

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

Complaint no. : 2318 of 2022

Date of order : 07.02.2024

Mr. Sandip Chhabra and
Ms. Renu Chhabra
ADDRESS: S-304, Sector 81, DLF Ultima, 30th Floor,
Gurugram-122004.

Complainants

Versus

DLF ULTIMA
ADDRESS: DLF Ltd., Ground Floor, Gateway
Tower, R Block, DLF City, Phase 3,
Gurugram, Haryana

Respondent

APPEARANCE:

For Complainant:

Ms. Ritu Kapoor Advocate

For Respondent:

Mr. Ishaan Dang Advocate

ORDER

1. This is a complaint filed by Mr. Sandip Chhabra and Ms. Renu Chhabra (allottees) under section 31 of The Real Estate



(Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017, against DLF Ultima (promoter).

2. As per complainants, in 2008 they(complainants) booked a residential apartment i.e. unit no. M2B082 in DLF premium project - Express Green. The residential project - Express Green went into litigation so at this stage the complainants were advised by DLF Sales team to surrender their unit and opt for a residential unit in DLF flagship project, "Ultima".
3. After many communications with the respondent, on 31.03.2016, they(complainants) purchased a unit and made a payment of Rs.1,05,46,730/- to the respondent. On 13.07.2016, Builder Buyer Agreement No. 714 was executed between both of parties, for UTS- 304, TOWER- S, 3 BHK apartment, admeasuring super area 2092 Sq. feet, with 2 covered parking no. PS2105 and PS2106@ Rs. 8700/- per square feet for BSP Rs.1,82,00,400. After including taxes, total sale price came to Rs.2,02,07,262, as per the final statement of account as on 14.02.2019.
4. After making full payment timely, the respondent made Offer of Possession on 18.03.2019. When they(complainants) visited the site, the unit was not ready. Even lift was not operational, so they refused to shift in that apartment. After regular follow ups, complainants shifted to the apartment in constrained circumstances in October 2019(after 8 months of offer of possession).



5. After taking possession on 11.10.2019, they (complainants) noticed many structural defects, on which DLF representative and care taker of Tower S viz. Mr. Manoj Dawar assured them that these defects will be fixed soon.

6. Following were the issues they faced: —

- a. Respondent had promised and assured that the flats shall have imported marble flooring (OMANI) in the living and dining area. This was also clearly specified in the Brochure and BBA, but, shockingly, the marbles were of cheapest local quality, having 11 inches ugly spots on it.
- b. Not only the walls, but also, the RCC beams & columns have developed frightening cracks, which are greatly hazardous and increased with time.
- c. GRC jali in balconies are cracked and broken, which are dangerous.
- d. Tiles used in kitchen, bathroom and balconies are of extreme poor quality. Not only that, the kitchen equipment is outdated, the counter is broken and the kitchen door is also one of the concerns.
- e. There were scratches on the sliding doors. Flush doors were of very poor quality. Large cracks were there on the walls, where door frames were fitted.
- f. There is leakage of water from the roof and the rain water pipes were not attached to the overhang roof / sun-shade (chajja).

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They (complainants) informed about these loopholes many a times to the representatives of the respondent through whatsapp, mail and personally, but to of no use.

7. On 28.01.2021, they (complainants) filed a complaint no. RERA-GRG-569-2021 against respondent. The Authority decided said complaint in favour of complainants vide order dated 31.03.2021 and directed the respondent to depute a qualified person from its construction division, to inspect the apartment and to get these alleged structural defects removed and rectified if found in existence, at the spot, within 30 days of the order.
8. To comply with said order, Mr. Parvesh Yadav, (DLF official) vide an email dated 13.04.2021 asked them (complainants) to inform the convenient time for inspection of their flat but due to covid cases, complainant's family & lockdown in Gurugram, the inspection of the flat was carried out on 28.05.2021 by Mr. Rajan Vij. Through an email dated 21st June 2021, he confirmed to carry out the rectification work in complainant's flat.
9. Since Mr. Sandip Chhabra was admitted to Fortis Hospital, Gurugram and Sir Ganga Ram Hospital, New Delhi from



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7.09.2021 to 5.10.2021 for multiple surgeries of his intestines, they (complainants) were not able to contact DLF for compliance of order till 20.11.2021. Afterwards, they (complainants) sent many emails to the respondent to comply with the order. After consistent & regular follow up between 27.01.2022 to 02.03.2022, respondent finally started rectification work on 08.03.2022.

