in absolute disregard of terms and conditions of construction linked payment plan and on the other hand complainant is stating that no agreement has been executed between the parties. Complainant has already offered possession for fit-out twice, back in the year 2018 and 2019. It is the complainant who is not coming forward to take the possession. The respondent company cannot be penalised for the delay being caused by the complainant in making the due payments. Every case has its own merits and the facts and the same cannot be applied in another case. It is denied that respondent has failed to obtain Occupancy Certificate despite lapse for more than 17 years from the date of booking. Respondent company has already received Occupation Certificate in respect of commercial site measuring 6.558 acres vide letter dated 12.06.2019 issued by Director, Town & Country Planning Department, Haryana. It is denied that the complainant made several communications and also visited personally the office of the respondent from the year 2010 to 2019 to enquire about the status of construction of the project, as the due date of offer of possession since booking comes out to be 15.05.2009. No reply has been given by the complainant for taking possession for fit-out and the remaining payments to be made to take the possession. It is denied that possession for fit-out is not a valid offer of possession, it means offer of notional possession without Occupancy Certificate and is not even near to actual possession. It is also denied that such fit-out offer of possession is misnomer and cannot be considered as valid offer of possession. It is denied that respondent intentionally did not

mention the area of unit in offer of possession for fit-out which was issued on 02.05.2018. It is also denied that arbitrary demand was raised by the respondent vide letter dated 24.05.2018 and another demand letter dated 19.02.2019 wherein the respondent charged huge amount as delayed interest but did not consider delay of 17 years since booking. All the demands were made in accordance with agreement executed between the complainant and the respondent company. Since the carpet area of the shop was reduced from 500 sq. ft. to 382.2 sq. ft., the corresponding sale consideration need to be re-assessed based on revised area and comes to ₹17,19,990/-. It is denied that respondent offered the complainant possession of the shop for fit-out in 2019 wilfully concealing the fact that the project is not free from encumbrances which would have resulted in wrongful loss to the complainant, had the complainant taken possession of the shop and proceeded with fit-out. It is also denied that Capital India Finance Limited has stated in its letter that no objection certificate was required from it for registration of shop in the name of the complainant. It is also denied that respondent cannot confer a clear transfer of title for the said shop, their offer of possession for fit-out highlights their attempt to cheat the complainant. It is denied that the complainant enquired about the status of the project/ receipt of Occupation Certificate and made numerous requests to respondent to clarify regarding mortgage of project to Capital India Finance Limited. All the requests of the complainant fell on deaf ears of the respondent and respondent neither gave any clarification regarding said mortgage nor confirmed the status of Occupation

Certificate. The respondent had not requested on numerous occasions to give clarification regarding arbitrary demands raised by the respondent and give reasons for levying and demanding maintenance charges before offer of possession. All the demands raised by the respondent company were well within the ambit of the agreement between the complainant and the respondent company. It is also denied that notice dated 02.01.2020 was served upon the complainant demanding a sum of ₹9,49,474/- and the respondent threatened to cancel the allotment of the unit. Respondent company was well within its right to issue notice for pre-cancellation of the unit booking in case the allottee fails to fulfill his obligations for timely payment. Complainant is making false and baseless allegations without any documentary proof. There was no intention on the part of respondent to cheat the complainant. The complainant cannot make such bald assertions against the respondent company especially when complainant himself is at fault. It is denied that the complainant had suffered losses and damages due to false and incorrect statement or commitment made by the respondent for delivering possession within stipulated time. It is denied that material information has been suppressed from the complainant before during or after the site visit or inspection of documents. It is also denied that respondent has played willful fraud and has been deceiving the complainant by showing some other features in the brochure/advertisement. The complainant is only trying to leap in the dark by making wrong and false averments against the respondent company with an intent to gain undue monetary benefits. It is denied that at the

time of receiving the booking amount against the said unit the possession of the unit was to be handed over in the year 2009 and even after delay of more than 14 years from the date of commitment and 17 years from the date of booking, the respondent has neither offered legitimate offer of possession nor apprised the complainant of receipt of Occupation Certificate. It is denied that respondent has not registered the said project under RERA Act and gave advertisement and made promotion through channel partners and various other sources in violations of Section 3 of RERA Act. The reliefs claimed by the complainant are denied and are not maintainable. The respondent has prayed for dismissal of the complaint.

