

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

**Complaint no. : 5297 of 2022
Date of order : 27.10.2023**

Smt. Jaishree Jain

Complainant

R/o: H- 452, Palam Vihar, Gurugram.

Versus

Emaar Mgf Land Ltd.

Address : ECE House, 28, Kasturba Gandhi Marg, New
Delhi - 110001

Respondent

APPEARANCE:

For Complainant:

Mr. Daman Sharma Advocate

For Respondent:

Mr. Ishaan Dang Advocate

HARERA
GURUGRAM
ORDER

1. This complaint is filed by Mrs. Jaishree Jain(allotee) under section 31 of the Real Estate (Regulation and Development) Act 2016 (in short the Act of 2016), read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules 2017, against respondent viz. Emaar Mgf Land Ltd.



2. As per complainant, she is a law abiding, senior citizen being 71 years of age. She (complainant) filed an application for allotment of a unit in respondent's project viz. "Imperial Garden", on payment of Rs.10,00,000/-. She was allotted a dwelling unit no. IG-06-0102 in Tower no.6 of group housing project in Sector-102, Gurugram admeasuring 2025 sq.ft.
3. That a Flat Buyer Agreement was executed between both parties on 05.06.2013. As per clause 14 of the agreement, unit in question was to be handed over within 42 months from the date of start of construction i.e. 11.11.2013 and further grace period of 3 months was allowed to the builder, thus making maximum period for delivery pf possession as 45 months. The due date of possession was 11.08.2017. She(complainant) had paid all the instalments in time and wherever there was a delay, she(complainant) paid an interest @ 24% p.a for each day's delay. She Deposited with the respondent an amount of Rs.1,53,55,759/- out of total sale consideration of amount of Rs.1,64,15,701/-.
4. That she(complainant) visited the site on 12.05.2018 and being extremely unsatisfied with the incomplete work, ^{she} wrote on 16.05.2018 to the respondent ^{as} that, " I seek refund of my entire deposit, along with interest and compensation because I cannot wait any further as your construction is too much delayed. Kindly do the needful in time as prescribed under Rule 16 of

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HARERA, Rules 2017 to give me the refund as well as the interest and compensation.”

5. That respondent did not pay any heed to ^{her} the request, so she (complainant) filed a complaint no.405 of 2018 with the Hon'ble Authority, which was decided on 05.09.2018, directing the respondent,” to give physical possession of the said unit to the complainant by 31.12.2018, also, respondent is directed to give interest to the complainant @10.45% p.a on the amount deposited by the complainant for every month of delay from the date of possession i.e. 11.08.2017 till 05.09.2018, within 90 days of this order and on 10th of every month of delay till the handing over of possession.”
6. That for compliance of this order, she (complainant) reminded respondent through various mails send ^r on 04.10.2018, 17.10.2018, 22.10.2018, 26.10.2018, 29.10.2018, 31.10.2018, 20.11.2018, 26.11.2018, 10.12.2018, 15.12.2018, 24.12.2018, 10.01.2019, 17.01.2019, 21.01.2019 and 28.01.2019. But instead of replying to the e mails, respondent approached the Appellate Tribunal. Appeal was dismissed as withdrawn on 02.05.2022. Respondent deliberately delayed the process.
7. That as the respondent failed to give the possession on time, ^r she (complainant) filed a complaint no.5539 of 2019 to seek refund along with interest. In the meantime, there was a continuous change in the legal position, in regard to the powers and scope



of Adjudicating Officer and the Authority. So, she(complainant) filed amended CRA in Accordance with the new Rules 28,29 & 29A of the Rules of 2017.

8. That Authority passed it's judgement on 10.05.2022 in complaint no. 5539 of 2019, directing respondent to comply with the order within 90 days to refund the entire amount received from the complainant along with the interest @9.40% p.a. from the date of each payment till the actual date of refund of the deposited amount.
9. That besides being senior citizen, she(complainant) approached the court of justice thrice, but respondent did not comply with the orders. There has been delay of more than 9 years from the date of booking of the flat. On basis of above grounds, complainant sought following reliefs:
 - i. Compensation of Rs.14,00,000/- for the loss of rental income from November 2107 to till date.
 - ii. A compensation of Rs.10,00,000/- for the anxiety, mental agony and harassment.
 - iii. Rs.6,00,000/- as cost of litigation for each of the 3 complaint i.e. Rs.2,00,000/- per complaint.

The respondent contested the complaint by filing a written reply.

It is averred :-

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10. That right from the very beginning, the complainant has been extremely irregular with regard to payment of installments.
11. It (respondent) applied for extension of the registration of its project, from 31.12.2018 to 31.12.2019. On one hand, HRERA, Gurugram Authority extended the timelines for registration of the project from December 2018 to December 2019, but took a contradictory view by passing an order to hand over the possession of the unit in question by December 2018.
12. Whereas, Authority could not have approbated and reprobated from its own stand, thereby the basis of directions issued by the Authority, vide order dated 05.09.2018 were devoid of any merit. This very aspect was also under consideration by the Tribunal in the appeal filed by the Respondent against order dated 05.09.2018.
13. During the pendency of the appeal before the Tribunal, respondent offered the possession of the unit to the complainant, vide letter of Offer of Possession dated 18.11.2019. But instead of taking possession, the complainant on one hand sought execution of the order dated 05.09.2018 and simultaneously, she (complainant) filed a second complaint seeking refund vide complaint no. 5539 of 2019. In view of the complaint filed by the complainant seeking refund, the appeal against the order dated 05.09.2018 was disposed of by the Appellate Tribunal vide order dated 02.05.2022.

