



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### BEFORE THE ADJUDICATING OFFICER

**Complaint No. – 2652 of 2022**

**Date of Institution: - 10.10.2022**

**Date of Decision: - 11.07.2024**

Varun Singla s/o late Sh. Rajender Prasad r/o M-78, 11<sup>th</sup> Avenue, Gaur City – 2,  
Plot No. GH-03, Sector-16C, Greater Noida West, Gautam Buddha Nagar, Uttar  
Pradesh – 201301

...COMPLAINANT

VERSUS

M/s RPS Infrastructure Ltd., through its Managing Director, office at 1117-1120,  
11<sup>th</sup> Floor, Tower-B, DLF Towers Jasola, District Center, New Delhi-110025

....RESPONDENT

**Hearing:-** 23<sup>rd</sup>

**Present:-** Mr. Varun Singla, complainant through video conferencing  
Mr. Akshat Mittal, Advocate, counsel for the complainant  
Mr. Garvit Gupta, Advocate, counsel for the respondent through  
video conferencing

*Garvit Gupta*

**JUDGEMENT:**

The brief facts culminating into the institution of the present complaint are:

1. Sh. Rajender Prasad, since deceased, husband of Smt. Pramod Lata and father of Sh. Varun Singla, Smt. Komal and Smt. Anshul Aggarwal had booked a residential apartment with the respondent in project 'Savana', Sector-88, District Faridabad, Haryana and was allotted Apartment no.105, Tower 12, 1<sup>st</sup> Floor, having built up super area of 1590 sq. feet. Apartment Buyer Agreement was entered into between the parties on 19.05.2008. The total sale consideration of the unit was ₹41,70,940/-. Sh. Rajender Prasad had paid ₹34,45,598/- i.e. approximately 85% of total sale consideration as per the payment plan. As per clause 13 of the Apartment Buyer Agreement, the possession of the unit was to be delivered within 36 months from the date of agreement, which comes out to 19.05.2011. The respondent has miserably failed to adhere to the timeline. Possession of the unit was offered by the respondent after miserable delay of more than 6 years on 22.06.2017. Instead of compensating the allottee for the delay in offer of possession, the said offer was coupled with extraordinary and illegal demands on various accounts i.e. interest on account of delayed payment, increased super area from original 1590 sq. feet to 1661 sq. feet, payment of enhanced EDC along with interest. Club membership charges, demand for ECC and FFC, meter connection charges, electricity consumer security, prepaid meter card, labour cess @12 PFS, administration charges, VAT charges and escalation

charges etc. The possession has not been handed over till date. Previously Sh. Rajender Prasad and now his legal heirs are made to suffer continuous harassment at the hands of respondent/promoter. Neither any compensation nor any interest has been granted to the complainant. The respondent had been withholding possession till illegal demands were meted out. At the time, letter of offer of possession was given, the project was incomplete. On the ground floor lobby development work was still going on, way to tower was still under development, even the lift was not operational, firefighting equipment was not being covered and containing open holes which is a major safety concern, shuttering being installed at multiple parts of tower for external walls fixation which create safety concerns, parking ramp was not ready and park and club were not ready. Aggrieved by the severe lapses on the part of the respondent, who had delayed delivery of possession, the complainant had filed Complaint no.2886 of 2017 before Permanent Lok-Adalat, Faridabad which was dismissed as withdrawn on technical grounds. After that, Complaint no.717 of 2019 was filed before Hon'ble Authority seeking possession, delayed possession charges, execution of conveyance deed along with refund/quashing of illegal demands of the respondent. Vide order dated 17.02.2022 passed by the Authority, complaint was partly allowed. The Authority had quashed certain illegal demands and it was held that the complainant was entitled to receive delayed possession charges of ₹33,26,992/-. It was also observed by the Authority that respondent was entitled to recover an amount of ₹12,60,294/- along with interest for delayed payment i.e.



₹5,46,219/-. After adjusting the amounts, the respondent was directed to make a payment of ₹15,20,479/- to the complainant. Even this order was also not complied with by the respondent. The respondent company has miserably failed to handover possession of the unit to the complainant even till date, this way the respondent has failed to handover possession of the unit even after more than 14½ years from the date of booking and execution of Apartment Buyer Agreement and more than 11½ years from the due date of possession, due date being 19.05.2011 as per agreement. The respondent company has intentionally, consciously, concoctedly and maliciously duped the complainant, who had invested his hard earned money with the respondent company. Despite several communications made by the complainant, the information regarding allotment and status of the project was not shared by the respondent with the complainant, thus violating the provisions of Section 19 of the Act. The grievances of the complainant were never looked into by the respondent company. Despite numerous efforts on the part of the complainant, the demands and deficiencies had not been rectified. The respondent company has left no stone unturned to harass the innocent allottee and the money paid to the respondent has been struck with respondent for more than 14½ years. Since even after long wait of 14½ years, possession has not been handed over to the complainant, he is having right to withdraw from the project and to seek refund of the amount paid by him along with interest. In good faith, the complainant is not pressing for refund and has sought possession of the unit along with delayed possession charges. If the allottee still wishes to continue with

