

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

Complaint no. : 5737 of 2022

Date of decision : 27.02.2024

Yatin Sharma

**ADDRESS : 3625/A/31, Vishnu Garden, Near
Gautam Hospital, Rajendra Park, Gurugram.**

Complainant

Versus

M/s Pareena Infrastructure Private Limited

**ADDRESS: Flat No.02, Palm Apartments, Plot
No.13B, Sector 6, Dwarka, New Delhi-110075.**

Respondent

APPEARANCE:

For Complainant:

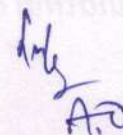
Mr. Siddhant Sharma Adv.

For Respondent:

Mr. Prashant Sheoran Adv.

ORDER

1. This is a complaint filed by Mr. Yatin Sharma (allottee) under section 31,35,36,37 and 38 of The Real Estate (Regulation


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and Development) Act, 2016 (in short, the Act) against M/s Pioneer Infrastructure Pvt. Ltd. (respondent/developer).

2. According to complainant, he applied for a unit vide application no. 001503 dated 25.05.2015 and received provisional allotment letter dated 09.11.2015 for unit no. 508, 5th floor, Tower 2 admeasuring 424.833 sq.ft in Affordable Group Housing Project namely "Laxmi Apartments" in Sector 99A, Gurugram along with one two-wheeler parking space, admeasuring 08.m x 2.5m. for a total sale consideration of Rs.17,49,330/-.
3. That the said project is registered with RERA vide registration no. 25/2017. Builder Buyer Agreement was executed between both of parties on 29.04.2016 and he(complainant) issued several cheques to the respondent from 31.01.2016 to 09.12.2019 and made payment of Rs.18,79,559/-.
4. That Real Estate Regulatory Authority, Gurugram (in brief the Authority) in similar matter titled as, Hari Ballabh Sharma vs. M/s Pareena Infrastructure Pvt. Ltd. (complaint no. 26 of 2019) observed that the due date of delivery of possession comes out to be 15.03.2020. The verbatim order dated 02.04.2019 is reproduced as under,

"...possession of the allotted unit was to be handed over from the date of grant of environmental clearance or from the date of sanction of building plan, whichever is later. The date of receipt of environment clearance in the present case is 15.03.2016, hence, the due date of delivery of position on calculation comes out to be 15.03.2020..."

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5. That after making payment of Rs.18,79,559/- respondent sent a letter dated 16.07.2021 offering possession of subject unit no. 508, as well as one two-wheeler parking site, after a delay of more than 1 year 4 months, demanding a payment of Rs. 1,86,110/- from him(complainant). Without any formal intimation, respondent increased the area of the allotted unit from 424.833 sq.ft to 440.25 sq.ft, which put extra financial burden on him(complainant) .
6. That he(complainant) approached Hon'ble Authority by filing a complaint no. 3456/2021 seeking delayed possession charges, along with other reliefs. The Hon'ble Authority vide its order dated 03.03.2022 and again through order dated 09.12.2022, was pleased to pass an order in favour of him(complainant) and directed respondent to pay interest @ 9.30% p.a for every month of delay from the due date of possession i.e. 15.09.2020 (after inclusion of extended period of 6 months on account of Covid 19) till the date of offer of possession i.e. 16.07.2021 + 2months i.e. 16.09.2021 or actual taking over of possession, whichever is earlier, as per section 19(10) of the Act.
7. That as per order dated 03.03.2022, the Authority directed the respondent to execute Conveyance Deed within 3 months from the date of order. As per section 18(3) of the Act, respondent has miserably failed to discharge its obligations and to obey order of the Authority.
8. Citing all this, the complainant has prayed for following reliefs:

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- a) To hold respondent guilty of violating section 18(3) read with section 17 of the Act.
- b) To hold respondent guilty of indulging into unfair practices and providing deficient services to the complainant and award a compensation of Rs.5,00,000/- 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 impose penalty in terms of section 61 of the Act.
- e) To grant cost of litigation of Rs.1,10,000/-.
- f) Pass any other order as this forum may deem fit and necessary in view of the above mentioned facts in favour of complainant and against respondent.

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

9. That 39 cases were filed by advocate Sh. Siddhant Sharma against same respondent and with same grounds, claiming delayed possession charges and other issues like additional area charges, administrative charges, meter connection charges, EEC, interest free security deposit, advance electricity consumption deposit, labour cess, advance maintenance charges, interest, execution of conveyance deed, cost of litigation. Out of above stated issues except advance

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maintenance charges, rest all were decided by the Hon'ble Authority vide judgment dated 09-12-2022.