10. Initially, cracks on the brick's walls were addressed and repaired by the respondent, but after 2 to 3 days, repaired cracks were resurfaced due to inferior grade material used & poor workmanship. After wasting almost 2 weeks, plaster from the RCC beam was removed by team of DLF, where multiple deep critical cracks were visible.

11. To investigate the reasons for visible critical serious cracks in the beam, DLF official viz. Mr. Yudhveer Singh, suggested them to move to another apartment, which DLF would arrange. Though this verbal proposal was given to them to move to another apartment but no arrangement was made till date, and now after damaging complainant's entire furniture, worth Rs 22.50 lacs and home furnishing worth Rs. 3 lacs this kind of proposal is coming from respondent to avoid complainants to see the method & procedure, being used to



- repair the RCC Beams. They (complainants) were not allowed to take pictures and to make videos of these RCC Beam cracks.
12. That again on 12.04.2022 they (complainants) wrote an email, informing the respondent that some more critical cracks have been found in two beams. After which, Mr Parikh and Mr Amitabh, along with other senior officials of respondent, visited their flat on 09.04.2022 and suggested to conduct Rebound Test of beam and Ultrasonic Test, using both indirect and direct methods. Test was conducted but reports of the test were not provided to them (complainants).
13. Consequently, on 06.05.2022, a legal notice was sent to respondent as none was paying heed to our complaints. Though the beams repair work is still going on but the entire repair process undertaken is highly unsatisfactory and cracks got resurfaced time and again. Copies of all the photographs of loopholes, emails and whatsapp messages of communication with the respondent are on file.
14. They (complainants) are suffering with serious ailments and are under constant fear of losing their lives, due to visible deep beam cracks.
15. Constrained in this manner, complainants approached this forum, seeking following reliefs:


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- i. the respondent be directed to pay the compensation of Rs.6,06,21,786/-, for physical and mental torture, agony, discomfort and undue hardship suffered.
- ii. the respondent be directed to pay compensation for damages done to furniture, furnishings worth Rs 25.50 lakhs during the unsatisfactory repair work.
- iii. To direct the respondent to pay a sum of Rs. 2,00,000/- towards the cost of litigation.

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

16. That the present petition has been filed in respect of the order dated 31.03.2021 passed by the Authority, Gurugram, whereby the complaint has been disposed off, with certain directions to the respondent. Respondent, has duly complied with order dated 31.03.2021 and has already carried out the rectification work as specifically requested by the complainants.

17. That conveyance deed bearing vasika no.11533 dated 02.03.2022 has already been executed in favour of complainants for unit no. S 304 located in the project known as "DLF Ultima" Sector 81, Gurugram. As per Clause 19 of the aforesaid conveyance deed, complainants were duly satisfied with the quality of workmanship and material used in the apartment in question, fittings therein, state of the apartment



etc. and had only thereafter proceeded to obtain physical and vacant possession of the same from respondent. Complainants, at this highly belated stage cannot claim that there had been any irregularities in the apartment in question.

18. That as per Clause 21 of the conveyance deed, complainants had undertaken to be solely responsible to maintain the apartment in question at their own cost and to keep it in a good condition. Still complainants approached the Authority despite not having any reason to do so, in order to have wrongful gain.

19. That Mr. Rajan Vij had casually and recklessly sent email dated 01.06.2021 without consulting his superiors. In fact, Mr. Rajan Vij was a disgruntled employee of the respondent who had in fact been reprimanded on various occasions by the management on account of his incompetence. In fact, Mr. Rajan Vij had submitted his letter of resignation to the respondent on 01.09.2021 as he was unable to perform his duties in a professional manner.

20. That the Omani Marble used in the apartment in question is of an excellent quality. The patches in the marble as mentioned by complainants are in fact a natural characteristic of the stone and the same cannot be changed/removed as they are part of the marble itself. However, complainants had directly reached out to the stone vendor i.e. M/s Unicorn Buildwell Private Limited and sent an email dated 07.03.2022 to the aforesaid vendor wherein it had been stated that all the alleged issues pertaining to the Omani Marble Flooring had

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been resolved. That Mr. Sandip Chhabra had in fact taken an amount of Rs.3,15,000/- from the aforesaid vendor (M/s Unicorn Buildwell Private Limited) on the basis of an inter se settlement between him and the vendor.

