

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

Complaint No.82 of 2023

Date of Decision : 25.11.2024

**Saurabh Mehta & Jai Parkash Mehta
C-101, Progressive Apartment,
GH-69, Sector-55,
Gurugram, Haryana-122011**

Complainants

Versus

**M/s. NBCC (INDIA) LIMITED
NBCC Bhawan, Lodhi Road,
New Delhi-110003**

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Chaitanya Singhal, Advocate
Mr. Ray Vikram Nath, Advocate**

ORDER

1. This is complaint filed by Mr. Saurabh Mehta & Mr. Jai Parkash Mehta (allottees) under section 31 read with section 71 of

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the Real Estate (Regulation and Development), Act 2016, against M/s. NBCC (India) Limited (promoter).

2. According to complainants, the respondent is a leading Real Estate Public Sector Undertaking Company, with various projects in Delhi NCR and other parts of India. Through public advertisement, it (respondent) boasted that it is its endeavour to meet the expectations of buyers, enticing them to invest their hard-earned money in its project **"NBCC Green View"** and made all claims and promises of high quality construction and timely possession. It ensured that the possession will be handed over to them (complainants) (buyers) within a period of 30 months from the date of booking.

3. That it was further assured that it (respondent) has procured all the necessary permissions and licenses from the competent authority for the start and time completion of the project.

4. That on 10th March 2011 after being lured and deceived by such tall claims and representations, they (complainants) booked a 3 BHK Unit in its project. On 27th June 2012, they filed an **"Application Form"** for allotment of a residential unit in its project **"NBCC Green View** located in Sector-37D, Gurugram Haryana and



paid an amount of Rs. 3,00,000/- alongwith the application for booking of the said unit.

5. That on 2nd November 2012, it (respondent) sent an **"Allotment Letter"** to them (complainants), according to which they were allotted residential unit No. B5.3 located on 5th floor in its project having super area of 1803 sq. ft for a total sale consideration of Rs. 74,13,422/-. Payments were to be made as per the **"Payments Schedule"** annexed with Allotment Letter. They were promised to deliver the possession of the booked unit within a period of 30 months from the date of allotment letter which falls on 02.05.2015. However, it failed to offer the possession of said unit to them.

6. That it (respondent) sent **"offer of possession letter"** to them, who paid final instalment due on offer of possession and thereafter on 08.12.2017, the respondent gave a **"No Dues Certificate"** to them.

7. That on 09.04.2018 it (respondent) got the **"conveyance deed"** executed in favour of them (complainants). They paid a sum of Rs. 4,18,800/- towards stamp duty and Rs. 31,200/- towards legal fees for getting the conveyance deed executed. They paid a

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sum of Rs. 79,06,639/- including Rs. 4,18,800/- on account of stamp duty and Rs. 31,200/- being legal fees to it (respondent), for execution of conveyance deed.

8. That they (complainants) received a "**Vacation Notice**" from it (respondent). It stated as follows: -

"Residents are hereby informed that with a view to address the issues rose by flat owners; NBCC (I) Ltd has decided to carry out comprehensive repair works in the complex at the earliest. It is further informed that the said activity would necessitate shutting down essential service in the complex, as it has been decided to carry out the repair works simultaneously in all towers of the complex.

To avoid inconvenience and for their safety, residents are hereby advised to vacate their flats within 15 days of this notice.

Residents are requested to kindly contact the site office of NBCC (I) Ltd in the complex for further information and or queries".

9. That on 6th October 2021, IIT-team Delhi carried out a "**Structural Survey**" of the project. It was observed that the structure is highly unsafe for habitation, and it needs to be demolished. The report stated that the whole area of structure is badly affected by corrosion and rust in steel, reinforcement further

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deteriorated due to poor quality of concrete work having cavities and use of untreated saline water during construction which has led to rust and poor workmanship. Cracks in beams, columns, rust. It was concluded that the building appears to be in distressed condition due to corrosion of steel, poor cement in concrete ratio. The building structure is unsafe for any habitation; therefore, it is recommended to demolish it.