10. That respondent preferred an appeal no. H-REAT 207 of 2023 before the Appellate tribunal, which is still pending. Decretal amount has already been deposited in said appeal by the respondent.

11. That when 39 complaints were filed before the Authority, a certain amount was left, to be recoverable from the complainants, which they were bound to pay to the respondent company. Delayed possession charges can only be paid (without prejudice and subject to appeal) only after adjustment of charges, which remain due towards the allottees.

12. That the complainant has intentionally concealed the fact that same (complainant) is bound to pay certain dues to the respondent and has only stated that delayed possession charges were not paid by the respondent. The Authority consolidated all the matters pending before it and passed a common judgement in case titled as Abhinav vs Pareena bearing complaint no. 3469/2021. Complainants were so desperate to file these cases that they filed these 39

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compensation cases prior to the final judgement in consolidated complaint no. 3469/2021. Respondent has filed appeal against order dated 27.09.2022, before the appellate tribunal.

13. That vide order dated 09.12.2022 in consolidated complaint no. 3469/2021 passed by the Authority, only delayed possession charges are awarded to the complainants. The Authority further directed that respondent shall not claim labour cess from complainants. Issue of maintenance charges was kept in abeyance as the authority has sought report from the DTCP qua maintenance charges and same has not been received.

14. That complainant himself has annexed letter of offer of possession, wherein the amounts due towards same were mentioned as on 16.07.2021. Complainant is duty-bound to take possession and to execute conveyance deed after paying relevant charges. None of the complainants ever approached respondent for taking possession or for execution of conveyance deed in his favour, thereby they themselves violated the provisions of Act of 2016.

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15. That said 39 complaints have been filed by the complainants so that they can avoid the liability to pay the balance amount due towards them. Respondent has obtained OC and is ready to execute Conveyance Deed, once the dues are cleared by those complainants.

16. That complainants amatively stated that the respondent had failed to execute conveyance deed within 3 months from the date of order, however, it is submitted that the conveyance deed can't be executed unilaterally, rather in order to execute of the conveyance deed allottee has to come forward to pay the stamp duty charges as well as administrative charges and other dues to the respondent. The respondent had duly demanded the above charges, while offering possession. Although, honourable authority has stated that the complainants are entitled for delayed possession charges yet the complainant can't avoid the liabilities to pay remaining amount against delayed payment interest, statutory charges against execution of conveyance deed.

17. That no loss has been proved to have been suffered by the complainant on record, thus no question of compensation arises.

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18. The respondent claimed that present complaint is devoid of merit and ought to be rejected with heavy costs.

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

19. It is not in dispute that on 25.05.2015, the complainant applied for unit no. 508, 5th floor, Tower 2 admeasuring 424.833 sq.ft in Affordable Group Housing Project namely "Laxmi Apartments" in Sector 99A, Gurugram along with one two-wheeler parking space, admeasuring 08.m x 2.5m. for a total sale consideration of Rs.17,49,330/-. Offer of possession was given by respondent on 16.07.2021 with increased area of the allotted unit from 424.833 sq.ft to 440.25 sq.ft.

20. Admittedly, the Authority consolidated 39 matters pending before it including aforesaid complaint and passed a common order dated 03.03.2022 and final order dated 09.12.2022, in case titled as Abhinav vs Pareena bearing complaint no. 3469/2021. The Authority through said orders held complainant entitled for DPC and directed respondent to pay interest @ 9.30% p.a to the complainant for every month of delay from the due date of possession i.e. 15.09.2020(after inclusion of extended period of six months) till the date of offer of possession i.e. 16.07.2021 + 2months i.e. 16.09.2021 or actual taking over of possession whichever is earlier, as per section 19(10) of the Act of 2016.

21. In this way, the respondent was obliged to deliver possession till 15.09.2020, but admittedly possession was not given to



complainant till this date i.e. 15.09.2020. Despite paying full amount of sale consideration to promoter/respondent, complainant was deprived of his unit. It is apparent that promoter/ JD used money, paid by allottee/ DH and thus got unfair gain/ advantage. On the other hand, the allottee suffered loss for not getting his unit, despite making payment of sale consideration. The allottee in such a case is entitled to be compensated.

