

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

Complaint no. : 1778 of 2023
Date of order : 11.12.2023

Mr. Rakesh Verma and
Mr. Sahil Verma

R/O: Raja Enterprises, Varun Complex, Rampura
Road, Haldwani, Uttrakhand.

Complainants

Versus

Athena Infrastructure Limited
Address: Office no.202, 2nd floor, A-18, Rama
House, Middle Circle, Cannaught Place, New
Delhi - 110001.

Respondent

APPEARANCE:

For Complainant:

Mr. Sukhbir Yadav Advocate

For Respondent:

Mr. Rahul Yadav Advocate

ORDER

1. This is a complaint filed by Mr. Rakesh Verma and Mr. Sahil Verma(allottees) under section 31 of The Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of



The Haryana Real Estate (Regulation and Development) Rules, 2017, against Athena Infrastructure Ltd.(promoter)

2. As per complainants, respondent is a 100% subsidiary company of India Bulls Real Estate Limited. They(complainants) booked a residential flat no. A-032 on 3rd Floor in tower-A admeasuring super area of 3400 sq ft under construction linked payment plan for a total sale consideration of Rs. 1,93,30,000/- in the project of the respondent namely "India Bulls Enigma" and paid Rs. 5,00,000/- as booking amount. BBA was executed on 23.04.2012, as per which, due date of possession was 23.10.2015.
3. They(complainants) paid remaining installments as per the payment plan and as ^{per} demands raised by the respondent. They have paid total of Rs.1,89,78,798/- i.e. more than 98% of the total sale consideration, ^{but possession was not given.}
4. Aggrieved by the acts, conducts, and deficiencies of the respondent, they(complainants) filed a complaint before the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017, against

A.O.



HARERA GURUGRAM

respondent on 24.07.2018 vide complaint no. 591 of 2018 seeking possession of the said flat and other reliefs.

5. After filing the above-stated complaint before the Hon'ble Authority, on 24.11.2018, respondent offered possession of the unit allotted to them (complainants). Two letters having the subject "Maintenance Charges and Registration of Flat No-A032" were also issued in their names on the same day i.e., 24.11.2018.
6. Through order dated 23.01.2019, the Authority directed respondent to pay the interest at the prescribed rate i.e., 10.75% p.a. for every month of delay on the amount paid by the complainants and to pay interest accrued from 23.06.2015 to 03.07.2018 on account of delay in handing over of possession to the complainant within 90 days from the date of order. Respondent failed to comply with said order, therefore they (complainants) filed an execution petition **vide CRN-E-67/1848/2020**.
7. As per BBA entered between the parties, due date of possession was 23.10.2015. After a long follow-up and lapse of 7 years, respondent handed over the possession of the unit and executed a conveyance deed dated 16.12.2022 with respect to unit no. A032 in the project of the respondent i.e. India Bulls Enigma. They (complainants) took physical possession of the same through Possession Letter dated 16.12.2022. Negligence and defect in services by respondent

Handwritten signature
A P



has caused huge financial loss since October 2015 and mental harassment to them(complainers).

8. Relying on information downloaded from two leading websites(one is 99acres.com) of real estate and one registered lease deed dated 24.02.2023, the rental value of 4 BHK apartments in the nearby location of the project is Rs.55,000/- to 59,000/- per month. Since the respondent failed to handover physical possession of the flat, on or before the due date of possession, therefore, there is a rental loss to the complainants of Rs.59,000/-, which amounts to loss of Rs.49,56,000/- accrued from October 2015 (due date of possession) to December 2022.
9. The average life of a residential building is 50 years and the superstructure of the said building was completed in 2015 and now the building is deteriorating/deprecating @ 2% per year. Depreciating amount of the building per year is Rs.3,86,600/- and till 16.12.2022 the depreciation amount is Rs.30,92,800/-.
10. They(complainers) do not want to withdraw from the project, the promoter has not fulfilled its obligation therefore as per obligations on the promoter under the Act, rules, and regulations thereunder, the same(promoter/ respondent) is obligated to compensate the complainant.

