

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

Complaint no. : 3068 of 2023

Date of order : 09.02.2024

Mohit Bansal

**ADDRESS: Q- 1302, JMD Gardens, Subhash
Chowk, Sector 33, Gurugram.**

Complainant

Versus

M/s Raheja Developers Limited

**ADDRESS: W4D, 204/5, Keshav Kunj, Western
Avenue, Cariappa Marg, Sainik Farms, New
Delhi-110062.**

Respondent

APPEARANCE:

For Complainant:

Mr. Nishant Bharihoke Advocate

For Respondent:

None

ORDER

1. This is a complaint filed by Mr. Mohit Bansal(allottee) under section 12,13,14,16,17,18,60 and section 61 of The Real Estate (Regulation and Development) Act of 2016(in brief the



Act of 2016) and rule 21(3)(c) of The Real Estate (Regulation and Development) Rules, 2017 against M/s Raheja Developers Limited(promoter/ respondent).

2. As per complainant, on 22.02.2012, he(complainant) booked a plot bearing no. F-151, admeasuring 243.37 sq. yd in "Raheja's Aranya City", sector 11,14, Sohna, Gurugram i.e. project developed by the respondent, for total sale consideration of Rs.77,56,218/-. From 2012 to 31.05.2017, he(complainant) paid Rs.73,11,449/-. Allotment letter was given for same by respondent and an agreement to sell was executed between both parties on 30.06.2014.
3. That his (complainant's) father has been terminally ill and required a clean, dust free, open environment because of which he wanted to build his own house rather than flat. Despite many e mails and SoS calls to the respondent, he(complainant) did not receive any satisfactory response. Possession of the plot was also not handed over by the respondent, despite making payment of Rs.73,11,449/-. Even copy of signed agreement to sell was not given by respondent to him(complainant).
4. That perturbed with the continued false promises and misrepresentations by respondent, he filed complaint no. 4188/2021 with the Authority, Gurugram. On 07.03.2023, the Authority ordered for refund of amount along with interest @10.7% p.a.
5. That he(complainant) filed criminal complaint also u/s 406,420,467 and 34 of IPC against Managing Director and

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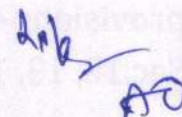
Chairman of the respondent Company, which is still pending with Ld. JMIC, Gurugram.

6. That the respondent was to handover the plot withing 36 months from the date of execution of Agreement to Sell, but it deliberately delayed the execution of the contract(BBA) by two years. The plot which respondent ought to give possession in 2015, the delay shifted the date of possession to 2017. He (complainant) bought the plot to build his own house for residential purpose but the delay of 8 years, forced him to live on rent and during this period, he has spent over Rs 45 lacs on rent.
7. That he(complainant) suffered huge financial losses and is in dire need of money. During aforesaid period he(complainant) lost the interest on the amount paid of Rs.67,96,651 till 20.06.2023. That during these 11 years the property prices in Sohna have increased 3 times, thus the approximate rate of plot in 2012 was Rs.31000 per sq.yd has now nearly touched Rs.1,00,000 per sq.yd. thus, causing Rs.1,70,00,000 as opportunity cost loss to the complainant.
8. Citing all this, complainant has sought following reliefs:
 - i. To direct the respondent to pay damages of Rs.21,27,792/- as compensation in accordance with the terms agreed in Agreement to Sell.
 - ii. To direct the respondent to pay Rs.1,70,00,000 along with interest till actual payment as compensation for causing financial losses on account of inflation in property prices due to delay of 8 years.
 - iii. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.
 - iv. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec.12, 13, 14 and 16 of RERA Act.

- v. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRERA Rules,2017.
 - vi. To direct respondent to pay Rs.10,00,000 as litigation expenses along with interest till actual payment.
 - vii. Any other relief which this Hon'ble Adjudicating officer deem fit and appropriate in view of the facts and circumstances of this complaint.
9. Notice of complaint is shown to have been served upon respondent through email as well as by speed post but none appeared. Tracking report from postal department shows, notice having been served on 13.07.2023. The respondent was thus proceeded ex parte.

I heard learned counsel for the complainant and went through record on file.

10. Section 18(1) of Act of 2016 provides that, if the promoter fails to complete the unit or is unable to give possession of an apartment, plot or building,- (a) in accordance with the terms of the agreement for sale he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may





be prescribed in this behalf including compensation in the manner as provided under this Act.

11. From aforesaid provision, it is abundantly clear that, in circumstances when, promoter fails to complete or is unable to give possession of apartment, plot or building in accordance with the agreement for sale (BBA), same is liable to refund the amount along with interest as well as to pay compensation in the manner as provided under this Act. As described above, when the respondent failed to handover the plot allotted to complainant, the later approached the Authority by filling a complaint, seeking refund of his amount. Said complaint no. 4188/2021, has been allowed by the Authority, vide order dated 07.03.2023.

12. According to the complainant, the respondent agreed to handover plot, within 36 months from the date of execution of agreement to sell. It is contended that execution of agreement to sell was delayed by respondent for about two years deliberately. The complainant booked plot in question by making payment of Rs.7,00,000/- on 26.02.2012, while the agreement to sell was executed on 30.06.2014. A copy of this document is on the record. Even, from calculating this date i.e. 30.06.2014, the respondent/ promoter was obliged to handover possession till 30.06.2017. No possession was handed over till this date. As mentioned earlier, the respondent has been directed by the Authority to refund the amount paid by complainant through order dated 07.03.2023.

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13. In this way, respondent/ builder used money paid by the complainant and failed to fulfil its obligation. Apparently, all this resulted in unfair advantage/ undue enrichment by the respondent and loss to the allottee/ complainant. Complainant is thus entitled for compensation in this regard.
14. Section 72 of the Act of 2016, enumerates the factors which are to be taken into account by the Adjudicating Officer, to adjudge quantum of the compensation, same are namely :
- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - b. The amount of loss caused as a result of the default.
 - c. The repetitive nature of the default.
 - d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
15. Although, complainant has claimed damages amounting Rs.21,27,792/- and again Rs.1,70,00,000/- as compensation for causing financial loss on account of inflation in property prices. It is contented on behalf of complainant that, during last 11 years, property prices in Sohna have increased 3 times. Approximate rate of plot there, in 2012 was Rs.31,000/- per sq.yd. but now, same touched Rs.1,00,000/- per sq.yd. The complainant did not adduce any evidence to substantiate this plea. Despite, all this judicial notice can be taken that prices of immovable properties (land/building/houses etc.) have increased tremendously in last years.
16. Plot in question is situated at sector 11, 14 of Sohna, which is developing area. it is admeasuring 243.37 sq.yd. Considering all this, in my



opinion, the price of said plot would have increased between 10-15%. Taking average of 12 % increase in rate of plot, it will amount to Rs. 9,27,146/-(77,26,218*12%). Respondent is directed to pay this amount to the complainant, as compensation for loss of later due to fault of respondent for not completing unit in time. ^{agreed}

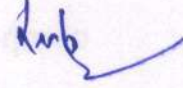
17. Complainant has claimed, a sum of Rs.10 Lakhs on account of mental agony, torture and harassment. I find weight in the submissions of the learned counsel for complainant, stating that the promoter agreed to complete the project and to hand over possession within 36 months i.e. till 29.12.2016, but same failed to adhere to the agreement and hence liable to pay compensation. When possession of plot was not given to complainant/allottee, despite making payment of Rs.73,11,449/-, apparently, complainant/ allottee has suffered mental agony and harassment. Rs.10 lakhs appears to be excessive. Considering facts of this case and circumstances of the complainant, same is awarded a compensation of Rs.2,00,000/- for mental agony and harassment, to be paid by the respondent.

18. Although complainant has not filed any receipt/ certificate about fees paid by it to its counsel, apparently, same was represented by an advocate during proceedings of this case. The complainant is thus awarded a sum of Rs.50,000/- as cost of litigation to be paid by respondent.

19. Complaint in hands is thus allowed. Respondent is directed to pay amounts of compensation as described above, within 90 days of this order, otherwise same will be liable to pay said

amounts along with interest @10.5% p.a. till realisation of amounts.

20. File be consigned to record room.



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



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