10. That based on follow up report of IIT, Delhi the respondent sent "**Second Vacation Notice**" dated 13.10.2021 and "**third & final vacation notice**" to them (complainants) and all allottees to vacate the premises. On 03.12.2021 it (respondent) got the valuation of flat interiors of the complainant done through the govt. approved valuers according to which, the cost of interiors of flat of complainant was assessed to be Rs. 60,000/-.

11. That on 17.02.2022 District Magistrate cum Chairperson of District disaster management authority, Gurugram on getting reference from DTCP office Chandigarh and after conducting meeting on 16.02.2022 with the residents of NBCC society and officials of NBCC (I) Ltd, issued order dated 17.02.2022, wherein it was observed that the building is highly unfit for habitation and



residents need to be immediately vacated. NBCC (I) Ltd was directed to give alternative premises fit for accommodation within 48 hours and to provide rent accommodation along with shift charges. Respondent (NBCC) was asked to provide refund of money along with interest as applicable as per law, to the residents' owners within a period of 1 month. Further it was stated in the order that if NBCC Ltd contravenes the order, then it shall be liable to be proceeded against. It failed to comply with the order and never gave offer for refund along with interest.

12. That the respondent sent an offer letter for refund of money paid to it without any payment of interest, compensation for mental agony, taxes paid to govt, litigation cost, cost of interior work done in flat.

13. That the respondent (NBCC) had paid an advance rent for a period of 12 months starting from 1.12.2021 uptill 30th November 2022 to the complainants i.e. Rs. 22,537/- @ Rs. 12.5/- per sq. ft per month and further brokerage/commission of 1.5 months @ Rs. 12.5/- per sq. ft. The said rental compensation paid by respondent is very less as compared to rentals in the neighbouring areas in

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Gurugram Sector-37 for a 4 BHK Flat of 1803 sq. ft area which was booked by complainant with the respondent.

14. That on 08.09.2022, it (respondent) sent a letter to them (complainants) regarding "Non-payment of rent" which stated that it (respondent) will stop payment of rentals beyond 30.11.2022. The complainants have entrusted their hard-earned money and had taken a substantial amount of loan to purchase Unit in question for residing therein and have been paying EMI's on the loan and interest. They are being denied the use of their property. All this has completely shattered their dreams of owning a house on their own.

15. That the complainants had paid a sum of Rs. 2,20,000/- towards litigation cost for filing cases.

16. That the complainants suffered at the hands of the respondent. The complainant sought following reliefs: -

- i. To direct the respondent to pay a sum of Rs. 4,18,800/- along with 18% interest towards stamp duty and Rs. 31,200/- towards legal fees for getting the conveyance deed documents ready and executed.
- ii. To direct the respondent to pay a sum of Rs. 60,000/- along with 18% interest towards interiors of flat as per

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- the Architects valuation report along with interest upon it.
- iii. To direct the respondent to pay a sum of Rs. 40,000/- per month cost incurred towards payment of rent by the complainant for living in alternate flat after getting vacation of flat by respondent.
 - iv. To direct the respondent to pay Rs. 5,00,000/- for harassment and mental agony/loss of opportunity in vacating the house, shifting to rented house, spending precious time in litigation with the respondent.
 - v. To direct the respondent to pay a sum of Rs. 35,000/- incurred towards travelling cost for coming to RERA Gurugram, regularly from Delhi to attend the proceedings.
 - vi. To direct the respondent to pay an amount of Rs. 45,000/- per month towards loss of rentals/earnings if the 4 BHK flat of the complainant would have been given on rent/lease to a tenant.
 - vii. To direct the respondent to pay compensation @ 6% per annum on the amount paid by the complainant towards inflation in prices of flat booked by complainant in the year 2011 and today i.e. in 2023. Prices of flat have tripled in 13 years.
 - viii. To direct the respondent to pay a sum of Rs. 2,20,000/- towards litigation cost for filing cases before Rera authority and Adjudicating Officer.

