



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. -262 of 2021

Date of Institution: -26.02.2021

Date of Decision: - 04.08.2021

Sandeep Yadav s/o Sh. Om Prakash Yadav r/o #332, Ward No. 6, Near Saini Truck Body, Vikas Nagar, Kalaka Road, Rewari – 123401.

....COMPLAINANT

VERSUS

M/s Ashiana Realtech Pvt. Ltd. through its Managing Director/ Directors and Authorized Representatives, 03-205, Progressive Chamber, D-3 Block Commercial Complex, Prashant Vihar, North West Delhi-110085

....RESPONDENT

Hearing:- 7th

Present:- Sh. Kunal Thapa Advocate, Counsel for the complainant through Video Conferencing.

Sh. Jatinder Nagpal Advocate, Counsel for the respondent through Video Conferencing.

Sarita Gupta

ORDER:-

Brief facts of the complainant's case are that:

1. Sh. Sandeep Yadav, complainant had booked an apartment bearing no. B1-806 having area of 1600 sq ft situated in respondent's project-The Cubix, Dharuhera, Rewari. Builder buyer agreement was executed between the complainant and respondent-developer on 01.08.2013. The complainant had paid amount of ₹ 23,78,401/- to the respondent against basic sale consideration of ₹ 38,70,000/-. The possession of apartment was to be delivered to the complainant upto 01.08.2017. The respondent has not offered possession of the apartment till date and has not paid any delay compensation/interest.
2. Feeling aggrieved, present complaint has been filed by the complainant seeking compensation of ₹ 5,00,000/- under Section 12 of the RERA Act,2016 for furnishing false information with respect to licenses of the project, compensation amounting to ₹ 2,50,000/- under Section 14 of the RERA Act, 2016 for developing the project without approval of building plans from the competent Authority, compensation amounting to ₹ 20,00,000/- for delay being caused for more than 4 years in offering possession of unit and for mental, physical and financial harassment and ₹ 2,00,000/- as litigation cost.
3. Respondent had appeared and filed reply stating therein that the project namely 'The Cubix' is being developed on an area of about 16.618 acres situated in sector-23, revenue estate of village Maheshwari, Tehsil Dharuhera, Rewari,

Haryana. The project is duly registered with the Authority vide Registration no. HRERA-PKL-RWR-39-2018 dated 20.08.2018 which is valid upto 14.09.2021. The project got delayed due to *force majeure* circumstances which were beyond the control of the respondent. Vide orders dated 16.07.2012, 31.07.2012 and 21.08.2012 passed by Hon'ble Punjab & Haryana High Court in CWP No. 20032 of 2008 ground water extraction was banned in Gurgaon, vide orders passed by Hon'ble NGT mining of sand in Haryana and Rajasthan was banned, Reservation agitation in Haryana; order of Hon'ble NGT to stop construction to prevent emission of dust in the month of April 2015 and during demonetization in November 2016 and GST etc. adversely affected the progress of the project. Due to ongoing/ prevailing Corona disease (Covid-19) lockdown situation, all the projects have already got extension of six months as observed by the Legal Authorities. It has been submitted that this Court has no jurisdiction to entertain the present complaint as the project has been registered under the Real Estate (Regulation And Development) Act, 2016 (herein after referred to as RERA Act). Service Plan was approved on 13.02.2019, fire plan approval was sanctioned on 25.10.2019 and electricity plan was approved on 10.12.2019. It was construction linked plan. Because of high level of inflation and escalating construction cost and financial crunch, the respondent has revised the date of completion which has been accepted by Hon'ble Authority. The registration of the respondent has been extended by Hon'ble Authority till 14.09.2021. Land area 16.612 to 9.42 acre was migrated. The respondent has revised building layout

plan, service plan, fire plan and electricity plan which took much time. Lack of material equipment, optimal use of labour and resources, availability of sub-contractors, stalling of the delivery of equipment, various public protests also delayed the procurement and transportation. An amount of ₹11 crores (approximately) is pending towards the allottees. Hon'ble Ministry of Environment and Forest and the Ministry of Mines had imposed serious restrictions against mining of sand from Aravalli Region. The respondent has applied for grant of occupation certificate to DTCP on 07.12.2020. The respondent has submitted quarterly progress report for compliance of Phase-1 of the project till 31.12.2020 to show its bonafide upon which certificate was issued by the Architect on 11.01.2021.