4. Arguments of 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 the complainant had booked a commercial shop in 'Rodeo Drive Mall' project of the respondent on payment of ₹4,50,000/- as advance against receipt dated 15.05.2006. Shop no. FF-96 admeasuring 500 sq. ft. was allotted to the complainant in Rodeo Drive Mall, TDI City, Kundli, Sonapat vide allotment letter dated 13.08.2006. As per the averment of the complainant, he had paid ₹2,25,000/- on 14.12.2006 against demand raised by the respondent. It is the allegation of complainant that no written agreement was executed between the parties and without execution of written agreement, the respondent had taken more than 10% of the total cost of shop as advance payment. Though in reply, it has been mentioned by the respondent that agreement between both the parties was executed much prior to coming into force of the RERA Act,

yet in detailed reply it does not find mention as to on which date agreement was executed between the parties. The respondent has stated that the agreement is binding on both the parties and the provisions of RERA Act or the Rules do not force to supplant already agreed terms and conditions of Flat Buyer Agreement. It has further been stated that complainant cannot withdraw his consent and he has signed each and every page of agreement and binding upon the complainant. It is pertinent to mention here that it appears that stereotype reply has been filed without going into the actual detail as to whether agreement was executed between the parties or not. The copy of alleged agreement has not been placed on record by learned counsel for respondent.

6. As per version of the complainant, against revised basic sale price of ₹17,19,000/- he had had ₹15,75,000/- which is more than 90% of the revised basic sale price. It is the averment of counsel for the complainant that if there was no written agreement, reasonable period of three years has to be calculated for handing over possession from the date of booking i.e. 15.05.2006 and the possession was to be handed over till 15.05.2009. It is the argument of the complainant that title of the land over which the commercial complex was to be constructed, was not clear. It was not owned by the respondent. Since, the respondent was not owner of the land and title was disputed, it could not convey title to the allottees. It has further been pointed out by learned counsel for the complainant that on 10.01.2020, the complainant had received a letter from Capital India Finance Ltd. to the effect that the respondent M/s TDI Infrastructure

Ltd. had mortgaged the project to Capital India Finance Ltd. in October 2018. On the other hand, it is the averment of learned counsel for respondent that firstly offer of fit-out possession was given to the complainant on 02.05.2018, copy of which has been placed on record as Annexure C-3. Statement of account dated 24.05.2018 has been placed on record by learned counsel for complainant as Annexure C-4 and as Annexure R-6 by respondent. Possession was not taken by the complainant. For the second time offer of possession was issued along with statement of account on 13.07.2019, copy of statement of account has been placed on record as Annexure C-5. Even after issuance of offer of possession twice, fit-out possession was not taken by the complainant. The statement of account shows that a sum of ₹15,75,000/- has been received by the respondent. It is not understandable as to why fit-out possession was not taken by the complainant. It is the averment of learned counsel for the complainant that the respondent had not received Occupation Certificate or Completion Certificate, that is why there was no occasion to offer fit-out possession and it was not a valid offer of possession in the eyes of law.

7. It is also the argument of learned counsel for complainant that the title of respondent was not clear. A letter dated 10.01.2020 was sent by Capital India Finance Ltd. to the complainant that no objection was required to be taken as the project was mortgaged with Capital India Finance Ltd. At that time neither the complainant nor the respondent company was aware of as to in future the project would be mortgaged with Capital India Finance Ltd. As per letter dated

10.01.2020 issued from the office of Capital India Finance Limited to the complainant/allottee, it has been mentioned that project Rodeo Drive Mall was mortgaged with the said Finance Company in October 2018 and fit-out possession has been offered after that. The plea of learned counsel for the complainant is that if the complainant would had taken fit-out possession as per offer of possession dated 02.05.2018, he would have suffered huge loss, as later on after few months it was mortgaged with Capital India Finance Ltd. It is also pertinent to mention here that Complaint no.906 of 2023 filed by the complainant seeking possession of the unit, has been pending before the Authority. Till now final order has not been passed. At this stage it cannot be presumed whether the Authority would come to conclusion as to whether the complainant is entitled to possession of the unit or he is entitled to refund of the unit. At this stage it can also not be presumed as to what would be the fate of that complaint, as to whether respondent could be directed to handover possession of the commercial shop or refund. The fact remains the same that for the first time offer of fit-out possession was made by the respondent on 02.05.2018. Though in reply, it has been stated by respondent that the respondent had already received Part Completion Certificate vide memo dated 23.01.2008 for land measuring 109.5 acres, Part Completion Certificate was received vide memo dated 18.11.2013 for land measuring 415 acres, another Part Completion Certificate was received on 22.09.2017 for land measuring 403 acres and Occupation Certificate in respect of commercial site measuring 6.558 acres which is part of residential plotted colony measuring 1097.894 acres was