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17. Respondent contested the claim of complainants by filing a reply. It is submitted that the complainants have concealed material facts under oath before this forum. They deliberately chose to conceal that their main complaint No. HRR/GGM/CRN/6890/2022 dated 07.12.2022 is pending before the Authority (RERA) for adjudication with same relief as prayed in the present complaint. The relief claimed before the RERA is as under:-

- i. To refund the entire amount paid by the complainant to the respondent along with interest as per HRERA Rule 15.
- ii. To refund INR 4,18,800/- towards stamp duty cost paid by complainant to the govt along with interest on it.
- iii. To pay sum of Rs. 60,000/- towards interior of flat, as per the valuation report conducted by architects of respondent along with interest upon it.
- iv. To grant litigation cost of INR 2.00 lakhs.

18. That the respondent is Public Sector Undertaking, and in-
alia engaged in the business of construction of residential/commercial projects. It developed a residential complex named "NBCC Green View Apartments", at Sector-37D, Gurugram. It had appointed IIT Delhi (IITD) as a consultant in December 2020

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for the structural condition assessment of the Project. IITD vide a report dated 02.02.2021 suggested that certain repairs were required to be made in the towers of the Project. These repairs were undertaken by the contractor engaged in the project namely M/s. Rama Civil India Construction Pvt Ltd. It put up notices at conspicuous places in and around the project site on 03.10.2021 requesting occupants to vacate the complex within 15 days and to contact site office of NBCC for further information.

19. That vide its follow up report dated 06.10.2021, IITD advised vacating the flats within a period of two months in the interest of resident's safety. Another report of IIT Delhi dated 17.11.2021 was received by it, which stated that a follow-up visual inspection of the buildings in the Project, indicated continued deterioration in the structures at an accelerated pace.

20. That it (respondent) put up another notice dated 18.11.2021 at the site requesting occupants to vacate the complex by 23.11.2021 and to contact respondent Help Desk at the site for further information.

21. That it (respondent) stated that there was no such promise/agreement to deliver the possession of the flat within 30

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months and the same is very clearly stated in the Allotment letter dated 02.11.2012 that the sixth/final instalment of the flat shall become payable either within 30 months of allotment or on the date of offer of possession.

22. That the District Magistrate cum Chairperson of District Disaster Management Authority, Gurugram vide order dated 17.02.2022 directed the residents to evacuate the premises for safety considerations and direction to the willing residents within 48 hours of the passing of the said order or to provide rent for similar accommodation along with shifting charges of the entire households of the residents.

23. That it (respondent) in its first offer was willing to refund the full amount of the flat/dwelling unit with booking and other incidental expenses along with a refund of any delayed payments made by them (complainants) but they refused the first offer letter and since it has always kept the interest of its residents' paramount. It is pertinent to mention that they (complainants) had purchased the unit in question from the respondent at the rate of INR 4140 per sq. ft and current prevailing market rate per sq. ft of a similarly placed project in Sector-37D, Gurugram is INR 5000-5250



per sq. ft and the circle rate of sector-37D, Gurugram is INR 4200 per sq. ft.

24. That they (complainants) were initially paid rentals from December 2021 to May 2022 @ 12.50 per sq. ft in line with the size of their flat amounting to Rs. 22,537.50/- per month plus brokerage of 15 days amounting to Rs. 11,268.75/- plus one month security deposit amounting to Rs. 22,537.50 and Rs. 10,000/- as incidental expenses. Upon the request made by them (complainants), rentals were paid @ Rs. 25000/- per month from June 2022 to November 2022.

25. That the flat was originally booked by them (complainants), which was a type-D 3 BHK flat i.e. a flat with 3 rooms and 3 toilets only and the respondent has adequately compensated them (complainants) by providing interim rentals @ Rs. 12.50 per sq. ft in line with the size of their flat i.e. 1803 sq. ft (super area) and as per the prevailing rental rates in the vicinity of NBCC Green View project in sector-37D during that period with brokerage of 15 days amounting to Rs. 11,268.75/- plus one month security deposit amounting to Rs. 22,537.50 and Rs. 10,000/- as incidental expenses.



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26. That the rentals offered by it (respondent) were interim in nature for the purpose of providing alternate accommodation. Therefore, they (complainants) do not deserve any relief whatsoever. It is prayed that the complaint may be dismissed in the interest of justice.