21. That the so-called cracks mentioned by the complainants are actually brick masonry partitions, which formed with time and the same are not a part of the structural framing system (load carrying system) of the building/tower in question. Therefore, the same do not affect the structure and strength or integrity of the tower. In order to improve the appearance of the walls, the team appointed by the respondent applied polymer based plaster on such cracks, and no cracks were observed after the aforesaid procedure had been carried out. Also, respondent replaced the entire 'GRC Grill' with a new one.
22. That all other flush doors had been repainted by the team appointed by the respondent. The team appointed by the respondent had scanned/checked the entire apartment in question for any leakage or water proofing issues and the same had been rectified wherever required. The respondent had incurred a total amount of Rs.7,82,579/- on account of the rectification work which had been carried out in the apartment in question. Delay was not on the part of respondent but due to complainant's ailments and Corona situation.
23. That in the spirit of goodwill, Mr. Yudhveer Singh had suggested complainants to shift to another flat temporarily



which would be arranged by the respondent, during the carrying out of the minor repair work even though there was absolutely no need for the shifting to be done. However, complainants for reasons best known to them outrightly refused to do so and in fact pressurized Mr. Yudhveer Singh to provide them with another apartment in the same complex, which was infeasible for respondent.

24. That proceedings of this complaint were undergone along with execution petition by the same complainants against same respondent for the same cause. As per order of the Court, Local Commissioner, Mr. Sumit Nain was appointed to visit the site and to give report to the Court.

25. That in order to ascertain the seriousness of the situation, NDT (Nondestructive Testing) was suggested and two types of tests - Rebound Hammer & Ultra-sonic Pulse Velocity (UPV) had been carried out by an outsource expert, cost of which was borne by the respondent, in the presence of complainants and Local Commissioner. Based on readings of the Rebound Hammer test, the compressive strength of the beam was found to be satisfactory. Furthermore, most readings from the UPV test also returned "Good" or "Excellent" results.

26. That this 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.



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27. Admittedly, through order passed by Authority dated 31.03.2022, the respondent /promoter was directed to depute a qualified person from its construction division to inspect and to rectify the alleged structural defects, within 30 days from the date of decision. Certain photographs have been filled by both of parties. Referring these photographs, learned counsel for complainants claims that cracks shown in these photographs are very deep causing danger to the building and consequently to its residents. While according to learned counsel for respondent, these are superficial cracks, developed due to atmospheric changes.
28. On an application filed by complainants, a Local Commissioner was appointed to inspect the unit and to submit the report about nature or cracks etc. Sh. J.S.Sindhu, Executive Engineer (M) of Authority (appointed as Local Commissioner) gave his report after inspecting the site on 02.12.2022. The Local Commissioner in his report, observed that there were hair cracks on some of wall surfaces, at about 7-8 locations. These cracks are travelling horizontally & vertically as well as diagonally. The complainants apprised him (LC) that these cracks are since the beginning i.e. since the time of taking possession and also that on their complaint, the respondent got the same repaired in June 2022. Now the cracks have cropped up again. Observing that all the RCC structural surfaces like beams/columns/RCC, shear walls/brick walls surfaces are completely covered with cement plaster/wall paint, it is very difficult to judge these cracks from naked eyes due to plastered /painted surface.
29. The Local Commissioner mentioned that quality of structure can be assessed only after getting structural audit report. In his opinion, developer may be directed for structural audit with Ultra Sonic Mapping of RCC from any recognized institute.
30. After said report was filed, learned counsel for respondent submitted that his client is ready to get structural audit done with Ultra Sonic Mapping of RCC structure, at its own cost. At



the same time, respondent's representative offered an alternative unit(house) for the petitioners (without any payment/ rent) so that same can shift therein till the defects are removed. But complainants refused to shift to another house for some time, rather asked the representative of respondent for another unit, permanently.