Handwritten signature
A.P.



11. Contending all this, the complainants have sought following reliefs :

- (i) To grant compensation of the rental cost/loss of Rs. 49,56,000/- from October 2015 (Due date of possession) to December 2022.
- (ii) To grant compensation on account of depreciation of Rs.30,92,800/-
- (iii) To grant the compensation of Rs. 10,00,000/- for causing mental agony.
- (iv) To grant a compensation of Rs. 1,00,000/- for travel expenses and loss of work as the complainants had to appear before the hon'ble authority (for complaint and execution) for about 20 times on their working days. Per day traveling cost and loss of work is Rs. 5,000/- per day.
- (v) To grant the litigation cost of Rs. 5,00,000/-.
- (vi) Any other relief/direction that the Adjudicating Officer deems fit and proper in the facts & circumstances of the present complaint.

dh
A.O ,

(vii) That in the interest of justice, this authority should pass strict and stringent orders against errant Promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the Respondent has not only treated the Complainants unfairly but many other such buyers.

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

12. That the complainants have filed the present complaint seeking compensation and other costs from the respondent towards delay in handing over the unit no. A032 booked by the complainants in the residential project of the respondent namely Indiabulls Enigma at Gurugram, Haryana. However, it is an admitted fact that the Hon'ble Authority vide order dated 23.01.2019 in complaint no. 591 of 2018 filed by the complainants, awarded delay interest @ 10.75% per annum for every month of delay on the amount paid by the complainants.

dob
A.O.



13. That the Complainants thereafter filed an execution petition no. 1848 of 2020 before this Authority, for enforcement of the Decree passed in favour of the complainants which is pending adjudication. That it is an admitted fact that for the delay caused in handing over of the possession to the complainants, the Hon'ble Authority awarded delay interest in favour of the complainants.
14. That the complainants have filed the present complaint seeking compensation as provided under sections 12, 14, 18 and 19 of the Act of 2016. However, no compensation is payable to them (complainants) under the said provisions of the Act. ~~That~~ As per the said provisions, it is only when, Developer/Builder fails to give possession of the unit to the Allottee and as a result the Allottee wishes to seek cancellation of their allotment ⁱⁿ the unit and demands refund from the builder, only in such circumstances, the Allottee becomes entitled for refund of the amount paid by him, alongwith interest and compensation as provided under section 18(1) of the RERA Act. Further, it is specifically clarified under the said provision that where an 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, at such rate as may be prescribed, which the Hon'ble Authority has already granted to the Complainants.
15. That complainants have already taken the physical possession of their unit as such no compensation is payable

dhb
A.O.



by the respondent to the complainants, under the provisions of the RERA Act.

16. That the complainants have not deliberately referred to section 18(2) of the Act of 2016, which talks about specific grounds/ circumstances wherein compensation becomes payable to the allottee/complainants. The relevant provision of Section 18 (2) of the Act of 2016 is reproduced herein below for the ready reference of this Hon'ble Authority, "The promoter shall compensate the Allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force." That a bare perusal of the above provision 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 defect is there in the project land.

17. That the complainants have ignored the fact that under section 19(10) of the Act of 2016 which clarifies that the allottee/complainants shall take the physical possession of the residential unit within 2 months of receiving of Occupational Certificate. That it is an admitted fact that the respondent obtained the Occupational Certificate on 06.04.2018 pursuant to which, the respondent offered

2/16
A.O.



HARERA GURUGRAM

possession to the complainants on 03.07.2018, which is also mentioned in the order dated 23.01.2019 passed by the Hon'ble RERA Authority. That upon offer of possession, it ^{were} ~~was~~ complainants, who ^{had} ~~were~~ to take ~~the~~ physical possession of their unit. However the complainants never came forward to take the physical possession of their unit, and instead filed execution petition for enforcement of the order dated 23.01.2019.