the project, interest for every month of delay till the handing over of the possession has to be awarded to the allottee, apart from compensation to be adjudicated upon by this Court. The delays and malafides on the part of respondent company have resulted in extreme disproportionate gain and unfair advantage to the respondent company which has been in continuous possession of the amount paid by the complainant without any intention to comply with its promises. The cause of action is continuous and default is repetitive in nature. The complainant has been made to suffer extreme mental harassment and distress at the end of respondent company which is evident from the record of emails attached with Annexure C-4. Rajender Prasad Singla, father of the complainant had entered into the booking of the flat in the year 2008, when he was 50 years of age, with the hope of quick and timely possession and with the aim of living his retired life in the unit in question which was supposed to be his home. Unfortunately, father of the complainant untimely expired on 14.05.2021 without reaping any benefit from the said booking with the respondent company. The complainant has also taken a loan for the booking of flat and the complainant has since then being burdened with the payment of instalments thereto without receiving possession of the flat in question. The documents pertaining to loan have been attached. Though, offer of possession was made on 22.06.2017, yet it contained several illegal payment demands. Even the compensation for delay in possession which has been mentioned in Apartment Buyer Agreement dated 19.05.2008 was not paid by respondent company to the complainant and it was



refused. The complainant was threatened to cancel the allotment of the flat in case the illegal demands made by the respondent company were not met by the complainant. Since, possession was not handed over to the complainant and his family members, the complainant had to stay in rented premises from the year 2011-2017. If the possession would had been handed over to the complainant, there was no need for the complainant and his family to live in rented house and bear harassment and unnecessary financial burden. Later on, complainant arranged resources and was left with no option but to purchase another flat to get rid of burden of monthly payment of rent. Because of cost escalation for similar property during these 14½ years, the complainant has also suffered extreme pecuniary loss. The complainant has sought directing the respondent to pay compensatory interest for the continuous delay in handing over possession @ 24% per annum compounded on the entire amount so deposited by the complainant w.e.f. the relevant dates of deposit till the actual and legal offer of possession, to direct the respondent to pay a sum of ₹20,00,000/- on account of mental harassment, agony, grievance and frustration caused to the complainant by deficiency in service, unfair trade practice and miserable attitude of the respondent along with interest and litigation cost of ₹1,50,000/-.

2. Upon notice, the respondent appeared and filed reply taking preliminary submissions that the complainant is allottee of Apartment no.T12-105 in the residential group housing colony i.e. Savana, Sector-88, Faridabad developed by respondent company, having 27 towers and 2344 independent

dwelling units. As and when the towers were completed, the Occupation Certificates were issued from time to time and final Occupancy Certificate in respect of 4 towers was received on 21.06.2017 which depicted the status of grant of Occupation Certificate for all 27 towers and allied structures in the colony. After receiving of final Occupancy Certificate, the respondent company made efforts to handover possession of the unit to the complainant but he declined to come forward and take the possession of said unit. Instead of taking possession of the unit in dispute, he dragged the respondent in various frivolous litigations. He along with his father filed Complaint no.717 of 2019 titled as Rajender Prasad Singal and Anr vs. RPS Infrastructure Ltd., wrongly alleging that respondent was withholding the possession of the said unit by raising illegal demands, additional super area, PLC, enhanced EDC, club membership charges, ECC & FCC, meter connection charges, electricity consumption security, prepaid meter card deposit, labour cess @12 per sq. ft., VAT, administration charges, service tax, escalation demand, holding and maintenance charges which are all baseless and frivolous. The respondent, as per Buyer Agreement and also as per directions of Hon'ble Authority, deducted certain amounts which are clearly shown in the statement. The complaint is not maintainable on the ground of jurisdiction as this Court has no power to adjudicate upon the subject matter of the said complaint as the project developed by respondent company was not an ongoing project. The HRERA Rules, 2017 were notified on 28.07.2017 whereas the final Occupancy Certificate of the project was received on 21.06.2017. This Court has jurisdiction to