received vide letter dated 12.06.2019, yet it has not been mentioned by learned counsel for respondent that Rodeo Drive Mall, TDI City, Kundli, Sonapat in which commercial shop has been allotted to the complainant, is part of which license for which either Part Occupation Certificate or Completion Certificate. Without mentioning the said fact, it cannot be concluded that Occupation Certificate was already received by the respondent with regard to Rodeo Drive Mall, TDI City, Kundli, Sonapat. Occupation Certificate was received on 12.06.2019, copy of which has been placed on record. As per version of learned counsel for judgment debtor, second offer of possession was made on 13.07.2019. Statement of account dated 13.07.2019 has been placed on record as Annexure C-5. Admittedly, when the second offer of possession was made on 13.07.2019, Occupation Certificate had already been received by the respondent on 12.06.2019. So far as the first offer of fit-out possession is concerned, though it is the argument of learned counsel for complainant that since Occupation Certificate was not received by respondent, it was not a valid offer. This point has to be considered if the complainant has sought possession along with delay interest for which complaint is pending before Hon'ble Authority. For taking fit-out possession without receiving Occupation Certificate, this point is not to be taken into account while calculating compensation for mental agony and harassment.

8. Undisputedly, the complainant had booked a commercial shop after paying an amount of ₹4,50,000/- on 15.05.2006. Shop no. FF-96 admeasuring

500 sq. ft. was allotted to the complainant in Rodeo Drive Mall, TDI City, Kundli on 31.08.2006. Since, there is no agreement between the parties, calculating three years from the date of allotment, deemed date of possession would be 31.08.2009. Since that time the amount paid by the complainant was being used by the respondent to his own advantage. Since, neither the possession was given nor the amount was paid back, it amounts to mental harassment and agony. It has to be compensated in terms of money, which is quantified. The period for which the compensation for mental agony and harassment is to be calculated is taken w.e.f. 31.08.2009 till 02.05.2018 when first fit-out possession was offered by the respondent to the complainant.

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹15,75,000	31.08.2009 to 02.05.2018	6%	₹8,19,949/-

9. Against relief no.1 and 2 sought by the complainant, compensation of ₹8,19,949/- is awarded to the complainant on account of mental agony and harassment.

10. The complainant has sought ₹1,50,000/- towards cost of litigation, however a sum of ₹25,000/- is being awarded towards cost of litigation.

11. Against relief no.4 and 5, the complainant has sought to impose penalty upon the respondent as per Section 60 of RERA Act for wilful default and Section 61 of RERA Act for contravention of Section 12, 13, 14 and 16 of

RERA Act. For both these reliefs the complainant has to knock the door of the Authority for imposition of penalty for wilful default. Hence no relief is being granted under relief no.4 and 5.

12. Against relief no.6, the complainant has sought to give direction to the respondent to provide details of account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payment under Rule 21(3)(c) of HRERA Rules 2017. Granting relief sought under this prayer is also not the jurisdiction of this Court. Hence this relief is declined.

13. The complainant has also sought to issue directions to make liable every concerned officer i.e. Director, Manager, Secretary or any other officer of respondent company at whose instance, connivance, neglect any of the offences has been committed as mentioned in Section 69 of RERA Act read with HRERA Rules. Under relief no.8, the complainant has also sought to recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 406, 409 and 420 IPC.

14. So far as both these reliefs are concerned, it is not the ambit of this Court's jurisdiction to deal with these reliefs. The complainant at liberty to approach proper forum. Hence, neither any direction is being issued to any Director, Manager, Secretary or any other officer of the respondent company to make them liable for non-compliance nor any recommendation is being made for initiating of any criminal proceedings. Hence relief under clause 7 and 8 are declined.

15. Compensation in the sum of ₹8,19,949/- under the head of mental agony and harassment and ₹25,000/- against cost of litigation = (₹8,19,949/-+ ₹25,000/-) ₹8,44,949/- (Rupees Eight Lakh Forty Four Thousand Nine Hundred Forty Nine only) is being granted to the complainant.


14. In these terms, the complaint is partly allowed The respondent is directed to pay amount of ₹8,44,949/- (Rupees Eight Lakh Forty Four Thousand Nine Hundred Forty Nine only) within 90 days to the complainant. 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.

05.12.2023


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains ²³/₄ pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER