

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

Complaint no. : 1079 of 2023
Date of decision : 10.04.2024

1. Shalini Mathur and
2. Maharani Mathur

ADDRESS: 212, Gulmohar Enclave, New Delhi-
110049.

Complainants

Versus

Selene Constructions Ltd.

ADDRESS: M-62&63, First Floor, Cannaught
Place, New Delhi - 110001.

Respondent

APPEARANCE:

For Complainants:

Mr. Pankaj Chandola Advocate &

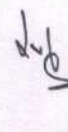
Mr. Venket Rao Advocate

For Respondent:

Mr. Rahul Yadav Advocate

ORDER

1. This is a complaint filed by Ms. Shalini Mathur and Ms. Maharani Mathur(allottees) against Selene Constructions Ltd.(developer).


A.O., Page 1 of 11

10-4-24



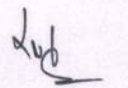
2. As per complainants, in 2011, they (complainants) came across to an advertisement given by the respondent for their project i.e. Indiabulls Centrum Park, Sector-103, Gurugram. They (complainants) booked one residential unit i.e. Flat No. R-061, in Tower R, admeasuring 1413 sq.ft., in the said project for a total sale consideration of Rs.83,95,945/-. On 13.12.2012, they (complainants) paid Rs.7,25,000/- through cheque as a booking amount. On various demands raised by respondent, they (complainants) have paid total of Rs.81,98,558/- (which is more than 95% of the total sale consideration amount).
3. After repeated follow-ups and reminders at regular intervals, the respondent executed a Flat Buyer Agreement (FBA) on 04.12.2013, after a delay of one year since the date of booking. That as per Clause 21 of FBA, respondent was duty bound to handover the possession of the said unit within a period of 3 years from the date of execution of the FBA, with a further grace period of six months' subject to timely payment by the allottees. Therefore, the possession of subject apartment was to be handed over on or before 04.06.2017.
4. When respondent did not offer possession of unit by 04.06.2017, they (complainants) requested for the refund of the amounts paid by them, along with interest @18% p.a., but on 22.02.2018, respondent issued demand letter for

Kvd
AD



Rs.8,49,046/-, stating that project is ready for possession. On non payment of this amount, respondent arbitrarily, cancelled the unit. Through email dated 28.08.2018, respondent intimated that pursuant to the cancellation of the allotment, the total deduction would be of Rs. 18,85,554/- which included 15% of the total sale consideration, brokerage paid, VAT and Interest. In this way, respondent calculated the total refundable amount as Rs. 63,13,004/-. Vide email dated 06.09.2018, they(complainants) were informed regarding the deduction of Rs.2,32,911/- towards service tax payable.

5. Respondent failed to adjust the amount towards penalty for delay in delivery of the project within the stipulated timelines and has arbitrarily and illegally deducted an amount of Rs.21,18,465/- which includes forfeiture of 15% of total sale consideration in utter violation of the provisions of the RERA Act, 2016 which clearly restricts the developer from forfeiting more than 10% of the earnest money.
6. Being aggrieved by the acts of respondent, they(complainants) filed a complaint no. 1765 of 2021, before Haryana Real Estate Regulatory Authority (The Authority), Gurugram which was decided on 12.07.2022. The Authority directed respondent to refund the forfeited amount after retaining 10% of the sale consideration within 90 days of the order, but the respondent did not comply with this order also.


A O

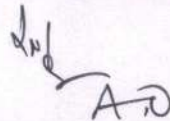


HARERA GURUGRAM

7. ~~By citing~~ ^{In the} judgements of *DLF Ltd. v. Bhagwati Narula*, revision petition no. 3860 of 2014, National Consumer Dispute Redressal Commission, New Delhi; *Mr. SK Sharma Vs M/s Ireo Grace Realtech Pvt. Ltd.* bearing complaint No. 90 of 2018 of HARERA, Gurugram, and *Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others* bearing Civil Appeal no. 6745-6749 of 2021, it is held that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate. They (complainants) have not only been left empty handed but have also been deprived of the benefit of escalation of price of the said unit.

8. Citing all this, complainants have sought following reliefs:

- a. To direct the respondent to provide compensation of Rs.10,00,000 for causing financial and mental agony and harassment to the Complainants
- b. To direct the respondent to provide the compensation of Rs. 5,00,000/- towards the legal costs incurred.
- c. To direct the respondent to provide the compensation of Rs. 2,00,000/- for special damages causing loss of future earning and punitive damages causing huge financial loss by the fraudulent behaviour of the respondent.


A.D.

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

9. That it is an admitted fact that the Hon'ble Authority vide order dated 12.07.2022 in complaint no. 1765 of 2021 filed by the complainants, already decided the grievances and dispute of the complainants against the respondent. Complainants thereafter filed an execution petition no. 900 of 2023 before this Authority, for enforcement of the decree passed in favour of the complainants, which is pending for adjudication. Complainants have filed this complaint on baseless and false facts, hiding the true facts from this Ld. Authority, raising unreasonable demands.
10. That complainants agreed and gave consent to the period of delivery, as defined in Clause 21 of Flat Buyer's Agreement, which clearly stated that "the Developer shall endeavor to complete the construction of the said building/unit" within the stipulated time i.e. 3 years 6 months which comes to 04.06.2017. The said clause clearly shows that the delivery of the unit /apartment in question was subject to timely payment of the installments towards the Basic Sale Price.
11. (Respondent) completed the construction of the tower wherein the unit was booked by the complainants and has applied for grant of Occupational Certificate before the

Director General, Town and Country Planning Department on 17.03.2017, however the same was received by the respondent from the concerned department by 05.02.2018 i.e. after a delay of almost 10 months for which the respondent cannot be held liable.

12. That after obtaining Occupational Certificate on 05.02.2018, ^{it} (respondent) immediately offered possession of the unit to complainants on 22.02.2018, calling them to take the physical possession of the unit and make clear the balance outstanding amount pending towards the unit. But, complainants instead of taking the physical possession of their unit, approached the respondent with request to cancel their allotment of the unit, owing to their personal difficulty, and in turn thereof, respondent accepted the said request of the complainants.

13. ^{It} (Respondent) initiated the refund process to the complainants, in terms of the Flat Buyers Agreement for the subject unit and informed complainants that out of Rs.81,98,558/- paid by them against the subject unit, an amount of Rs.21,18,465/- shall be forfeited by the respondent and remaining amount of Rs.61,42,410/- shall be refunded to complainants, which was

Handwritten signature
A, D

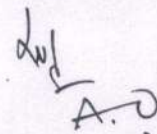
duly acknowledged and accepted by the complainants without any grievance.

14. That complainants have filed the present complaint seeking compensation under section 18 of the RERA Act, however, section 18(2) clarifies that compensation to the Allottee is payable only in circumstance when loss is caused/suffered due to defective title of the project land and not otherwise. As, such, no compensation is payable by the respondent to the complainants, as no violation under section 18 of the RERA Act is done by it(respondent).

15. That complainants have filed the present complaint seeking compensation for the amount of loss caused to them however, they(complainants) have not placed any documents on record to substantiate their claim of loss. It is the discretionary power of Ld. Adjudicating Officer, provided under Section 72 of the Act of 2016, to provide the same.

16. That the instant complaint is devoid of any merits, hence the same is liable to be dismissed, in limine.

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





17. There is no denial that according to agreement (BBA) executed between the parties, the respondent was obliged to hand over possession of subject unit till 04.06.2017. Respondent failed to deliver the unit till this date. According to section 18(1) of the Act of 2016, the promoter/ respondent was obliged to refund the amount on demand raised by the allottee, when failed to handover possession in agreed time. Complainants sought refund of the amount which was not adhered by the respondent. Complainants were constrained to file complaint before the Authority. Admittedly, said complaint has been allowed and respondent has been directed by the Authority through order dated 12.07.2022, to refund the forfeited amount, after retaining 10% of sale consideration.

18. I do not find much weight in the plea of the respondent claiming that, according to BBA, same was required to make endeavour to complete the construction within stipulated time i.e. upto 04.06.2017. Same made endeavour but failed to complete the project. I agree with learned counsel for complainants, claiming that his clients were assured that their unit will be completed within a period of 3 years and 6 months, which comes out to be 04.06.2017, that is why, the complainants agreed to purchase the unit, otherwise, same would not have agreed. Simply by using words, "sell



endeavour", is not enough to absolve the promoter from it's responsibility to complete the project during the period as was undertaken by the same.

19. Similarly, I do not agree with the plea of respondent claiming that, no loss is caused to the complainants and hence same are not entitled to any compensation. According to complainants, after booking unit in question, same (complainants) paid Rs. 7,25,000/- on 13.12.2012. Till 02.05.2015, they paid a total sum of Rs. 81,98,558/- out of total sale consideration of Rs. 83,95,945/-, which is about 95% of total sale consideration. Even if, the Authority allowed refund of the amount, same suffered huge loss due to escalation in price of real estate and depreciation of value of rupee. According to learned counsel for complainants, the value of similar units/unit has increased 3 times, till now.

20. True, the Authority has allowed refund of the amount but without any interest. Considering above mentioned facts, in my opinion, the complainants have suffered loss/ damages, which can be quantified.

21. Section 72 of the Act of 2016, enumerates the factors which have to be taken into account by the Adjudicating Officer to adjudge quantum of the compensation, same are reproduced here as :

Handwritten signature
A.O



- 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.
22. As mentioned above, complainants paid about 95% of sale consideration but did not get their unit, within agreed time. Apparently, respondent used said money and hence gained by use of same, consequently, causing loss to the complainants. Even if, the complainants have failed to prove that the prices of houses increased 3 times, from the time, unit in question was booked, a judicial notice can be taken that prices of real estate are increasing constantly, particularly, in Millenium City of Gurugram. Considering all this, size and location of unit i.e. 1413 sq.ft. in the project, situated at sector 103, Gurugram. In my opinion, complainants suffered loss of about Rs.5,00,000/- in this regard. Same i.e. Rs.5,00,000/- is thus allowed to the complainants as compensation, to be paid by the respondent.
23. Apart from same, complainants are awarded a sum of Rs.1,00,000/- as compensation for mental agony and harassment to be paid by the respondent.

Handwritten signature
A0



24. When compensation is awarded for financial loss, mental agony, etc., there is no reason to award compensation as special damages causing loss of future earnings and punitive damages. Request in this regard is thus denied.
25. The complainants have also prayed for Rs.5,00,000/- towards legal cost, incurred by the same. Although complainants did not put on file any certificate of their counsel about letter's fee etc. to prove litigation cost. Apparently, same were represented by a lawyer during proceedings of this case. Complainants are allowed a sum of Rs.50,000/- as cost of litigation, to be paid by respondent.
26. Complaint is thus disposed of. Respondent is directed to pay amounts of compensation as described above, within 30 days of this order, otherwise same will be liable to pay said amounts along with interest @10.50% p.a. till realisation of amount.
27. File be consigned to the record room.

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