18. That as per section 72 of the Act of 2016, the Ld. Adjudicating officer has to adjudicate the matter considering certain factors as defined in the Act. As per this section, the adjudicating of compensation or interest can be done only upon reliance of documents showing loss suffered by allottee/complainants. That merely alleging mental and financial loss does not prove the same. Such losses have to be proved by the aggrieved person. In present matter, no ^{such} ~~such~~ documents are placed on record by complainants, which ^{proves} any financial loss suffered by them if any.
19. That the complainants claim of rental loss is based on figures which are displayed on property websites which cannot be considered as accurate. Such amounts are always on higher side and are subject to negotiations. As such, cannot be relied upon for adjudication of the present complaint.
20. That the complainants while relying upon certain emails alleged that the respondent failed in handing over the possession of the unit to the complainants, however the complainants have deliberately not disclosed the material fact



that they (complainants) and respondent entered into settlement talks for which appropriate approvals were taken whereby giving waivers, discounts and other benefits to the complainants for which consent was also given by the complainants. That pursuant to such approvals, draft of Settlement Agreement was shared with the complainants for signing the same, however the complainants ^{neither} ~~never~~ signed ^{the} ~~the~~ said Settlement Agreement nor gave any response.

21. The respondent prayed 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.

22. As mentioned above, in complainant no. 591/2018, the Authority directed respondent to pay the interest @ 10.75% p.a. for every month of delay on the amount paid by the complainants and to pay interest accrued from 23.06.2015 to 03.07.2018 on account of delay in handing over of possession to the complainants within 90 days from the date of order. The polemic question to be answered here is, when complainants have been granted said relief of interest, whether, same are still entitled for compensation by way of loss of rental income etc. or not?

dw
A.O.

23. As per learned counsel for respondent, "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. Learned counsel relied upon cases titled as, *Suman Lata Pandey vs Ansal Properties & Infrastructure Ltd. 2022 SCC OnLine RERA (UP) 123*; *Anurag Verma vs Parsvnath Developers Ltd. 2021 SCC OnLine UP RERA 41*; *Aakash Bhartiya vs Shreesri Buildtech Pvt. Ltd. 2023 SCC OnLine UP RERA 44*; *Alok Kumar vs Paarth Infrabuild Pvt. Ltd. 2023 SCC OnLine UP RERA 56.*

24. On the other hand, learned counsel for complainants submits that even if his clients have been allowed interest by the Authority, as described above, same are entitled for compensation also. As per BBA, respondent was obliged to hand over the physical possession of the unit till 23.10.2015. but same was delivered on 16.12.2022 i.e. after about almost 7 years. They purchased said flat thinking that burden of rental would go off and they will live in their own house. Amount of

Handwritten signature
A.O.



interest is not enough to compensate them. Despite paying entire sale consideration, they remained deprived of possession of their house. Learned counsel referred a case, titled as, Ramprastha Promoters and Developers Pvt. Ltd. and others Vs Union of India and others, decided by Punjab and Haryana High Court and reported in (2022) 2 RCR (Civil) 652. Commenting upon, the scheme of compensation envisaged in Act of 2016, Hon'ble High Court held that, "compensatory relief under the scheme of the Act has been kept separate and distinct and accrues in the event of occurrence of certain pre-requisites and for which the determination is to be done by the Adjudicating Officer. Per contra, the entitlement of the allottee to claim interest on the payment made in the event of his withdrawal from the project or for the period of delay in handing over the possession, is a part of the statutory scheme and is not part of interest by way of compensation".

25. Proviso added to sub section 1 of sub section 18 of the Act, provides for payment of interest by promoter for every month of delay till handing over of possession, where an allottee does not intend to withdraw from the project. Although, this proviso does not mention specifically about awarding of compensation (apart from payment of interest), also, Section 18(3) of the Act, makes it clear that, if promoter fails to discharge any other obligation imposed upon him under the Act or Rules or Regulations made there under or in

And
A.O.



accordance with the terms and condition for agreement to sale, he shall be liable to pay compensation.

