



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. - 159 of 2020

Date of Institution:-31.01.2020

Date of Decision:- 08.09.2021

Ms. Vijaylaxmi Sharma, d/o late Shri Brij Bhushan Goswami, permanent resident of House No. 754, Sector 9, Faridabad, Haryana, 121006, presently residing at House No. 602, Sector 9, Faridabad, Haryana, 121006

...COMPLAINANT

VERSUS

Emerald Home Developers Private Limited, Corporate Office : 6/97, DDA Flats, Madangir, New Delhi-110062

...RESPONDENT

Hearing: 22nd

Present: Mr. Shiv Kumar, Advocate counsel for the complainant through video conferencing

Mr. Rajesh Goswami, Advocate with Ms. Suchita Kakkar, counsel for the respondent through video conferencing

Sapita Gupta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are as:

1. The complainant had booked a unit measuring 1250 sq. ft. in project of the respondent namely 'Emerald Heights' by paying an amount of ₹ 5,00,000/- as earnest money on 25.10.2012. Despite repeated requests from October 2012 to June 2013, respondent did not provide the complainant with allotment letter and further asked her to pay ₹ 5,00,000/- for allotment. Said amount was paid by the complainant on 27.06.2013. However, respondent company issued allotment letter on 19.03.2015. Vide said allotment letter, complainant was allotted a 2BHK apartment measuring 1310 sq.ft. The total sale consideration of the unit was ₹49,60,750/ including EDC/IDC and all other charges. As per provisional registration letter dated 23.05.2015 issued to the complainant, the price of the unit was ₹ 41,50,000/-. Between June 2015 and June 2017 complainant made repeated requests to the respondent to execute a builder buyer agreement. The respondent/ promoter insisted the complainant to make full payment before signing the building buyer agreement. By the year 2017, complainant had paid total of ₹ 55 lakh to the respondent. In December 2017, respondent issued two cheques dated 13.12.2017 & 25.12.2017 to the complainant total amounting to ₹ 10,00,000/- paid as a refund of the excess amount than the actual amount of the

unit. The complainant vide email requested the respondent to transfer the amount vide cheque dated 25.12.2017 into her account through RTGS mode. Amount of ₹ 5,00,000/- was received by the complainant in her account. Complainant tried to contact the respondent several times but respondent did not respond to any communication. After having waited for a long time, on 14.01.2019, the complainant sent a legal notice to respondent/promoter for delivery of possession of unit and refund of excess amount of ₹ 3,50,000/- as she had paid ₹ 45 lakh and the price of the unit as per provisional allotment letter was ₹ 41,50,000/-.

2. Upon notice, the respondent appeared through counsel and filed written statement taking preliminary objections with regard to suppression of material facts and the complaint has been filed on basis of false averments, the complainant is herself guilty as she got allotment of flat and thereafter herself converted into another flat in order to purchase a pair of flats, now deliberately claiming re-allotment of earlier flat and complaint is devoid of merits and is liable to be dismissed

3. On merits, it is submitted that vide letter dated 19.03.2015 respondent company had allotted a flat bearing no 701 in Tower A, in its project 'Emerald Heights' situated at sector 88, Faridabad. Total sale price of the allotted flat was ₹ 50,10,750/-. The allotted flat was a corner flat carrying preferential location charges which were duly dropped by the respondent as the said flat was booked by complainant through her real brother who was a key associate of the developer company. Further a discount of ₹ 50,000/- was also given to the complainant.

Between June 2015 to June 2017, the respondent company carried out construction work at the site of the project and duly demanded payments from the complainant as per construction linked plan. However, the complainant had only paid a sum of ₹ 10 lakh out of ₹ 20 lakh to be paid till June 2017. It is the complainant who had approached the respondent with a desire to purchase two adjoining flats in place of already allotted flat. Since the adjoining flats to originally allotted flat no. 701 were already allotted, the deal was finalised for a pair of flats at 5th floor bearing no. 501 and 508. After approval, the complainant had transferred a sum of ₹ 35 lakh to the respondent. By June 2017 complainant had already paid a total sum of ₹ 55 lakh for two flats. In December 2017, complainant expressed her inability to purchase pair of flats as she did not require both of them anymore. On request of the complainant that she needed funds for the marriage of her daughter, respondent company released a sum of ₹ 10 lakh by way of two cheques but the complainant got encashed only one through her bank and insisted to transfer the second by way of RTGS. In the period from February 2018 to November 2018, complainant was fully aware that the flat in question has been constructed and was ready for habitation. Despite repeated requests to the complainant for making balance payment, complainant did not come forward to execute builder buyer's agreement on one pretext or the other. It has further been submitted by the respondent that on 05.11.2018 respondent company had applied for grant of occupation certificate with Directorate of Town and Country Planning. In the meantime since the units already stood constructed and all basic

amenities have been provided, the respondent company had offered fit out possession of the units to its buyers and the same offer was also made to the complainant. Complainant is not at all interested in making remaining payment and to take fit out possession of the unit.