4. Preliminary objections have been taken by the respondent that the complaint is highly misconceived, premature and not maintainable. Apartment buyer agreement was executed much before coming into force of the RERA Act. The adjudication of the complaint for compensation has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as HRERA Rules) and no other agreement. Since the project is almost completed, the relief of granting compensation is not made out. The complainant has failed to bring on record any violation of provision of RERA Act,2016. The respondent has changed the completion date which was earlier submitted to complete the project

on or before 14.03.2020. Later on extension was sought due to unavoidable circumstances and extension was granted till 14.09.2021 by Hon'ble Authority. Proper court fee has not been paid.

5. On facts, it is submitted that Flat No. B1-806, 8th Floor, Tower Block B-1 measuring 1600 sq. ft. approximately was allotted to the complainant vide allotment letter dated 14.05.2013. Apartment Buyer Agreement was executed between the parties on 01.08.2013. The possession of the flat was to be handed over within 42 months from the date of agreement with a grace period of 6 months. Even after unavoidable delays, 100% construction has already been completed by the respondent builder. The report prepared by the Chartered Accountant showing the stage of development/ construction work till 31.12.2020 has been annexed. The remaining facilities are under construction. The complainant has himself admitted that he had stopped making further payments due to delay occurred in delivering the possession. The complainant has paid ₹ 23,78,401/- till 30.12.2014 and thereafter stopped making the payment. Since the complainant is not entitled to receive any amount, the respondent has prayed for dismissal of the complaint.

6. Arguments advanced by both ld. counsel for the parties have been carefully heard along with meticulous examination of records of the case.

7. Record reveals that the present complaint has been filed by the complainant on 26.02.2021 seeking relief of compensation as per provisions of

RERA Act, 2016 for delay for more than 4 years, compensation for harassment, mental pain and agony, litigation cost, making sales without approval of building plans and rent paid by the complainant during 4 years.

8. The first argument raised by learned counsel for the respondent is that the builder buyer agreement was executed in the year 2013 and the RERA ACT has come in operation in the year 2017. Hence the provisions of RERA Act are not applicable to the facts of the present case.

9. Though the RERA Act,2016 has come into operation in year 2017 and in the present case builder buyer agreement was executed on 01.08.2013 yet it is pertinent to mention here that in the year 2017 when the RERA Act came into operation, the project of the respondent had not been completed and RERA Act,2016 is fully applicable to ongoing projects also. Complainant is within his right to approach the Real Estate Regulatory Authority for redressal of his grievances. Hence this argument of ld. counsel for respondent is turned down.

10. On 10.06.2021, an application was moved by the complainant for placing on record rent receipts and rent agreement dated 28.03.2017, 06.03.2018, 08.11.2019 and 24.12.2020. Vide order dated 20.07.2021, said application was allowed as the rent agreements for the afore-mentioned dates were not disputed by ld. counsel for the respondent. Ld. counsel for the complainant has placed on record copies of rent agreements dated 28.03.2017, 06.03.2018, 08.11.2019 and 24.12.2020.

By way of present complaint, along with other reliefs the complainant has sought reimbursement of rent paid by him till the time possession has not been handed over to him. Ld. counsel for the complainant has placed on record copy of rent agreement dated 28.03.2017 which is for the period 01.04.2017 to 28.02.2018, rate of rent is ₹ 15,000 per month and the total of the rent has been shown in the table supplied by ld. counsel for the complainant as ₹1,80,000/-. Next copy of rent agreement is dated 06.03.2018 w.e.f. 01.04.2018 to 28.02.2019 and the rate of rent is ₹ 14,000 per month and total has been mentioned as ₹ 1,68,000/-. The next copy of rent agreement is dated 10.11.2019 w.e.f. 10.11.2019 to 09.10.2020 and the rate of rent is ₹ 20,000/- per month and the total has been shown as ₹ 2,40,000/-. Last agreement placed on record by ld. counsel for the complainant is dated 24.12.2020 w.e.f. 10.11.2020 to 09.10.2021 and the rate of rent has been shown as ₹ 20,000/- per month and the total amount has been shown as ₹ 1,60,000/-. It is pertinent here to mention that first two rent agreements dated 28.03.2017 and 06.03.2018 are for H.no. 1743, Sector-45, Gurugram. Rent agreements dated 10.11.2019 and 06.11.2020 are for Flat No. 203, Tower C, SS Coral Woods, Sector-84, Gurugram. All the four rent agreements are for house/ flat situated at Gurugram. The project in which the complainant had booked a flat is situated at Sector-23, Dharuhera, District Rewari, Haryana. The flat in the above said project of the respondent was booked by the complainant on 01.08.2013 and possession was to be delivered by 01.02.2017 with a grace period of six months i.e. 01.08.2017. Possession has not been offered till now. Though during the course of the arguments, ld. counsel for