26. It is not denied that at this stage that, as per agreement entered between the parties(BBA), the respondent undertook to deliver possession till 23.10.2015 but same was delivered on 16.12.2022, despite having received amount of sale consideration from the complainants/ allottees. The promoter/ JD apparently failed to discharge its obligation towards allottee/ DH. In such a circumstance, in my opinion, the complainants are well within their right to claim compensation, apart from amount of interest, which is allowed by the Authority.

27. Interest and compensation are not synonymous. As per Rule 15 of Rules of 2017, interest at the prescribed rate means, State Bank Of India highest marginal cost of lending rate(MCLR) + 2% . All this is not applicable in case of compensation. Amount of compensation is to be ascertained on the basis of several factors, which will be reproduced later. Provision to award interest is an effort to save the payer(allottee in this case) from inflation or from depreciation of value of currency i.e. rupee. It is not necessary that amount of interest is able all the time, to beat inflation. Parties have legal right to prove that amount of interest was either less than the loss suffered by payer or more than such tentative loss.



Perhaps keeping all this in mind, provision is made to grant compensation.

28. Section 72 of the Act of 2016, tells about the factors, which Adjudicating Officer has to take into consideration while deciding quantum of the compensation. Same are as under :
- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
 - The amount of loss caused as a result of the default.
 - The repetitive nature of the default.
 - Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

29. As described earlier, complainants have sought Rs.49,56,000/- for rental loss, stating that a 4BHK house in that locality had rental value of Rs.59,000/- p.m. It is apparent that promoter/ JD used money paid by allottee/ DH and thus got unfair gain. On the other hand, the allottees suffered loss for not getting their unit despite making payment of sale consideration. It is established that allottees/DH were deprived of their unit i.e. flat no. A-032 on 3rd Floor in tower-A admeasuring super area of 3400 sq ft in the project viz. "India Bulls Enigma", sector 110, Gurugram. It was purchased for a consideration of Rs.1,93,30,000/-. Sector 110 is a developing area of Gurugram. Considering same, and size of unit, tentative rental value of same is taken as Rs.18,000/-p.m. Complainants are thus awarded compensation of Rs.18,000



HARERA GURUGRAM

p.m. from due date of possession i.e. 23.10.2015 till offer of possession i.e. 03.07.2018, to be paid by respondent.

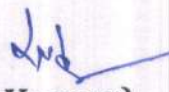
30. Complainants also claimed compensation on account of depreciation (in value of property) of Rs.30,92,800/-. As per learned counsel for complainants, life of a building is limited and thus value of unit in question has been depreciated due to lapse of time. On the other hand, it is contented by learned counsel for respondent that prices of land /property are constantly increasing. Complainants did not adduce any evidence to prove that they suffered any loss due to depreciation of property/ unit. Prayer in this regard is thus declined.
31. It is not in dispute that the respondent undertook to deliver possession till 23.10.2015 but same was delivered on 16.12.2022. Despite paying amount of sale consideration to respondent, complainants got possession of their unit after approx. 7 years and 2 months. All this caused mental harassment and agony to them. The complainants are allowed a sum of Rs.1,00,000/- for mental agony and harassment in this regard.
32. Complainants have claimed, a compensation of Rs.5,00,000/- as cost of litigation. Complainants also filled receipts of fees of his counsel, which seem to be excessive. Complainants are allowed a sum of Rs.50,000/- as cost of litigation.

[Handwritten signature]
A.O.



HARERA
GURUGRAM

33. Complainants also claimed compensation of Rs.1,00,000/- as travel expenses and loss of work. All this is remotely connected to claim of compensation. Prayer in this regard is thus declined.
34. Complaint stand 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 @10.5% p.a. till realisation of amounts.
35. Announce in open court today.
36. File be consigned to records.


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