

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

Complaint No.5443-2022

Date of Decision: 13.01.2025

Mr. Ashok Kumar Soni son of late Shri Achnit Ram Soni r/o C-5,
Gulmohar Park, New Delhi-110049.

Complainant

Versus

M/s. Tata Housing Development Co. Ltd
Registered Office at E-Block Voltas Premises, TB Kadam Road
Marg, Chinchkopli, Mumbai-400033.

Branch Office:

TRIL COMMERCIAL CENTRE, INTELLION EDGE,
Tower A, Floor-I, Sector 72, SPR,
Gurugram.

Respondent

APPEARANCE

For Complainant:
For Respondent

Mr. Geetansh Nagpal, Advocate
Mr. Pawan Bhardwaj, Advocate

ORDER

1. This is a complaint, filed by **Ashok Kumar Soni** (allottee) under section 31 of the Real Estate (Regulation and Development), Act 2016 (in brief the Act) read with rule 28 of the Haryana Real

Estate (Regulation and Development) (Amendment), Rules 2017, against M/s. Tata Housing Development Co. Ltd (promoter).

2. That the complainant is a peace loving and law-abiding citizen and is a permanent resident of aforesaid address.

3. That the respondent M/s. Tata Housing Development Co. Ltd, being a juristic person duly registered under the relevant provisions of the Companies Act, is represented through its directors/officers/authorized representatives, who are responsible for the business conduct of the respondent company as well as for implementation of the policies of the company.

4. That he (complainant) had booked an apartment with the respondent-company vide application form dated 31.10.2012 at TATA Primanti, Sector-72, Gurugram. Apartment Buyer's Agreement (BBA) dated 16.08.2014 was entered into between the parties and he paid/deposited total amount of money of Rs. 2,77,74,702/-. It (respondent) offered for possession of apartment/Unit No. Tower-II-3501 in 'Primanti' situated at Sector 72 Gurugram to the complainant vide letter dated 28.6.2017.

5. That the complainant came to know under RTI (Right to Information Act, 2005) that Oriental Bank of Commerce purchased 10 flats for their officers of the same area for a total consideration

amount of Rs. 2.18 crores each i.e. at lesser rate in comparison to the price amount paid by him (complainant). The respondent charged Rs.66.00 lacs ^{an} ~~being~~ extra amount from him (complainant). He (complainant) filed a complaint being complaint No.1171 of 2018 titled as 'Ashok Kumar Soni and others vs Tata Housing Development Co. Ltd.' before the Authority, Gurugram, which was disposed of vide judgment/order on 07.02.2019.

6. That it (respondent) has very cleverly divided the land in two different towers and materially changed the main entry gate to Tower-II with no facilities as provided to Tower I. He (complainant) preferred an appeal dated 01.07.2019 (Appeal No.490 of 2019) before the Appellate Tribunal against judgment/order dated 07.02.2019 passed by the Authority, Gurugram. The Tribunal was pleased to dismiss the appeal as withdrawn. He (complainant) reserved his right to raise the issue regarding compensation, before the Hon'ble Authority against the irreparable losses which he suffered on account of non-availability of promised facilities in accordance with the terms and conditions of Apartment Buyer's Agreement dated 16.08.2014.

7. That ^{the respondent -} ~~it (respondent)~~ obtained two occupation certificates, one is dated 28.6.2017 and another is dated 09.03.2018 but failed to deliver

possession of allotted unit despite having received huge quantum of money of Rs. 2,77,74,702/-.

8. That it is pertinent to mention that he (complainant) due to non fulfilment of the buyer's agreement and non delivery of possession of the said apartment had to live on rent for a period of almost 5 years from 01.01.2016 to 28.02.2021 and had paid an amount of Rs. 30,50,000/- due to negligence of the respondent.

9. That present complaint has been filed in order to seek compensation for the financial, mental as well as physical loss suffered by the complainant due to fraudulent acts of the respondent.

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It (respondent) has utterly failed to fulfil its obligations to deliver the possession in time and has caused mental agony and huge losses to the complainant.

10. That the respondent company has resorted to unfair practices, by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of section 12 of the Act of 2016.

^{respondent}
11. That it (~~respondent~~) has failed to provide the requisite facilities, amenities and services as agreed at the time of booking and has violated the provision of Section 14 of 12 of the Act. It (respondent) by

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using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress.

12. That the respondent had substantially failed to discharge its obligations imposed upon it by Act of 2016 and rules and regulations made thereunder.

13. In the facts as elaborated above, the complainant prayed for following reliefs:-

- a. To direct the respondent to provide all the facilities, amenities and services as mentioned under the Brochure and the Builder Buyer Agreement and assured at the time of the booking.
- b. To direct the respondent to provide compensation of Rs. 10,00,000/- for causing financial and mental agony and harassment to the complainant.
- c. To direct the respondent to provide the compensation of Rs. 5,00,000/- towards the legal costs incurred.
- d. To direct the respondents 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.
- e. To direct the respondent to provide a compensation of Rs. 30,50,00,000/- for causing loss due to live on rent for a period of 5 years and causing mental harassment.
- f. To impose penalty upon the respondent as per the provisions of section 61 of the Act for contravention of Section 12, 13, 14 and 16 of the Act.