adjudicate upon matters only pertaining to ongoing projects. Buyer Agreement was signed by the complainant on 19.05.2008. Duration of handing over of possession of unit was 36 months from the date of execution of Buyer Agreement exclusive of time taken by Competent Authorities towards approval of various sanctions and subject to force majeure circumstances and on receipt of all the payments as per payment plan and other charges due/demanded and payable upto date on possession according to payment plan opted by the buyer. Possession of the unit was offered to the complainant on 22.06.2017, admittedly with a delay of 6 years and the cost of escalation is attributed to the delay in remittance of instalments made by the complainant as well as delay on the part of Director General, Town and Country Planning, Haryana, Haryana Urban Development Authority and other concerned Authorities in commencing an external development work and completing basic infrastructure such as roads, electricity, sewer line etc. necessary for timely completion of the project. Buyer Agreement was entered into between the complainant and the respondent in the year 2008 and the HRERA Rules came into force on 28.07.2017 i.e. pursuant to offer of possession in respect of unit of the complainant issued on 22.06.2017. This Court is not empowered to change the terms and conditions as agreed between the parties. Respondent is holding the unit of the complainant since 2017 and has been incurring a sizeable chunk of money every month upon maintenance and upkeep of the said unit. The complainant has declined to come forward to accept offer of possession and has invoked the jurisdiction of this Court by raising vague,



false and frivolous allegations over valid demand raised in accordance with the provisions of buyer's agreement. The object of the Act is not to raise non-existent dispute in an advertent attempt to harass the respondent by depriving of its right to realise the legitimate claims outstanding against the complainant which stand as undischarged liability for more than 3 years. The possession to all other 139 unit holders has been delivered out of total 140 allottees in the said tower. Except the complainant, all other allottees have taken peaceful possession and are living happily since 2017. Number of reminders have been mailed and communicated telephonically to the complainant. The complainant is demanding compensation for agony suffered, has knocked the doors of this Court after 5 years of completion of project and possession being offered after continuing with so many frivolous and unnecessary litigations which would not be in existence if he would have accepted the possession as per agreed terms of Buyer's Agreement.

3. On merits, in parawise reply, all the averments made in preliminary objections and submissions have been reiterated and the respondent has prayed for dismissal of the complaint.

4. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

5. It is not disputed that the complainant Varun Singla along with his father Sh. Rajender Prasad Singla, now deceased, had jointly booked a residential apartment in the project 'Savana' Sector-88, Faridabad being developed by the respondent in the year 2008. Buyer's Agreement was entered into between the

parties on 19.05.2008. Apartment no.105, Tower-12, First Floor having built up super area of 1590 sq. ft. was allotted to them. The total sale consideration of the unit was ₹41,70,940/-. The complainant along with his father had paid ₹34,45,498/- to the respondent, being approximately 85% of total sale consideration. Despite arguments of learned counsel for the complainant that as per clause 13 of Buyer Agreement, the possession of the unit was to be delivered within 36 months from the date of agreement which comes out to 19.05.2011. It has been argued by learned counsel for the complainant that the timeline fixed by the respondent was not adhered to by it. After delay of more than 6 years, it was only on 22.06.2017, that the possession was offered to the complainant. Even at the time of offer of possession, extra ordinary and illegal demands were also raised by the respondent. Despite allegation of the complainant that the super area was increased from 1590 sq. ft. to 1661 sq. ft., the respondent had raised illegal demands interest on account of delayed payment, payment of enhanced EDC along with interest, club membership charges, ECC and FCC charges, meter connection charges, electricity consumer security, labour cess, pre-paid meter card, administration charges, VAT charges and escalation charges. Allegedly, the demands raised by the respondent were illegal, these amounts were not paid by the complainant and resultantly possession was not handed over by the respondent to the complainant. It has also been pointed out that at the time alleged offer of possession, the project was incomplete. The respondent had been withholding possession till illegal demands were met. The complainant has



