

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

Complaint no. : 8109 of 2022

Date of order : 15.03.2024

Satish Verma

Complainant

ADDRESS: Flat no.67, Pocket E, Sarita Vihar, Delhi

Versus

1. Dynamic Universal Limited;

Respondents

2. Mr. Sachin Dewan;

Address : Plot no. 20/4, Sukhrali Road,
Opposite Sector 14, HUDA Park, Gurgaon

3. Elite Promoter Private Limited;

Address : Plot no. H-17, 3rd Floor, Lajpat
Nagar-III, New Delhi-110024.

APPEARANCE:

For Complainant:

Mr. Arjun Bhatnagar Advocate

For Respondent:

None

ORDER

1. This is a complaint filed by Mr. Satish Verma (allottee), under section 31 and section 71 of The Real Estate (Regulation and Development) Act of 2016 (in brief the Act,



- 2016) and rule 29 of The Real Estate (Regulation and Development) Rules, 2017 against Dynamic Universal Limited, Mr. Sachin Dewan and Elite Promoter Private Limited (promoter/ respondent).
2. According to complainant, vide sale deed no.2548 dated 01.06.2017, he purchased unit no 11 from Mr. Ram Kumar Gupta and Mrs. Anju Gupta, who had bought the same vide sale deed no.18038 dated 27.11.2006 from M/s Mudit Finance. The latter had purchased it from M/s Dynamic Universal Limited (respondent no.1) vide sale deed no. 9283 dated 07.11.2000. M/s Dynamic Universal Limited in collaboration with M/s Elite Promoter Private Limited constructed a building by the name and style of, "PALM COURT", Plot no.20/4, Sukhrali Road, Gurgaon.
 3. While conveying the said property the previous owner in possession portrayed to him (complainant) that the building has got all the plans and licences approved from the requisite authorities. After purchasing said unit, he(complainant) came to know that there are lot of discrepancies in terms of the maintenance charged from him(complainant).
 4. Respondents used to charge different amount of maintenance and different charges towards electricity consumption per unit, from different unit holders through Palm Court Maintenance Agency, which is also owned by the director of the respondent company.

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5. When he (complainant) raised his concern pertaining to the same with the respondent no.2 (Mr. Sachin Dewan), who is also the director of the maintenance agency. The latter disconnected electricity of the unit of the complainant. Left with no other option, he(complainant) approached the civil courts to pass appropriate order and to get the electricity restored.
6. That due to the autocratic behaviour of the respondents and the irrational amount of maintenance charged from different unit holders, the tenant of the complainant vacated the premises and since 01.01.2018 his unit is lying vacant. This act of the respondents has caused direct loss of Rs. 1,44,000/- per month to him(complainant). Due to pandemic Covid' 19 and a nationwide lockdown, his commercial unit remained closed for a substantial time.
7. Some party contacted him(complainant) for taking the unit on lease in the month of April ,2022. When, he(complainant) visited his unit for the same, he was surprised to see Demolition Order affixed on the walls of the Palm Court building issued by the Municipal Corporation, Gurugram dated 13.04.2022.
8. Subsequently, he(complainant) decided to check the veracity of the project and on further enquiry about the project, he(complainant) was shocked to know that vide Memo no. MCG/TP/CTP/2020/36497 dated 05.12.2020 issued by the Commissioner MCG, the building has been declared illegal. A copy of the aforesaid memo was also forwarded to Joint Commissioner II, MCG for rendering the building as illegal and



- to also lodge an FIR against the respondents no.1 and 2 for cheating and forgery.
9. The said letter was also forwarded to ZTO(HQ), MCG (Admin NDC) and DTP(Enf.) to take appropriate action against the respondents with the specific directions to declare the Property IDs created in the Palm Court as unapproved and also to take appropriate action for violating the Act of 1975 respectively.
10. That further, after perusing the other documents it also became apparent that:
- i) That the aforesaid Commercial Establishment i.e. Palm Court has been running since the year 2000 without any Occupation Certificate or Completion certificate.
 - ii) That the respondents did not deem it proper to obtain any License as prescribed in the Haryana Municipal Building Bye laws, 1982.
 - iii) That the sanctioned Building Plan dated 28th February 1997 conveyed vide memo bearing no. 1155 ME dated 3rd September 1997 of the Commercial establishment i.e. Palm Court has been revoked by the Planning Branch of Municipal Corporation, Gurugram rendering the building as illegal.
 - iv) That furthermore, the respondents have mentioned in the Deed of Declaration that the Occupation Certificate bearing no.2363 dated 11.05.2014 was issued to you by the Municipal Corporation, which is prima facie false, illegal and a sham document as it was a Sunday and no such letter was ever issued by the planning branch.