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- g. To conduct enquiry under section 35 of the Act against the respondent.
- h. To pass such direction, as may be deemed fit, under section 37 & 38 of the Act, towards giving effect to anyone or more of the above sought reliefs.
- i. To grant any other relief as may deem fit.

14. The respondent contested claim of complainant by filing a written reply. It is averred that the complainant has deliberately and with mala fide intention concealed the material fact that he (complainant) had filed a complaint bearing No. 241 of 2021 titled "Ashok Kumar Soni and others vs TATA Housing Development Company Limited" before this forum, which was dismissed vide order dated 15.09.2021, ^{The complainant - took} ~~and he had also taken~~ same pleas in ^{the} ~~the~~ said previous complaint, which are being reiterated in the complaint under reply. The Adjudicating Officer after hearing both the parties dismissed the previous complaint filed by the complainant therein being devoid of any merits. Apparently, he (complainant) inter alia was seeking refund of Rs. 66,00,000/- along with interest on the ground of difference in sale price for same size of units sold to different allottees and apart from delay in handing over possession, ^{he} (complainant) was also seeking compensation for change in site

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plan. The Adjudicating Officer vide its order dated 15.09.2021, dismissed the complaint.

15. That the complainant has deliberately concealed from the learned AO that he (complainant) along with two other applicants had booked the unit in question and said unit was allotted jointly. The said unit is jointly owned by the complainant along with Ms Nandita Soni Malik and Mr. Nishant Soni vide conveyance deed dated 02.04.2021. Possession was handed over to them on 05.03.2021.

16. That the complainant has accepted delayed possession compensation as per order dated 07.02.2019 passed by the learned Authority in complaint bearing No. 1171/2018, detail of which is mentioned in para no. 4.5 of reply. It (respondent) has provided all the amenities as per sanctioned plan and revised plan and as agreed under the Agreement.

17. That the complaint bearing No.1171 of 2018 has already attained finality and the complainant has already accepted the compensation amount of Rs. 10,70,855/-, (after deducting the payment over dues of the complainant and other owners of the unit), which was credited into the accounts of owners through RTGS of 20.03.2021. It is admitted fact that the complainant filed an appeal against the order dated 07.02.2019 and during course of hearing, it

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was the complainant, who withdrew the same in order to file purported complaint before learned AO. Hence, the order dated 07.02.2019 has attained finality.

18. Contending all this, the respondent prayed that the complaint may be dismissed, with exemplary cost. The respondent has sought initiation of proceedings against the complainant, for concealment and suppression of material facts and to mislead the learned Adjudicating Officer. It is further prayed that cost of litigation to tune of Rs. 1,50,000/- be also awarded to the respondent.

19. Both of parties filed affidavits in support of their claims.

20. I have heard learned counsels for both of the parties and perused the record.

21. It is not in dispute that present complainant had filed a complaint i.e. complaint No. 241/2021 and same was dismissed by this forum vide judgment dated 15.09.2021. Admittedly, apart from some other ground, one of grounds taken by complainant to seek compensation was that the respondent allotted similar units in favour of Oriental Bank of Commerce for lesser sale consideration and that plea did not find favour of this forum. The complainant ^{has} again sought compensation citing same reason. When ~~once~~ ^s said issue has already

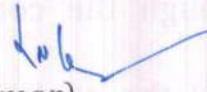
been decided by this forum, the complainant should not have raised same issue by filing another complaint i.e. complaint in hand.

22. Although the complainant has sought compensation on the ground that the promoter/respondent has changed site plan of the project, copy of which was provided to him i.e. complainant. Complainant did not adduce any evidence to prove said fact. Even copy of site plan claimed to have been provided to him by the respondent or the copy of actual site plan are not put on record. The complainant claims that respondent changed main entrance of Tower-II and shifted to revenue road adjoining to private property or the existing road as provided by respondent is passing through some private land i.e. road but no evidence is shown to establish all this. Needless to say ^{that} ~~that~~ respondent ^{has} denied, having changed any such site plan.

23. In this way, the complainant ^{Res ✓} failed to prove his case. Complaint in hand is thus dismissed.

24. As mentioned above, although respondent has requested to initiate proceedings against the complainant for misleading this forum, due to pendency of so many cases, I do not think proper to initiate any such proceedings ^{and to ✓} by increasing burden of litigation upon this forum. Request in this regard is declined.

25. Parties to bear their own ~~case~~ ^{case} costs.
26. File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer
Haryana Real Estate Regulatory Authority,
Gurugram. 13.01.2025