14. That the complainant is estopped from seeking refund and compensation in view of the institution and pendency of execution proceedings bearing no E/41/405/2018 by the complainant. Even after possession of the unit was offered to the complainant, the complainant continued to prosecute said execution proceedings. On the one hand, complainant is seeking interest on alleged delay in possession and on the other hand, she(complainant) is seeking refund and interest. Complainant cannot be permitted to pursue parallel remedies which are mutually irreconcilable reliefs and impermissible in law, hence, complaint should be dismissed.

15. That it(respondent) received OC for the tower in which the unit in question is situated on 17.10.2019. After receiving OC, respondent offered possession of unit to the complainant on 18.11.2019 and complainant was called upon to remit balance amount. But, Complainant failed to take possession, despite repeated requests. Rather she(complainant) kept on filing complaints on one pretext or the other.

16. That construction was also delayed due to several other reasons like, default in timely payment by other allottees, delay of construction by the contractor, delay in getting OC by the competent authority, etc.

I heard Ld. counsels for both of parties.

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17. As mentioned above, the complainant has been allowed by the Authority, refund of the amount as paid by her to the respondent, along with interest. When, the complainant has been granted, relief of the refund of the amount, same is not entitled for loss of rental income, even if any. Prayer in this regard is thus declined.
18. As described earlier, complainant has sought Rs.10,00,000/- compensation for anxiety, mental agony and harassment. Section 18 of the Act of 2016, prescribes for the refund of the amount to the allottee/ complainant, if promoter fails to complete or is unable to give possession of the apartment etc., in accordance with the terms of agreement for sale. At the same time, this section provides for the compensation, in the manner as provided under this Act. Similarly, rights of allottee have also been described in Section 19 (4) of the Act of 2016.
19. A perusal of aforesaid provisions makes it clear that, an allottee has both of remedies i.e. refund as well as compensation, as prescribed by law. Considering all this, in my opinion, there is no legal obstacle in allowing compensation for anxiety, mental agony, etc., even if complainant has been allowed refund of amount, paid by her to respondent/ promoter. As per complainant, the respondent had agreed to hand over the possession of subject unit, till 11.08.2017. No such possession was given to her, despite, the fact that she paid an amount of



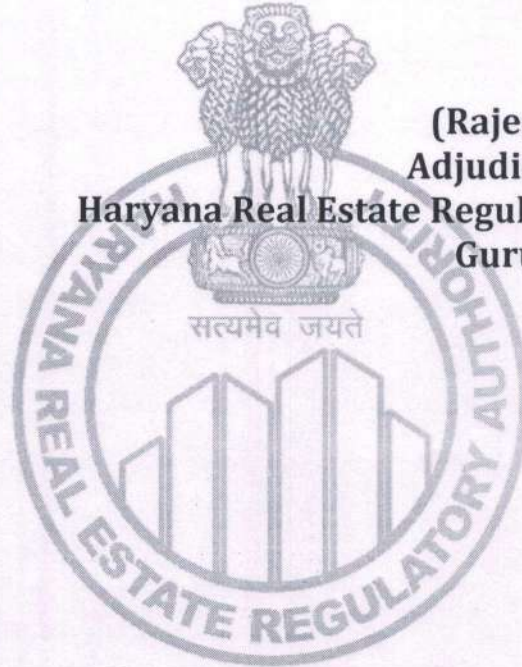
Rs.1,53,55,759/- out of total sale consideration of Rs.1,64,15,701/-. Even decree/order passed by the Authority to handover physical possession was not complied with. Alternatively, the Authority allowed the complainant to approach the same i.e. Authority again for remedy. She (complainant) was constrained to approach the Authority again, by filling a complaint. On that complaint, vide order dated 10.05.2022, the Authority directed refund of the entire amount as paid by her (complainant) along with the interest.

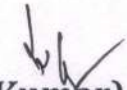
20. The complainant is a senior citizen, who apparently faced harassment, mental agony, etc. as claimed by her. Keeping in view facts of the case and circumstances of the complainant, same is allowed a sum of Rs.2,00,000/- as compensation for anxiety, mental agony and harassment.
21. Although complainant has claimed, a compensation of Rs.6,00,000/- as cost of litigation for each of three cases. She could have claimed, cost of litigation in other cases when same were decided except complaint in hands. Although complainant has not filed any evidence about payment of fee etc. to her counsel, she was represented by an advocate during proceeding of this case. Considering all this, complainant is allowed a sum of Rs.50,000/- as cost of litigation.
22. Respondent is directed to pay amounts of compensation as described above, within 30 days of this order, otherwise same

will be liable to pay interest @ 10% p.a. till realisation of amount.

23. Complaint is thus disposed off.

24. File be consigned to the Registry.




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

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