sought compensation to the tune of ₹20,00,000/- on account of mental agony and harassment suffered by the complainant, his father and now the other legal heirs also. Initially the complainant had filed Complaint no.2886 of 2017 before Permanent Lok Adalat, Faridabad which was withdrawn by the complainant on 27.02.2019. Copy of Complaint no.2886 of 2017 filed by the complainant before the Permanent Lok Adalat, Faridabad and also copy of order dated 27.02.2019 vide which the complaint was dismissed as withdrawn have been placed on record. After that Complaint no.717 of 2019 was filed before Hon'ble Authority seeking possession, delayed possession charges. The complainant had also sought quashing of illegal demands made by respondent. It has been pointed out by learned counsel for complainant that vide order dated 17.02.2022, copy of which has been placed on record, the Authority had quashed certain illegal demands and it was also observed that the complainant was entitled to receive delayed possession charges to the extent of ₹33,26,992/-. It has further been pointed out by learned counsel for the complainant that the Authority had also observed that the respondent was entitled to recover an amount of ₹12,60,294/- along with interest for delayed payment which comes to ₹5,46,219/-. Against the said observation, the complainant had approached Hon'ble Appellate Tribunal. Against the remaining relief of possession as well as amount of delayed possession charges, the respondent has filed appeal before Hon'ble Appellate Tribunal. Both the appeals are pending before Hon'ble Appellate Tribunal. It was the argument of learned counsel for the respondent that this case be adjourned

beyond the date fixed before Hon'ble Appellate Tribunal as both the parties had gone in appeal and matter has not been finally adjudicated upon. To this learned counsel for the complainant has stated that for decision of compensation case, there is no need to wait for decision of Hon'ble Appellate Tribunal in appeals filed by both the parties.

6. Learned counsel for the respondent has drawn attention of the Court towards copy of agreement dated 19.05.2008 which was entered into by the parties, copy has been placed on record. It is the argument of learned counsel for the respondent that the terms of agreement entered into between both the parties are binding upon them. He has placed reliance on 2016 AIR (Supreme Court) 2822 titled as Mukul Sharma vs. Orion India (P.) Ltd. through its Managing Director, in which it has been observed by Hon'ble Apex Court that as per provisions of Section 5 of the Contract Act, defendant cannot resile from mutually agreed position. In 2017(4) R.C.R. (Civil) 983 titled as Naresh Kumar vs. Pritam Singh and others, it has been observed by Hon'ble High Court Punjab and Haryana that once a written contract is proved to be entered into between the parties with free will and volition, Courts should be very slow to doubt genuineness of such a contract. In 2014(4) PLR 167 titled as Karambir Nain vs. The State of Haryana and others, it has been observed by Hon'ble High Court Punjab and Haryana that once an agreement is reduced into writing, it shall be binding on the parties to the agreement and no party has any right to relieve itself of its contractual obligation unilaterally.



7. With regard to payment of compensation, it has been argued by learned counsel for respondent that in Complaint no.717 of 2019 filed by the complainant seeking possession and delay possession charges, the Authority has awarded delay possession charges to the tune of 33,26,992/-, it also amounts to compensation. He has drawn attention of the Court towards observations of Hon'ble High Court, Bombay in Writ Petition no. 2737 of 2017 titled as Neelkamal Realtors Suburban Pvt. Ltd and Anr v/s Union of India and Ors passed by Hon'ble High Court, Bombay in which it has been observed that the requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of delay suffered by the allottee who had paid for his apartment but has not been received possession of it. The interest is merely compensation for use of money.

8. Learned counsel for the respondent has also drawn attention towards observations recorded by learned Adjudicating Officer, HARERA, Gurugram in Complaint no.6701 of 2022 titled as Pratibha Khan and Afzal Ahmad Khan vs. M/s Imperia Wishfield Pvt. Ltd., in which it has been observed that the requirement to pay interest is not a penalty as the payment of interest is compensatory in nature. The interest is merely compensation for use of money. Learned counsel for the respondent has pointed out that interest is merely compensation for use of money, learned Adjudicating Officer, HARERA, Gurugram has declined any compensation. Copy of order dated 08.09.2023

passed by learned Adjudicating Officer, HARERA, Gurugram has been placed on the record.

9. Learned counsel for respondent has also placed reliance on Case no.287 of 1960 titled as Fateh Chand vs. Balkishan Dass decided on 15.01.1963, in which it has been observed by Hon'ble Apex Court that where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the Court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. In (2019) 2 GauLR 672 titled as Rungta Projects Ltd. vs. Union of India and Others, it has been observed by Hon'ble Gauhati High Court that compensation for loss or damage caused by breach of contract. The measure of damages in case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. While reiterating that compensation has to be reasonable which has to be awarded or determined according to settled principles, Hon'ble Supreme Court held that award of compensation cannot be justified when in consequence of the breach no legal injury at all had resulted because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things or which the parties knew when they made the contract to be likely to result from the breach.

