



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

COMPLAINT NO. 3058 OF 2019

Vinod KumarCOMPLAINANT(S)

VERSUS

SRS Real Infrastructure Ltd.RESPONDENT(S)

Date of Hearing: 03.12.2020

Hearing: 7th

Present: - Mr. Vinod Kumar complainant with
Mr. Himanshu Raj, Advocate through VC

Respondent already ex parte

ORDER (DR. SARITA GUPTA-ADJUDICATING OFFICER)

1. Brief facts of case of the complainant are that he had booked a unit measuring 1665 sq. ft. on 02.01.2012 in the project namely "SRS Royal Hills" situated at Sector-26, Rewari to be developed by the respondent company. Total sale consideration of the unit was ₹45,35,950/-. The

Sarita Gupta

complainant had paid an amount of ₹42,54,700/- which is more than 90% of the total sale consideration. Allotment cum Builder Buyer Agreement between both the parties was executed on 25.10.2012 wherein flat bearing no.202 in Tower C was allotted to him. As per terms of allotment cum Builder Buyer Agreement dated 25.10.2012, the respondent was under obligation to hand over possession of the unit up to 25.04.2017 i.e. within four and half years from the date of execution of the builder buyer agreement. Despite receiving 90% payment out of total sale consideration, the respondent has neither completed project nor has offered possession. The complainant has constantly tried to communicate with the respondent but all in vain.

The complainant has further submitted that because of mismanagement and severe defaults on the part of the respondent, he had filed complaint no. 74 of 2018 titled as Vinod Kumar Versus SRS Real Infrastructure Ltd. before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula in April 2018. Vide order dated 04.12.2018 passed by Hon'ble Authority refund along with interest at the rate prescribed under Rule 15 of HRERA Rules 2017 was allowed in favour of complainant. Despite order of Hon'ble Authority, amount was not paid by the respondent to the complainant. The complainant was compelled to file execution of the above said order which is pending adjudication before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula.

The complainant has approached this Court seeking compensation under following heads:

- (i) Escalation of cost of ₹67,32,843.75/- in buying a new flat with same specifications and dimensions as the booked flat
- (ii) Amount of rent ₹12,66,024/- that has been paid by him till 30.12.2019
- (iii) Mental harassment and agony faced by him at the rate ₹10,000/- per month which amounts to ₹9,60,000/-
- (iv) Litigation cost of ₹99,999/-.

2. Efforts were made to get the service effected on the respondent. It was transpired that Directors of the respondent company were confined in District Jail, Faridabad. Therefore, notice of the complaint got served through Superintendent of Neemka Jail, Faridabad. Despite service of notice, respondent neither appeared nor filed his reply till date. Vide order dated 19.11.2020 passed by this Court respondent was ordered to be proceeded against ex-parte.

3. Arguments raised by learned counsel for complainant have been carefully heard along with meticulous examination of the records of case.

4. At the outset, it has been argued by learned counsel for complainant that the complainant had booked a flat measuring 1665 sq. ft. in the project namely SRS Royal Hills of the respondent on 02.01.2012.

Allotment cum builder buyer agreement was executed between the complainant and the respondent on 25.10.2012 and flat no. 202 was allotted to complainant. Total sale consideration of the flat was ₹44,38,460/- against which the complainant had paid an amount of ₹42,54,700/-. Assurance was given to the complainant that actual and complete possession of the flat would be delivered by 25.04.2017 i.e. 4 years after the date of booking of the flat. The respondent company has completed only 40% of the project. The complainant has constantly tried to communicate with respondent with regard to possession and status of the project but the complainant could not succeed in establishing communication with respondent company. 8 years have already passed from the date of booking, no work has been carried out at the site of said project.

