

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

Complaint no. : 6701 of 2022
Date of decision : 08.09.2023

Ms. Pratibha Khan and
Mr. Afzal Ahmad Khan
Both resident of : A-602, Prateel Edifice, Sector 107,
Noida 201304.

Complainants

M/s Imperia Wishfield Pvt. Ltd.
ADDRESS: A-25, Mohan Co-operative Industrial Estate,
New Delhi 110044.

Respondent

APPEARANCE:

For Complainant:

Mr. Siddhant Sharma Advocate

For Respondent:

Ms. Antra Mishra Advocate

HARERA
GURUGRAM

ORDER

1. This is a complaint filed by Pratibha Khan and Afzal Ahmad Khan(allottees) under section 31 read with section 72 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.

2. As per complainants, in May 2012, they applied for the virtual office space admeasuring 500 sq.ft. with respondent in its project viz. Byron at Sector 62 in Gurgaon under assured monthly return. They paid full consideration amount of Rs.25,45,292/- on 17.05.2012.
3. MOU between both the parties was signed on 29.05.2012. On 15.03.2016, respondent informed them(complainants) that Project name is changed from "Byron" to "MindSpace" though other material facts remained same.
4. From May 2015, respondent started to delay payment of monthly assured returns as agreed to be paid as per clause 4 of the MOU. Also, the respondent miserably failed to allot a unit and to handover the possession even after repeated requests and receiving the entire consideration amount from the complainants. Its been more than 10 years since booking and paying the entire consideration, but they(complainants) did not get any unit allotted.
5. Respondent further threatened them(complainants) that the unit will only be allotted to them once they withdraw the cases filed against them and do not demand any compensation or delayed possession charges from them.
6. On 12.11.2020 Authority allowed complaint no. 2110/2019, filed by them, wherein, they(complainants)

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were entitled for delayed possession charges w.e.f. 04.12.2017 till the actual delivery of possession. They have filed an execution petition no. 2741/2021 for execution of order dated 12.11.2020, wherein the respondent u/s 18(3) of the Act 2016, failed to hand over the actual physical possession and did not pay DPC amount.

7. Citing facts as described above, complainants have sought following reliefs:

- a. To hold respondent guilty of violating section 18(3) read with section 17 of the Act, 2016.
- b. To hold respondent guilty of indulging into unfair practices and providing deficient services to complainants and award a compensation of Rs.50,00,000/- with interest as per rules.
- c. To award pendent lite interest as per rules from the date of payment of amounts till realization.
- d. To award loss of rent from 04.12.2017 till date.
- e. To impose penalty in terms of section 61 of the act.
- f. To grant cost of litigation of Rs. 1,10,000/- in favour of complainants.

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

8. That the complainants had first approached the Authority for compensation and loss of return vide complaint no. 2110/2019, wherein the complainants were awarded DPC @ interest of 9.30% p.a. for every month of delay on amounts paid by the complainants. It(respondent) has already procured Occupation Certificate before the order dated 12.11.2020 was passed in the said complaint. Complainants further filed an Execution Petition No. 2741/2021 before the Ld. Adjudicating Officer, Gurugram, for execution of the order dated 12.11.2020. It must be noted that the respondent had already made part payment of the award and the said execution proceedings are still pending. Thereafter, complainants further filed complaint no. 477/2021 before the Hon'ble District Consumer Disputes Redressal Commission, Gurugram, for claim of compensation and assured return, which is still pending before the Hon'ble Commission and thereby, the complainants are asking for the same compensation which was pleaded before this Hon'ble Authority in the complaint No. 2110/2019 and for which complainants have approached before Hon'ble Adjudicating Officer in the present case.



9. That on 28.12.2022, it(respondent) gave offer of possession to complainants after receiving Occupancy Certificate on 02.06.2020.

10. That the present complaint comes under the purview of Doctrine of Election which postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. That the complainants, having elected the remedy to file a claim before this Hon'ble Authority vide CC No. 2110/2019, and sought refund of their amount, same as estopped from exercising the other two remedies. However, the complainants had filed the present complaint, subsequent to filing complaint No 2110/2019 before this Hon'ble Authority, for the same cause of action and seeking the same prayer before this Hon'ble Authority.