22. In clause (a) & (b) of prayer paragraph, the complainant has prayed to hold respondent guilty. In other way, this is a relief to declare respondent guilty for violating its obligation. None of the provisions i.e. section 12,14,18 and 19 of the Act empowers Adjudicating Officer to pass an order declaring any party guilty. This forum (AO) has been empowered to try and entertain complaints seeking compensation in view of section 12, 14, 18, 19 of the Act of 2016.

23. Similarly, power to grant interest, as is claimed by the complainant in clause(c) of prayer paragraph, is vested with the Authority. This scheme has been re-iterated by the Apex Court in the case titled as M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others decided on 11.11.2021, Civil Appeal no. 6745-6749 of 2021. Again, jurisdiction to impose penalty under section 61 of the Act as is claimed in clause (d) of the said paragraph, is not within the ambit of Adjudicating Officer. Requests for these reliefs are thus declined.

24. Although, in clause (f) of prayer paragraph, the complainant has prayed for an order (granting compensation) as this forum

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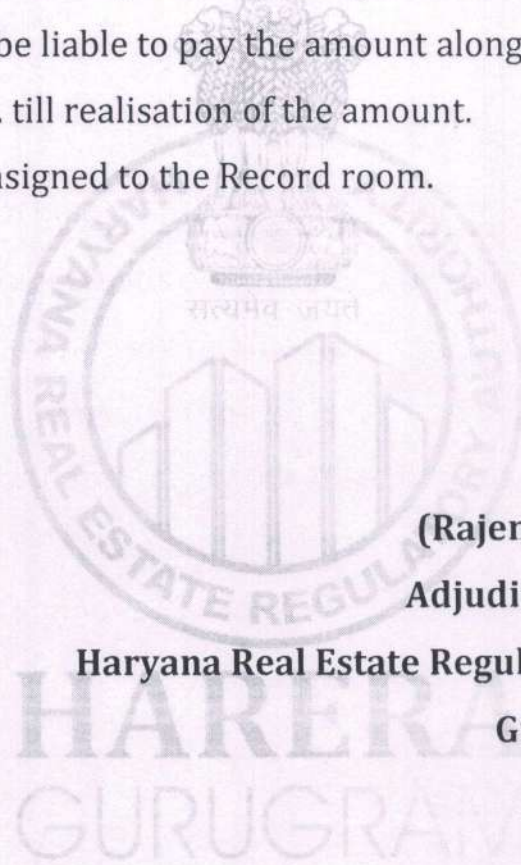
may deem fit and necessary, in view of facts of the complaint. The complainant did not specify as under which provision and what type of compensation, same has claimed. Further he did not quantify compensation, which he claims to be entitled for.

25. It is well settled that a party cannot be denied just relief, simply for not mentioning specific provision of law or for any technical reason. One of the main objects of the Act of 2016 is "to protect the interest of consumers, in real estate sector". Apparently, complainant is a consumer, being an allottee of a residential unit in the project being developed by the respondent. Even if same or his counsel has erred, in not mentioning specifically the provision of act or the amount of compensation, it will amount denying justice to him (complainant), if his complaint is dismissed merely for aforesaid reason, when same is other-wise entitled for compensation for failure of respondent to deliver the subject unit as per agreement.

26. It is not clear as when physical possession of subject unit was actually given to allottee/ DH, despite offering possession on 16.07.2021. As per findings of Authority, DH is entitled for DPC till 16.07.2021 + 2 months i.e. 16.09.2021. Sector 99A, Gurugram, where the subject unit is situated, is a developing area. Considering the same and also the size of apartment, complainant is allowed a sum of Rs.10,000/- p.m. (from 15.09.2020 to 16.09.2021) as compensation, to be paid by respondent, for having been deprived of possession of his unit.

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27. The complainant did not put on file any receipt of payments to his counsel as latter's fee, but apparently, same was represented by an advocate during proceedings of this matter. The complainant is allowed Rs.50,000/- as cost of litigation, to be paid by the respondent.
28. The complaint stands disposed of. The respondent is directed to pay the amounts of compensation including litigation cost as detailed above, within 30 days of this order, otherwise same will be liable to pay the amount along with the interest @10% p.a. till realisation of the amount.
29. File be consigned to the Record room.



Rajender Kumar

(Rajender Kumar)
Adjudicating Officer,

Haryana Real Estate Regulatory Authority
Gurugram