Aggrieved from the default conducted by respondent, the complainant had filed complaint before Hon'ble Haryana Real Estate Regulatory Authority Panchkula in April 2018. Vide order dated 04.12.2018, Hon'ble Haryana Real Estate Regulatory Authority has directed the respondent to refund entire amount paid along with interest as per Rule 15 of HRERA Rules 2017. The order passed by Hon'ble Authority has not been complied with. The complainant was forced to file an execution petition in which Hon'ble Authority has ordered recovery of amount by attachment and sale of assets of respondent vide order dated 11.09.2019.

5. It has further been argued by learned counsel for complainant that complainant is also entitled to compensation for the financial losses suffered by him for the period of non-delivery of possession of the flat, deficiencies in service and unfair trade practice on the part of the respondent.
6. The complainant has sought compensation under different heads: escalation of cost for buying new flat, amount of rent paid by the complainant on account of default of respondent, mental harassment and agony faced by him on account of respondent and litigation cost incurred by the complainant.
7. Notice was sent to the respondent. Despite service of notice upon respondent through Jail Superintendent, the respondent had opted not to appear before the court and it was ordered to be proceeded against ex-parte.
8. From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, it has transpired that allotment cum builder buyer agreement was executed on 25.10.2012, copy of which has been placed on record at Annexure C2 at page 26 in the paper book of complaint. It bears signatures of Vinod Kumar(complainant) and also authorised signatory on behalf of respondent. As per clause 4.1 of builder buyer agreement, possession was to be handed over up to 25.04.2017. Since the respondent failed to hand over possession of the flat to the complainant, the complainant had filed complaint no.74 of 2018 before Hon'ble Haryana Real Estate Regulatory

Authority Panchkula in the year 2018. Vide order dated 04.12.2018 passed by Hon'ble Authority, refund of amount paid by the complainant (₹42,54,700/-) was allowed in favour of complainant. Learned counsel for complainant has placed on record copy of order dated 11.09.2019 passed by Hon'ble Authority in execution no. 546 of 2019 vide which the property of the respondent has been ordered to be attached and sold in execution of order dated 04.12.2018.

9. The complainant has sought compensation under various heads before this Court.

(i) The first head of compensation is escalation of cost in buying a new flat with same specifications and dimensions as the flat booked with the respondent company. It has been argued by learned counsel for complainant that the complainant had booked flat having super area of 1665 sq. ft on 02.01.2012 when the cost of the said flat was ₹2665.75 per sq. ft. which comes to ₹44,38,460/- being the total sale consideration. Whereas the cost of the new flat same specification and dimensions as the flat booked with the respondent on the date of filing of complaint i.e. 19.12.2019 is at least ₹6709 per sq ft, total sale consideration comes to ₹11,170,568.25/-. It has been argued by learned counsel for complainant that difference of the price on the date of filing of complaint and on the date of booking of flat comes to ₹4043.75

per sq ft which comes to ₹67,32,843.75/-, to which amount the complainant is entitled to. To prove escalation in cost to purchase a flat as on today, learned counsel for complainant has placed on record documents of nearby builders namely M/s Urban Land Management Sector 25, Rewari and BM Gupta Developers Pvt Ltd Sector 25 and 26, Rewari which are within 500m range of the project in question. No doubt the documents placed on record by learned counsel for complainant relating to M/s Urban Land Management Sector 25, Rewari and BM Gupta Developers Pvt Ltd Sector 25 and 26, Rewari show the price of flat at the rate of ₹6709 per sq. ft. yet it is not the only factor which needs to be calculated. By merely placing on record the brochure of the other projects, the complainant does not become entitled to escalation of cost at the rate which are being offered by near by projects. The facilities offered and cost of infrastructure always vary. In section 71 of the RERA Act there is no such grant of compensation such as escalation of cost. It is worthwhile to point it out here that refund has already being allowed in favour of complainant and that too along with interest. No ground is made out to award compensation to complainant under the head cost of escalation.

(ii) The next head of compensation claimed by the complainant is the amount of rent that has been allegedly paid by him on account of default of respondent.