11. That the State Government had acquired the land which comprises said project land and transferred the same to the respondent, for development of the said project in accordance with the Master Plan and then carved out various Sectors and plots therein. Thereafter, it(respondent) received initial approval of building plans on 04.12.2015 and then started construction and began allotting units to the allottees. Furthermore, it(respondent) on certain recommendation

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changed the name of the project from the 'Imperia Byron' to 'Imperia Mindspace'.

12. That both parties had executed Memorandum of Understanding on 29th May, 2019. The complainants had purchased the said unit on 'investment return plan', the space admeasuring a super area of 500 sq.ft. approximately in the project of respondent at basic rate of Rs. 4,938/- per sq.ft. of super area, aggregating to a basic consideration of Rs. 24,69,000/- along with charges of reserved car parking and other charges which were liable to be paid by the complainants, at the time of handing over possession of unit.

13. That it(respondent) had paid the complainant a total sum of Rs. 4,71,240/- from 04.12.2017 to 31.03.2019. It must be further noted that after pandemic, the working protocols of the IT sector has transformed into work-from-home, due to which the real estate has immensely suffered. Despite all this, it(respondent) is adhering to the payment structure and is still paying assured return & lease rental to the allottees, including that of the complainants. To the contrary, complainants have not paid the installments towards the allotment on time and still a large portion of amount is due, despite the fact that so many reminders have been sent to them.

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14. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from November 4, 2019 onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. In pursuance to the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m., and the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020.
15. That clause 27 of the said MOU states that if the dispute or difference shall arise between the parties, the same shall be referred for Arbitration proceedings and the seat of arbitral proceedings shall be New Delhi.
16. That respondent gave offer of possession to complainants on 28.12.2022, after receiving Occupancy Certificate on 02.06.2020. As the offer of possession has already been issued to the complainants, the respondent is entitled to recover maintenance charges from the complainants to the tune of Rs. 20.50/- per sq. ft. per month from the date of offer of possession to the date of realization.

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

17. As mentioned above, the present complainants filed a complaint no.2110/2019 before Haryana Real Estate Real Authority, Gurugram (in brief Authority). In said complaint, the Authority has awarded interest @9.30% p.a. for every month of delay on the amounts paid by the complainants, with effect from due date of possession i.e. 04.12.2017 till actual delivery of possession of the unit. As stated above, the complainants have prayed for the compensation of Rs.50,00,000/- on the ground that respondent indulged into unfair practices and provided deficient services, loss of rent from 04.12.2017 till date and interest pend-en-d-lite from the date of payments of amounts till realisation.

18. When respondent has already been ordered to pay interest on the amounts paid by the complainants till actual delivery of possession of the unit, same is as good as compensation. May I refer here a case, decided by Uttar Pradesh Real Estate Appellate Tribunal, titled as, Suman Lata Pandey vs Ansal Properties & Infrastructure Ltd. Appeal no. 56/2020 reported in 2022 SCC Online RERA (UP) 123. The Tribunal, referred a judgement decided by Bombay High Court, in case titled as, Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of



India, where it was held that, "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 in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money."

On the basis of aforesaid reason, the complainants are not entitled to any compensation in this regard, *or for loss of rent.*

19. So far as prayer of complainant to impose penalty in terms of section 61 of the Act of 2016 is concerned, in my opinion, this forum (AO) has no jurisdiction to impose any such penalty. The complainants may approach proper forum (Authority), in this regard.

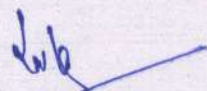
20. The complainants have also prayed for litigation charges of Rs.1,10,000/- for legal costs. No certificate of fee of advocate is put on record. Even then, it is apparent that complainant *was* represented by a lawyer, during proceedings of this case, same *was* allowed a sum of Rs.50,000/- as cost of litigation.

21. Respondent is directed to pay amount of compensation within 30 days of this order, otherwise same will be liable to pay interest @10% p.a. till realisation of amount.

22. Complaint stand disposed off.

23. File be consigned to the Registry.




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

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