

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

Complaint no. : 7874 of 2022
Date of decision : 16.05.2024

Pankaj Kaushik and
Ruchika Kaushik
Address: 4105, Sector 23 A, Gurugram.

Complainants

Versus

M/s JMD Promoters Limited
Address : 1. JMD Regent Square, Mehrauli Gurgaon
Road, Gurgaon - 122001.
2. 6, Devika Tower, Upper Ground Floor,
Nehru Place, New Delhi - 110019.

Respondent

APPEARANCE:

For Complainant:

Mr. Krishna Sharma Advocate

For Respondent:

Mr. Pankaj Chandola Advocate

ORDER

1. This is a complaint filed by Mr. Pankaj Kaushik and Mrs. Ruchika Kaushik (allottees) under section 31 read with section 72 of the

- Real Estate (Regulation and Development) Act 2016(in brief Act of 2016), against respondent viz. M/s JMD Promoters Limited.
2. According to complainants, on 11.09.2006, Builder Buyer Agreement was executed between both the parties, for unit no.1102, Tower G,11th Floor ad-measuring 1875 sq. ft. in "JMD Gardens", situated in village Islampur, Tehsil & District Gurugram for total sales consideration of Rs.64,68,750/-.
 3. As per clause 15.1 of BBA, respondent was required to handover the possession of unit by March 2010 i.e. approx. 3.5 years from signing of BBA. After many follow ups, respondent handed over the physical possession of the said unit to them (complainants) on 06.08.2012. Subsequently, sale deed was executed between the parties on 25.03.2013.
 4. At the time of the execution of the Builder-Buyer Agreement, respondent represented that they are in possession of the necessary approvals from the DTCP, Haryana vide License No. 03 to 12 of 2005 to commence with the construction work of the Residential Project which will include a School, Dispensary and Community Centre in the area. However, till date no construction of Dispensary and Community Centre has taken place at the site.
 5. It was discovered by them(complainants) later on that balcony area is not included in the agreement (BBA). As per clause 3.1 of BBA, definition of super area did not include the balcony. However, in clause 4 of the sale deed, the balcony was included in the definition of the super area and thereby decreased the total super area of the



flat. The super area mentioned in BBA was 1875 sq. ft. @ 3450 per sq. ft. and the Built up area was 1549 sq. ft. which included the area of the balcony. In the Builder Buyer Agreement, balcony is not included in the super area. At the time of executing the sale deed, respondent coerced them (complainants) to accept the amended definition of super area which included balcony.

6. The respondent promised in the Sales Brochure, and also under BBA that bathrooms would be fitted with bath tub and geyser and the Master bedroom with inbuilt cupboard. Bathrooms of the unit allotted to them (complainants) were not as per the promised specifications. Respondent had charged a significant amount of money for various facilities and amenities like amphitheatre, school, shopping complex etc. but did not provide the amenities.
7. The quality of construction and services provided were of inferior quality to what had been promised by the respondent. Most of the towers suffered from serious structural defects. Almost all the flats of every tower have seepage, since inception. The moisture and seepage caused deterioration of floor joints, beams, subflooring, insulation, and electrical-mechanical systems. They (complainants) had strong apprehension that prolonged water logging will soften the soil and weaken its weight bearing capacity.

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8. Respondents are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to them (complainants) by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
9. In present case, as per section 12 of the RERA Act 2016, the promoter is liable for giving any incorrect, false statement etc. As per section 11 (4) of the RERA Act. 2016, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the RERA Act. 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over possession as per the terms and agreement of the sale. Honourable Authority has decided to treat such complaints as an application for non-compliance of contractual obligation on the part of the promoter/ respondent in terms of section 34(f) of The Act of 2016.
10. Citing all this, the complainants sought following reliefs: -
- To direct the respondent to compensate the (complainants) for the sum of Rs.11,24,700/- along with interest as per the RERA Act, as compensation for selling unit with reduced built up area.
 - To direct the respondent to pay a compensation of Rs.15,00,000/- for not providing basic amenities and for poor construction quality.
 - To direct the respondent to compensate the complainants with a sum of Rs.25,00,000/- for the harassment and mental agony faced by complainants.

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- iv. To direct the respondent to pay a sum of Rs.1,00,000/- as litigation cost.

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

11. That the unit no. G-1102, Tower- G, 11th Floor, admeasuring 1875 sq. ft. (super area) in the Project "JMD GARDENS" situated at Sohna Road, Gurgaon was originally allotted to Mr. Gurinder Singh Bawa vide Apartment Buyer Agreement dated 11.09.2006.
12. On 02.03.2010, respondent received an application from the original allottee for issuance of "No Objection Certificate" for transfer of the said unit in the name of the present complainants i.e. Mr. Pankaj Kaushik and Mrs. Ruchika Kaushik, subject to fulfilment of the requisite terms and conditions required for transfer as per terms and conditions mentioned in Agreement dt. 11.09.2006 of allotment letter and agreement to sell which shall also be binding upon the prospective buyer/transferee. For all practical purpose the complainants became allottees only from 15.03.2010 in the said Project.
13. That in the matter of *Ms. Renu Garg vs. M/s Pioneer Urban Land & Infrastructure Ltd. and Varun Gupta vs Emaar MGF Land Limited (CR/4031/2019)*, this Ld. Authority has held where the

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allottee steps into the shoes of the original allottee after the expiry of the due date of handing over possession, then the rights of the subsequent allottee shall arise only w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement, whichever is earlier. As per clause 15.1 of the ABA, due date of possession was 15.09.2009. Complainants stepped into the shoes of the original allottee on 15.03.2010 i.e after the due date of handing over of possession and is covered by the category in the aforementioned case. Complainants had always been aware of the clauses with respect to possession, delay possession charges as well as the nature of the sale area etc. as agreed between the parties in the Apartment Buyer Agreement prior to getting the same endorsed in their favour.