It has been argued by learned counsel for complainant that the complainant had booked flat with the respondent on 02.01.2012. Till 30.12.2019 he has paid rent in the sum of ₹12,66,024/-. Learned counsel for complainant has placed on record Annexure C-5 showing the rent paid from the year 2013-14 till 31.12.2020, total of which comes out to ₹12,64,024/-. At this stage, it is relevant to mention here that possession of the flat was to be delivered to the complainant on 25.04.2017. It is not understandable as to why the complainant has shown the rent paid by him with effect from the year 2013. Learned counsel for complainant has placed on record copies of pay slips issued by Oil and Natural gas Corporation Limited (ONGC), New Delhi for the period of November-December 2012; June, October-November 2013; July-August 2014; May, August, September, December 2018; January, April, May, August 2019; February, March, October 2020. In all these pay slips, the complainant has highlighted HRA, HRR overrun, HRR incl retro and perks showing housing. There was no need to place on record the pay

slips prior to April 2017. Counsel for complainant has also placed on record letter dated 31.08.2020 issued from office of ONGC, New Delhi showing that Vinod Kumar (complainant) has been residing at Vasant Kunj since 18.07.2017 on leased accommodation. At this stage, it is to be clarified that leased accommodation means the amount of rent is being paid by the Authority not by the employee. He has also placed on record a copy of letter written by him to his office highlighting that on leased house, HRA is not being paid to an employee. Copy of letter dated 04.01.2018 by ONGC to the owner of the house shows that flat at Vasant Kunj, New Delhi had been taken on lease by ONGC for residential purpose of Vinod Kumar from 01.12.2017 to 31.10.2018. Sanction orders dated 04.01.2018 and 25.05.2019 by ONGC show that excess amount was paid by employee at ₹9475/- and ₹1470/- respectively. Annexure-1 shows the details of leased accommodation from 01.11.2018 to 31.12.2018, 01.02.2019 to 30.04.2019, 01.05.2019 to 31.03.2020 and 01.04.2020 to 31.03.2021 and rented accommodation from 01.01.2019 to 31.01.2019. At all the places address of Vasant Kunj, New Delhi has been written. Though lengthy arguments have been advanced and a number of documents either showing pay slips or leased accommodation have been placed on record.


Yet the complainant has not clarified as to how he would had been living at Rewari in the flat which was to be allotted by respondent, particularly when he was posted at New Delhi. The matter would have been entirely different if the place of posting of complainant and location of the flat was in one city or it was practical to commute from one place to other. It is no argument of counsel for complainant that the complainant could commute daily from Rewari to New Delhi. No ground is made out to award any compensation to complainant under this head.

(iii) Compensation has further been sought by complainant under the head of mental agony faced by the complainant on account of default of the respondent. He has claimed ₹10,000/- per month from the date of booking i.e. on 02.01.2012 till 30.12.2019, the date of filing of complaint, total of which comes to ₹9,60,000/-. Firstly, it is to be pointed out that mental harassment of the complainant had not started from the date of booking i.e. 02.01.2012. At the most, the complainant can allege mental harassment from the date on which possession was to be delivered i.e. 25.04.2017. A total sum of ₹25,000/- is allowed as compensation on account of mental harassment.


(iv) The last head on which compensation is claimed is litigation cost at ₹99,999/-. He has placed on record photocopy of acknowledgment receipt in the amount of ₹99,999/- and the date is 23.02.2018. It is pertinent to mention here that under the signature name of the signatory has not been mentioned and moreover the complaint has been filed on 21.12.2019. It is not understandable as to why amount of ₹99,999/- was paid one year and 10 months prior to filing of complaint. It does not take around two years to draft the complaint. A lump sum of ₹25,000/- has been awarded to complainant under the head of cost of litigation.

10. In these terms, present complaint is **disposed of**. File be consigned to record room and order be uploaded on the website of the Authority.

03.12.2020


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DR. SARITA GUPTA
(ADJUDICATING OFFICER)

Note: This order contains eleven (11) pages and all the pages have been checked and signed by me.


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DR. SARITA GUPTA
(ADJUDICATING OFFICER)