27. In their rejoinder to the reply filed by complainants, they (complainants) denied the averments as made by the respondent and reiterated their claim as reproduced above.

28. Both of the parties filed affidavits in evidence reaffirming their case.

29. I have heard learned counsels for both of the parties and perused the record on file.

30. It is not in dispute that present complainants have already filed a complaint before RERA, Gurugram. Apart from claiming refund of amount already paid by them, the complainants have already prayed for payment of Rs. 4,18,800/- along with interest, Rs. 60,000/- along with 18% interest towards interior of the flat have already been sought from the Authority. No reason to allow same reliefs.

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31. As per section 72 of the Act of 2016, the Adjudicating Officer has jurisdiction to allow compensation under sections 12, 14, 18 and 19 of the Act.

32. Section 12 provides for obligation of the promoter regarding veracity of the advertisement or prospectus. Section 14 casts duty upon the promoter to adhere to sanctioned plans and project specifications of the project/unit. Section 18 prescribes about return of the amount of compensation and section 19 tells about rights and duties of allottees. In view of mandate given by the Apex Court in case titled as "*M/s. Newtech Promoters and Developers Pvt Ltd vs State of UP & Ors etc in Civil Appeal Nos. 6745-6749 of 2021*", jurisdiction to allow refund of the amount, which includes payment of stamp duty charges and again interior lies with the Authority. Prayer to grant these reliefs is thus declined.

33. As stated above, section 14 casts duty upon the promoter to develop project in accordance with the sanctioned plans, lay out plans and specifications as approved by the competent authorities. The allegations of complainants that unit allotted to them was not found worth habitable, are not denied by the respondent also. It does not remain in dispute that team of experts from IIT Delhi,



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carried out a structural survey of the project. The team found that structure for building was highly unsafe for habitation and it needs to be demolished. In this way, it can be presumed that the building was not constructed by the promoter/respondent as per project specifications. Same is violation of section 14 of the Act. The complainants are thus entitled for compensation from respondent. The averment made by the complainants that respondent paid advance rent for 12 months starting from 01.12.2021 till 30.11.2022 @ Rs. 22,537/- per month is not in dispute. Although, the complainants have sought compensation at rate of Rs. 40,000/- per month. Due to devaluation of rupee, in my opinion Rs. 30,000/- per month will be appropriate amount to be awarded in favour of the complainants, as compensation towards rent. Respondent is directed to pay said amount of Rs. 30,000/- per month to the complainants as loss of house/rent till possession of other unit or till the amount paid by the same (complainants) is refunded to the latter, as per law.

34. The complainants have sought Rs. 5,00,000/- for harassment and mental agony/loss of opportunity in vacating the house,

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shifting to rented house, spending precious time in litigation with the respondent.

35. When house/apartment allotted to complainants has been found unsafe for living, they have to vacate it. All this apparently caused harassment and mental agony to the complainants. However, there is no scale to measure loss caused by harassment in this way. Considering facts of case and circumstances of complainants, they are awarded a compensation of Rs. 1,00,000/- for mental agony and harassment to be paid by the respondent.

36. The complainants have sought relief of Rs. 2,20,000/- as litigation cost for filing cases before RERA Authority and Adjudicating Officer. The complainants have filed bills for Rs. 2,50,000/- towards fees for NBCC refund case before RERA Authority for Rs. 1,25,000/- and Rs.1,00,000/- for NBCC compensation case before A.O. (Rs.100,000 less 25,000 discount). Receipts placed on file by learned counsel for complainant are total of Rs. 1,85,000/-. A sum of Rs. 1,00,000/- is allowed to complainants as cost of litigation to be paid by respondent.

37. Respondent to pay amounts of compensation described above within one month of this order otherwise, same be liable to pay the amounts with interest @ 10.5% per annum till realisation of amount. The respondent is a public sector undertaking Company. It runs on public money. Apparently, building of project, where unit in question is situated, is found unsafe for human habitation by a team of experts from IIT Delhi, meaning thereby construction

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quality was bad. The respondent may recover the amount from erring officials/contractor, as per law.

38. Announced in open court today.

39. File be consigned to records.

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