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- v) That the building plan of the commercial establishment i.e. Palm Court was categorically approved for the exclusive use of the Company. However, the builder/developer has changed the nature of the building.
- vi) That the respondents have carved out an unauthorized commercial establishment by sub-dividing the unit and selling it to different people without obtaining any license from the DTP as prescribed in the Act of 1975.
- vii) That the FAR achieved by the respondent company was more than the sanctioned FAR which is established from the letter dated 21.02.2000.
11. That as the building is being declared illegal, nobody is interested in buying or leasing the units in the premises as no sale deed or lease agreements can be registered for an illegal building which is also causing direct loss to him (complainant) as their units are lying vacant.
12. Citing all this, complainant has sought following reliefs:
- Compensation of Rs.69,12,000/- towards loss of rent i.e. Rs.1,44,000/- per month for 48 months since 01.01.2018.
 - Compensation of Rs.60,00,000/- towards mental agony and harassment suffered by the complainant at the behest of the respondents.
 - To direct the respondents to pay a sum of Rs.2,50,000/- towards litigation charges.
 - To grant any other relief that may be necessary in the interest of justice.

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13. Notice of complaint is shown to have been served upon respondents through email as well as by speed post. Tracking report from postal department shows, notice having been served on 23.01.2023. The respondents were thus proceeded ex parte.

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

14. As described earlier, none appeared on behalf of any of respondents, despite service of notice. As per tracking report, put on file, notice upon respondent no.1 was served on 23.01.2023, upon respondent no. 3 on 27.01.2023, respondent no.2 is stated to be none but director of respondent no.3.
15. When respondents opted not to contest the claim of complainant, despite service of notice, a presumption is raised that same did not dispute the averments made by the complainants.
16. In view of section 71 of the Act of 2016, Adjudicating Officer has jurisdiction to adjudge compensation under section 12,14,18 and 19 of Act of 2016. Section 12 prescribes obligations of promoter regarding veracity of advertisement or prospectus. Section 14, says that the proposed project shall be developed and completed by the promoter, in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. Sub

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section 2, bars the developer/ promoter from making any additions and alterations in the sanctioned plans, layout plans and specifications, without previous consent of the person i.e. allottee. With the exception that, alterations/ additions can be allowed with previous written consent by at least 2/3 of allottees. As per section 18(3), if the promoter fails to discharge any other obligation, imposed upon him under this Act or Rules and Regulations made there-under, or in accordance with the terms and conditions mentioned in an agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act. Section 19, enumerates rights and duties of allottees. As per sub section 1, the allottee is entitled to obtain information relating to sanctioned plans, layout plans etc.

17. If the claim of complainant is presumed to be true (respondents having opted not to contest the claim), when he (complainant) visited his unit, he found a demolition order, affixed on the wall of Palm Court building, issued by Municipal Corporation of Gurugram (MCG). On being enquired, he came to know that MCG has through said notice, declared building as illegal. It was further known that layout plans were unapproved, which violated Act of 1975. Again, aforesaid commercial establishment i.e. Palm Court, had been running since 2000, without any Occupancy Certificate / Completion Certificate. The respondents had not obtained license as prescribed in Haryana Municipal Buildings By Laws 1982. The sanctioned building plan dated

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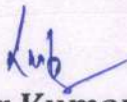
28.02.1997, had been revoked by the planning branch of MCG, and building was declared as illegal. It is further plea of complainant that in the deed of declaration, it was mentioned that OC has been received on 11.05.2014 by the MCG. Said claim was prima facie false and aforesaid document was illegal and sham. Further, aforesaid commercial establishment i.e. Palm Court was approved for exclusive use of the Company, however, the builder/ developer changed the nature of the building. They(promoters) carved out unauthorised commercial establishment by sub dividing the unit and selling it to different purchasers without obtaining any license. It is also the claim of complainant that FAR achieved, was more than sanctioned FAR. Having building declared illegal, no body is interested in buying the same or taking it on lease. Contending all this, complainant has claimed compensation @ Rs1,44,000/- p.m. or 48 months i.e. till 02.01.2023, total amounting to Rs.69,12,000/-.

18. The complainant has put on file, copy of some lease deeds to verify the lease amount in the area, where the unit in question is situated. Considering said lease deeds, the fact that it is a commercial unit and is situated at Sukhrali road, Gurgaon, same is awarded compensation of Rs. 25,000/- p.m. for 48 months as loss of rent, to be paid by the respondents.
19. Apparently, it was right of allottee to obtain information about sanctioned plan, layout plan etc, which the respondents failed to provide. The letters (respondents) are



also blamed for not informing allottee about their acts of changing nature of building, running the same without obtaining OC/ CC and for not obtaining licence under Haryana Municipal Buildings By Laws 1982.

20. All these circumstances, were enough to cause mental agony and harassment to the complainant, at the behest of the promoters/ respondents. The allottee/ complainant is thus entitled to be compensated in this regard. A sum of Rs.1,00,000/- appears to be an appropriate compensation in this regard. Same is allowed to the complainant to be paid by respondents.
21. Although complainant has not filed any receipt/ certificate about fees paid by him to his counsel, apparently, he was represented by an advocate during proceedings of this case. Same is awarded a sum of Rs.50,000/- as cost of litigation to be paid by respondents.
22. Complaint in hands is thus disposed of. Respondents are 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.
23. File be consigned to records.


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