4. The complainant instead of taking possession, trying to create unwarranted situation of disputes to mount pressure on the respondent without any reason, whereas the complainant is not interested in purchasing the unit. Dismissal of the complainant has been prayed for.

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

6. As per the version of the complainant, she had booked a unit measuring 1250 sq.ft. in project of respondent "Emerald Heights". She had paid earnest money of ₹5,00,000/- on 25.10.2012. Respondent company had issued allotment letter on 19.3.2015 vide which unit no.701 of 2 BHK measuring 1310 sq.ft. was allotted to the complainant. As per provisional registration letter dated 23.5.2015 issued to the complainant, the price of the unit was ₹ 41,50,000/-. By the year 2017, the complainant had paid ₹ 55 lakh to the respondent, out of which the respondent had returned an amount of ₹.10,00,000/- vide two cheques dated 13.12.2017 and 25.12.2017. Till the time of filing of complaint i.e. 31.01.2020, the respondent has not offered possession of the unit. On the other hand, the plea of the respondent is that it is the complainant who had requested the respondent

to give two adjoining flats. In that eventuality, flat no.501 and 508 were allotted to the complainant instead of originally allotted flat no.701 in Tower 'A'. Later on the complainant had refused to take two flats i.e. flat no.501 & 508 as she was in need of money for the purpose of marriage of her daughter. In these circumstances, ₹10,00,000/- were given back to her vide cheques dated 13.12.2017 and 25.12.2017. To support his argument, ld. counsel for the respondent has drawn attention of the Court towards copy of allotment letter dated 10.12.2017 in which unit no.501, tower 'A', 2BHK measuring 1310 sq.ft. was allotted to the complainant, placed on record as Annexure-22. The total cost of the said unit has been mentioned as ₹ 50,10,750/- and after giving discount of ₹ 50,00,000/-, the total amount comes to ₹ 49,60,750/-. This document has been denied by the complainant on the ground that there is no receipt of this allotment letter and it also does not bear her signatures. It is the argument of ld. counsel for the complainant that two adjoining flats were never asked for by the complainant. The respondent has made up a false story as the possession of the unit no.701 was not handed over to the complainant. Possibility cannot be ruled out that unit no.701 might have been sold to some other person.

7. Perusal of record shows that unit no.701 in tower 'A' was allotted to the complainant vide allotment letter dated 19.3.2015, copy of which has been placed on record as Annexure-2. The total cost has been shown as ₹ 50,10,750/-

and after discount of ₹50,00,000/-, the total amount has been shown as ₹49,60,750/-. The receipt dated 18.3.2015 is for the amount of ₹ 10,00,000/- against advance for registration. The receipt also mentions the allotment of unit no.701 in tower 'A'. It is pertinent to mention here that in the floor-wise price list and payment plan, copy of which has been placed on the record as Annexure-4, from 4th floor to 7th floor, for area measuring 1310 sq.ft., the cost of the unit has been shown as ₹ 41,50,000/-. Another allotment letter, copy of which has been placed on record as Annexure-22, against the price of the unit which was described for unit no.701 has been mentioned i.e. ₹ 49,60,750/-. On one hand, respondent has made up a story that the complainant had requested for two adjoining units, since adjoining unit of unit no.701 was not available, in these circumstances, two units 501 & 508 were allotted to the complainant. There is no reference of unit no.508 in any of the correspondence between the complainant and the respondent company. It is also not understandable as to why ₹ 55 lakh were taken by the respondent, when one unit was costing ₹49,60,750/-. Again when as per the version of the respondent, one unit was required by the complainant and it was cancelled. Why an amount of ₹ 10,00,000/- was given back to the complainant particularly when unit no.501 was also costing ₹ 49,60,750/-. Neither there is any request in writing to give two adjoining units nor there is anything on the record as to when two units bearing nos. 501 & 508 were allotted to the complainant and later on unit no.508 was cancelled. It is all an oral version of the respondent. On one hand, unit no.501 is being allotted to

the complainant on 10.12.2017 and on the other hand, on 13.12.2017 and 25.12.2017 ₹ 5,00,000/- each is being given back to the complainant.