the respondent has stated that 95% of the project is complete and application for grant of occupation certificate has been applied by the respondent. Ld. counsel for the complainant has filed a separate complaint for refund of the paid amount which is pending before Hon'ble Authority. The complainant has been shown as resident of Vikas Nagar, Kalaka Road, Rewari. He had also booked flat in the project of the respondent at Dharuhera, Rewari. It is not understandable as to why the complainant had taken on rent the house or the flat at Gurugram right from 2017 till date. If the house or the flat would had been taken by the complainant on rent at Rewari, the matter would had been entirely different. He could say that since possession was not offered by the respondent in the project in which the flat was booked by the complainant, the complainant had no option but to take the house on rent for which he is entitled to compensation from the respondent for failure to complete the project on time. Since all the rent deeds are of the house/ flat situated at Gurugram, the complainant cannot be said to be entitled to compensation on account of rent.

11. The first head under which the complainant has sought compensation to the extent of ₹ 5 lakh is under Section 12 of the RERA Act, 2016 for furnishing false information with respect to licenses of the project. Section 12 of the RERA Act reads as:

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model

apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

12. It has specifically been mentioned in Section 12 of the Act that if any person sustains any loss or damage by reason of any incorrect/ false statement, he shall be compensated by the promoter. Meaning thereby, the complainant has to prove that because of such incorrect information, he has suffered loss or damage, which is missing in the present case. The complainant has not mentioned as to what false information was given to him with respect to licenses of the project. He has failed to depose as to what loss he has incurred because of that false information. In the absence of any such proof or pleading of loss or damage, the complainant cannot be said to be entitled to any amount by way of compensation under this head.

13. The second ground taken by the complainant seeking compensation of ₹ 2,50,000/- under Section 14 of the RERA Act, 2016 for developing the project without approval of building plans from the competent Authority.

It has been argued that the building plans were approved in the year 2018. Record shows that the complainant has placed on record copy of approval of building plan certificate as Annexure C-7 showing that it was approved on 30.10.2018. Though revised building plans of the project of the respondent have been approved on 30.10.2018 and were not available in the year 2013 when the builder buyer agreement was entered into between the complainant and the respondent. Yet it does not attract any compensation in favour of the complainant. Hence no compensation is being paid under this head.

14. The third ground taken by the complainant seeking compensation of ₹ 20,00,000/- for delay in delivery of possession of the unit which has caused mental, physical and financial harassment to him.

As per record, the complainant had paid ₹ 3,98,958/- on 08.03.2013, ₹ 3,98,958/- on 07.05.2013, ₹ 5,57,358/- (₹ 3,98,958/- + 1,58,400/-) on 06.07.2013, ₹ 3,57,879/- (₹ 1,99,479/- + ₹ 1,58,400/-) on 16.08.2014, ₹ 3,62,679/- (₹ 1,99,479/- + ₹ 1,58,400/-) on 20.10.2014, ₹ 3,02,569/- (₹ 1,99,479/- + ₹ 1,03,090/-) on 30.12.2014. A sum of ₹ 23,78,401/- was deposited by the complainant till 30.12.2014. The possession of apartment was to be delivered to the complainant upto 01.08.2017. Thus, despite payment of

₹ 23,78,401/- to the respondent against basic sale consideration of ₹ 38,70,000/, the respondent has failed to deliver the possession of the apartment till date. The utilization of the amount of ₹ 23,78,401/- since the deemed date of delivery of the apartment i.e. 01.08.2017 can be termed as disproportionate gain to the respondent and loss to the complainant, which can be further termed as a result of default committed by the respondent. It has caused much mental pain and agony and harassment to the complainant. The compensation is quantifiable and it would be appropriate if amount of compensation is calculated @6% per annum.

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
As per statement of Accounts (Annexure-C-3)			
23,78,401/-	01.08.2017 to 04.08.2021	6 %	05,72,380/-
Total=23,78,401/-			Total=05,72,380/-

15. The fourth ground taken by the complainant seeking compensation of ₹ 2,00,000/- on account of litigation charges. However, the complainant is awarded ₹25,000/- as litigation cost.

16. Sequel to aforesaid observations, this complaint is allowed. The respondent is directed to pay an amount of ₹ 05,97,380/- (₹ 05,72,380/- + ₹ 25,000/-) (rupees five lakhs ninety seven thousand and three hundred eighty only). The

amount shall be paid in two instalments, first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

Sarita Gupta
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Dr. Sarita Gupta
[Adjudicating Officer]

04.08.2021

Note: This order contains 12 pages. All the pages have been checked and signed by me.

Sarita Gupta
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Dr. Sarita Gupta
[Adjudicating Officer]