31. An application was also filed by complainants, with request to appoint some other Local Commissioner, preferably an architect to oversee work of structural audit with Ultra Sonic Mapping of RCC, being done by the respondent. The complainants apprehended that respondent may manage some fake report. Without accepting the allegations of complainants, learned counsel for respondent did not oppose appointment of another Local Commissioner. Sh. Sumit Nain (Executive Engineer of the Authority) was appointed as Local Commissioner with following directions :

- (i) The Local Commissioner is asked to visit the apartment of complainant at the time of structural audit with ultrasonic mapping being done by team of experts appointed/ hired by respondent. He will oversee the work of audit team, being done at the unit of complainants.
- (ii) The Local Commissioner may give his suggestion but not to give any direction to the inspection team/audit team of respondent.
- (iii) Respondent is asked to inform the date and time of audit / visit by such team to the complainant as well as to the Local Commissioner.
- (iv) If team of experts take's several days in concluding its act of audit/ structure, audit/ repairs, the LC may visit said apartment on each of those days, if thinks fit.
- (v) Respondent is asked to direct its team to consult the Local Commissioner in fixing the dates of audit/ repairs.
- (vi) The Local Commissioner to submit his report after final audit/ repairs.



32. Sh. Sumit Nain submitted his report on 16.06.2023. According to him, required tests were done on 25.05.2023, by Bureau Veritas India Pvt. Ltd. and that too in the presence of him and both of the parties, at the location mutually agreed by both of parties. The report prepared by said agency i.e. Bureau Veritas India Pvt. Ltd. is reproduced as under :-
33. The tests were conducted at the beam (M25) and Shear wall (M25) and is found that :
- (A) Rebound hammer test result for beams are in the range of 30 to 40 N/mm² [Avg. 34.6 N/mm²] and test results for shear wall is 38 N/mm². **Rebound hammer test result are satisfactory.**
- (B) UPV test result for beam is 3.5 to 4.1 km/sec [Avg. 3.7 km/sec] and for shear wall is 3.7 km/sec. Ultrasonic Pulse Velocity (UPV) test results are in the range of "Good". **UPV test result are satisfactory.**
34. Learned Counsel for complainant still insisted that the cracks developed in the wall are deep cracks and not superficial, which are dangerous to the building as well as to lives of residents. While referring to said report, learned counsel for respondent, reasserted the plea that construction raised by his client is as per admitted norms of BIS. Even if some cracks were developed, same were superficial and required repair has already been done.
35. As mentioned above, according to Bureau Veritas India Pvt. Ltd., results were satisfactory for Rebound Hammer Test and Ultrasonic Pulse Velocity Test for the beam were in the range of "Good". Report further suggests that crack/ defects were not structural defects. There is nothing to suggest that quality of construction is poor or the cracks developed in the wall of the unit of petitioner are so deep, which may pose danger to the building and consequently risk to residents. The cracks/defects are stated to have already been removed, by filling the same.


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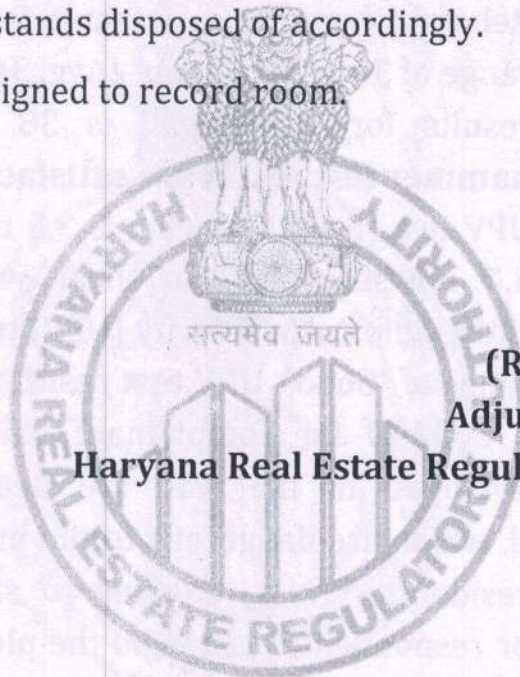
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36. The complainants did not adduce any evidence to prove any damage to their furniture, as claimed by them. Considering all this, complainants are not entitled to any compensation.

37. Complainants have claimed, a compensation of Rs.2,00,000/- as cost of litigation. As they failed to prove their case, no reason to allow cost of litigation. Both of parties to bear their own costs.

38. Complaint stands disposed of accordingly.

39. File be consigned to record room.



Rajender Kumar

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