14. Occupation Certificate for the specific tower, where the unit of the complainant is situated was received from the Competent Authority on 31.01.2011. Respondent issued Notice of Possession vide letter dated 28.03.2011, and subsequent reminders dated 28.05.2011 and 17.07.2012 were sent to complainants inviting them to take over the possession of the unit and execution of the Conveyance deed thereof. Complainants finally took over physical possession of unit on

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06.08.2012 and the keys on 08.08.2012. Conveyance Deed was executed on 25.03.2013.

15. After execution of the Conveyance Deed, the Complainant does not fall within the definition of Allottee as provided in section 2 (d) of the Real Estate (Regulation & Development) Act, since the relation of allottee and promoter stands concluded and all the obligations of the promoter under the agreement stand discharged. ~~That~~ After the execution of the Conveyance Deed, the buyer became the owner of the unit.

16. Present complaint is hopelessly barred by law of limitation. The possession in the instant case was offered on 28.03.2011, and the Conveyance Deed was executed on 25.03.2013. However, the present complaint has been filed only on 17.12.2022. There is a delay of more than 9 years 9 months from execution of the Conveyance Deed of the concerned unit, in filing of the complaint. Provisions of the Limitation Act, 1963 shall become applicable by virtue of Section 29(2) and Section 3 of the Limitation Act, 1963. The period of limitation shall be computed as per article no 55 and 113 of the Schedule, as per which period of Limitation shall be deemed to be 3 years. Since more than 3 years have elapsed, present complaint is not maintainable, before the Adjudicating Officer.

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17. That even as per Section 14(3) of the ~~RERA~~ ^{of} Act, 2016, a Promoter is liable for any structural defects in workmanship, quality etc. only for a period of 5 years from the date of handing over possession of the Unit to the allottee. In the present case these 5 years have also lapsed on 06.08.2017 since the possession of the Unit was handed over on 06.08.2012.
18. In the matter of *Vijay Kumar Vs. Swarna Rani & others, 2013 SCC OnLine P&H 22717 the Hon'ble Punjab and Haryana High Court* held that ignorance of law is not an excuse for condoning delay.
19. Hon'ble Supreme Court of India in *M/S Newtech Promoters and Developers Pvt. Ltd. And State of UP & others, 2022(1)RCR(Civil)289* held that the applicability of the provisions of RERA Act, 2016 are retroactive in nature and does not affect the project that are already complete or for which completion certificate has been granted.
20. On 28.03.2011, respondent made offer of possession and before execution of Conveyance Deed, complainants visited the unit and signed a undertaking cum affidavit on 14.04.2011. Clause 3, mention as "That I/We have visited the flat and satisfied ourselves as to the quality and standard of Construction with reference to the

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specifications provided in the flat buyer's agreement executed between me/us and the developer."

21. In view of the above facts, respondent prayed that the present complaint is devoid of merit and ought to be rejected with heavy costs.

I heard arguments advanced by Ld. Counsels for both of the parties and went through the documents placed on record.

22. Apart from disputing the claim of complainant, the respondent has raised a preliminary objection about maintainability of complaint, claiming it to be time barred. As per respondent, possession of subject unit was offered to the allottee/complainant on 28.03.2011, conveyance deed has been executed between the parties on 25.03.2013. In this way ^{having} any cause of action arisen on 28.03.2011, present complaint ^{is} highly delayed by 9 years and 9 months. Ld. Counsel for respondent reminded that as per Article 55 of ^{the} schedule attached with limitation act, ^a suit/complaint seeking compensation for breach of any contract, express or implied could have been filed within 3 years.

23. On the other hand, it is claimed on behalf of complainant that no period of limitation is described under Act of 2016.

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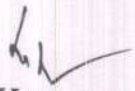
24. Section 18(2) mentions clearly that claim for compensation under this sub section shall not be barred by limitation provided under any law for the time being in force. According to Ld. Counsel for respondent, this provision makes it clear that claim under sub section 2 i.e., based on defective title of land will not be barred on the ground of limitation. ✓
25. I find force in this plea of Ld. Counsel. Perhaps considering that an allottee has no mean to find out whether promoter had a valid title upon the land of the project and hence the legislature thought it proper to allow filing of a complaint based on defective title, without any limitation ^{of} ~~for~~ period. No such exemption is allowed for compensation on other grounds. ✓
26. It is worth mentioning that complainant in this case ^{has} ~~has~~ prayed for compensation alleging that in the BBA, balcony area was not included in the super area, where at the time of execution of sale deed, area of balcony was also counted in super area. Similarly, quality of construction was inferior to the quality as promised by the respondent, at the time of the agreement. ✓
27. It is not denied that Complainants took possession of subject unit after being issuing letter of possession by the promoter on 28.03.2011. complaint in hands was filed on 10.12.2022.
28. In this way it can ^{not} ~~be~~ be claimed that complainant had no knowledge about the quality of construction or calculation of area of balcony in the super area, before filing this complaint. ✓



HARERA
GURUGRAM

29. It is in the public interest that there should be end of litigation. Sword of litigation cannot be allowed hanging on the head of a party indefinitely. In view of all this, the parliament enacted law of limitation.
30. On the basis of aforesaid fact, complaint in hands was highly delayed and the complainants ^{failed to explain} free to express this delay. Complaint is liable to dismissed on this ground alone. Without discussing merits of the case, complaint is thus dismissed being highly delayed.
31. ~~Same is thus dismissed.~~ Both parties to bear their own cost.
32. File to consigned to record room.

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