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10. It is important to have a look on clause 13 of Buyer's Agreement dated 19.05.2008, copy of which has been placed on record as Annexure C1, reads as:

*That the company shall endeavour to give the possession of the unit to the intending allottee(s) within a period of 36 months from the date of execution of the Buyer's Agreement exclusive of the time taken by Competent Authorities towards approval of various sanctions such as sanctioning of Maps/Plans/, Environmental Clearances, issuance of the Completion Certificates/Occupation Certificates etc. subject to force majeure circumstances and on receipt of all payments as per Payment Plan and other charges due/demanded and payable up to the date of possession according to the payment plan opted by him/'her. The company on completion of the construction shall issue final call notice to the intending allottee(s), who shall within 30 days thereof, remit all dues and take possession of the unit. In the event of his/her failure to take possession for any reason whatsoever, he shall be deemed to have taken possession of the allotted unit and shall bear all maintenance charges and any other levies on account of the allotted unit.*

11. In the abovementioned para, there was few words which are important to be taken into consideration. It was agreed that company would give possession of the unit to the intended allottee within a period of 36 months from the date of execution of Buyer's Agreement, this line does not stop here, learned counsel for the complainant has taken only these two lines presuming that possession has to be handed over within 36 months from the date of execution of Buyer's Agreement, which was executed on 19.05.2008 and this way he has calculated the period of 36 months for handing over of possession and the deemed

date of possession has been taken as 19.05.2011. If para 13 is read cautiously, it has specifically been mentioned that exclusive of time taken by Competent Authority towards approval, various sanctions such as sanctioning of maps, plans, environment clearances, issuances of Completion Certificate/Occupation Certificate's etc. The period of 36 months is not to be taken from 19.05.2008, rather it would be taken from the date of receipt of Occupation Certificate or issuance of Completion Certificate. As per version of the respondent, Occupation Certificate was received on 21.06.2017 and possession to the complainant was offered on 22.06.2017. It is not a general practice that the period of 36 months has to be reckoned from the date of agreement entered into by both the parties, rather the terms and conditions mentioned in the Builder Buyer Agreement have to be looked into. If in the Builder Buyer Agreement dated 19.05.2008 Annexure C-1, it has been mentioned that possession would be handed over to be allottee within 36 months exclusive of time taken by Competent Authority towards approval of various sanctions and issuance of Completion Certificate/Occupation Certificate, Occupation Certificate was received on 21.06.2017 by the respondent, the period of 36 months has to be calculated from that date only. Very next day of receipt of Occupation Certificate, possession was offered to the complainant. It cannot be said that the complainant had suffered mental agony and harassment because of delay in handing over possession. In the absence of any proof of mental agony and harassment suffered by the complainant, he cannot be said to be entitled to compensation on this account.



12. Though compensation on account of rent allegedly paid by the complainant has not been sought in the relief, yet it has been mentioned that since possession was not handed over to the complainant and his family members, the complainant had to stay in rented premises from the year 2011 to 2017 and the complainant was bearing harassment and unnecessary financial burden. To get rid of burden of monthly payment of rent, complainant had arranged sources and purchased another flat. Since neither any amount of rent per month has been mentioned nor any receipt of rent w.e.f. year 2011 to 2017 has been placed on record, it cannot be said that the complainant is entitled to any compensation for harassment on account of living in rented premises.

13. The complainant has also stated that there was escalation of cost of similar property during 14½ years, the complainant had also suffered extreme pecuniary loss, no amount has been claimed as compensation for suffering pecuniary loss on account of cost escalation.

14. The complainant has sought directing the respondent to pay compensatory interest for continuous delay in handing over possession @ 24% per annum compounded on the entire amount deposited by the complainant. Firstly, there is no provision of awarding compensatory interest @ 24% per annum compounded and secondly delay possession charges have already been awarded by Hon'ble Authority vide order dated 17.02.2022 in Complaint No.717 of 2019.


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15. The complainant has sought compensation of ₹20,00,000/- on account of mental harassment, agony, grievance, frustration cost to the complainant by deficiency in service, unfair trade practice and miserable attitude of the respondent. There is no evidence of deficiency in service, unfair trade practice and miserable attitude of the respondent. The compensation on account of mental agony and harassment has already been declined in the foregoing paragraphs.


16. The complainant has sought litigation cost of ₹1,50,000/-. Since, the main relief of compensation on different counts is not being awarded, cost of litigation is also not allowed in favour of complainant. Hence this relief is also declined.

17. Sequel to aforesaid discussion and observations, the present complaint is ordered to be **dismissed** with order as to costs. File be consigned to record room after uploading the order on the web site of the Authority.

11.07.2024

  
(DR. SARITA GUPTA)  
ADJUDICATING OFFICER

**Note:** This judgement contains 18 pages and all the pages have been checked and signed by me.

  
(DR. SARITA GUPTA)  
ADJUDICATING OFFICER