8. As per version of the respondent, the respondent company had applied for occupation certificate on 5.11.2018 and after that the respondent company had started offering fit out possession of the unit and it was also offered to the complainant. Neither any letter showing offer of possession has been placed on record by the respondent nor any date has been mentioned. Though later on the respondent counsel has placed on record that it had received occupation certificate on 11.12.2020, yet it does not show as to when offer of possession was given to the complainant even during the pendency of the present complaint. Very cleverly builder buyer's agreement was not executed by the respondent, obviously there was no date of handing over the possession of the flats. In 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s HICON Infrastructure) & another, it has been observed by Hon'ble Supreme Court that if there is no time mentioned in builder buyer's agreement when possession is to be handed over, reasonable period has to be taken into consideration and reasonable period would be three years. In the present case since a period of three years is to be computed, it would be counted from the date of allotment of unit i.e. 19.3.2015. After calculating three years from this date, it would be 19.3.2018. Since the possession of the unit has not been offered even till now, it is hereby observed that the respondent company has utilised the amount of ₹ 45 lakh paid

by the complainant to the respondent for more than three years i.e. w.e.f. 19.3.2018 till date i.e. 8.9.2021.

Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant factors enumerated in section 72 of the RERA Act are to be taken into consideration.

Section 72 of the RERA Act is reproduced as:

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the Adjudicating Officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the Adjudicating Officer considers necessary to the case in furtherance of justice.”

9. To prove the payment of ₹ 55 lakh paid by the complainant, the complainant has placed on record copies of details of bank transactions showing payment of ₹ 5,00,000/- on 22.10.2012 , ₹ 5,00,000/- on 27.6.2013 , ₹ 5,00,000/- on 4.6.2015 , ₹ 5,00,000/- on 4.6.2015 , ₹ 10,00,000/- on 15.6.2017 , ₹ 10,00,000/- on 25.6.2017 , ₹ 5,00,000/- on 27.6.2017 & ₹ 10,00,000/- on 25.6.2017. It has been admitted by the respondent in para no.12 of reply on merits. It is pertinent to mention here that the refund of ₹ 10 lakh has been admitted by the complainant as well as by the respondent, resultantly showing payment of ₹ 45 lakh by the complainant to the respondent.

10. As per the provision of section 13 of the RERA Act, the promoter respondent was required to execute written agreement to sell and without execution of written agreement to sell, the promoter cannot take more than 10% of the cost of the flat from the allottee. Admittedly, in the present case, the respondent has not executed written agreement to sell. It is also admitted case of both the parties that up to 27.6.2017, the complainant had paid an amount of ₹ 45 lakh against booked flat. This is clear violation of section 13 of the RERA Act by the respondent. It is also proved on the record that after taking amount of ₹ 45 lakh from the complainant till 27.6.2017, the respondent has failed to execute a builder buyer agreement with the complainant and even after more than 3 years possession has not been delivered till date which 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. After taking reasonable time for delivery of possession, three years from the date of allotment, the possession was to be delivered by the year 2018 which in fact has not been delivered even till today. It can be said to be continuous default on the part of the respondent. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default for a number of years i.e. 3 years and 6 months and utilisation of the amount paid by the complainant to the respondent starting from 2018 till 2021. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6%.

Compensation calculation

Sr. No.	Amount (in ₹)	Time period	Rate of interest	Compensation Amount (in ₹)
1.	45,00,000/-	19.3.2018 to 08.09.2021	6%	9,38,712/-

11. Sequel to aforesaid discussion, this complaint is allowed. The complainant is also awarded ₹ 25,000/- as litigation cost. Respondent is directed to pay an amount of ₹ 9,63,712/- [₹9,38,712/- + ₹25,000/-] (₹ Nine lakh sixty three thousand seven hundred and twelve only) to the complainant in lieu of compensation. 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.

In these terms, the present complaint stands disposed of. File be
consigned to record room.

Sarita Gupta
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Dr. Sarita Gupta
[Adjudicating Officer]

Note : This judgement contains 12 pages and all the pages have been
checked and signed by me.

Dated:

08.09.2021

Sarita Gupta
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Dr. Sarita Gupta
[Adjudicating Officer]