



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. 759 OF 2021

Date of Institution: 30.07.2021

Date of Decision: 06.01.2022

Sumant Singh Ajay s/o Shri Netra Pal Singh r/o H.No.147, Village Bindu
Khadaak, Post Office Bhalaswagaz, Distt. Haridwar, Uttarakhand, Pin 247668.

....COMPLAINANT

Versus

1. M/s Konark Rajhans Estates Pvt. Ltd., Registered Office at village Kot Behla,
Sector 14, Panchkula Extension II, Haryana.
2. M/s Konark Rajhans Estates Pvt. Ltd. Office at SCO 406, First Floor,
Sector 20, Panchkula, Haryana.
3. Sh. Aditya Bansal s/o Sh P.D. Bansal, r/o B-1165, Shastri Nagar, Delhi being
authorized signatory for M/s Konark Rajhans Estate Pvt. Ltd.

....RESPONDENTS

Hearing: 10th

Present: - Mr. V K Aggarwal, Counsel for Complainant
Mr. Vivek Sheoran, Counsel for respondents no.1 and 2 through VC

JUDGEMENT:

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

2. The complainant Sumant Singh Ajay had booked an apartment 2 BHK measuring 1110 sq.ft. with the respondent builder Konark Rajhans Estates Pvt. Ltd. vide application dated 01.06.2016. He was allotted apartment no. F-0505. Apartment buyer agreement between the complainant and respondent was executed on 16.06.2016. Both the parties had mutually agreed to change the allotted apartment from 2 BHK to 3 BHK measuring area of 1405 sq. ft. In pursuance of said change, the complainant was allotted apartment no. D-405. Apartment buyer agreement was again executed on 29.07.2016. Basic sale price of 3 BHK apartment bearing no. D-405 was ₹30,83,975/-. The complainant was offered a payment plan of 30:70 and accordingly, the complainant had deposited ₹9,89,960/- being 30% before possession of the apartment. As per agreement, the possession of apartment was to be delivered on 31.05.2019. The respondent could not adhere to the said agreement and failed to give possession to the complainant. Since possession could not be delivered

to the complainant, the complainant had instituted a complaint bearing no.39 of 2020 on 05.02.2020. It was adjourned sine die. The present complaint has been instituted on 30.07.2021 before this Court seeking relief of refund of deposited amount of ₹9,89,960/- along with interest @ 18% per annum, compounded annually on the amounts from the respective dates of deposit till its actual realization, litigation charges to the tune of ₹50,000/-, amount of ₹10,000/- per month towards rent from the date of promised possession of apartment i.e. 31.05.2019 till the realization of amount, the complainant had suffered a cardiac stroke on 04.10.2020 due to financial stress caused by non-availability of apartment, total of medical expenses coming to ₹1,84,209/-.

3. Upon notice, respondents no.1 & 2 appeared and filed written statement taking preliminary objections regarding maintainability of the complaint, the complaint is gross misuse of provisions of Real Estate Regulatory (Regulation & Development) Act 2016, the complainant has no locus-standi or cause of action to file the present complaint, hence, complaint is liable to be dismissed. The present complaint is a misleading attempt on the part of the complainant to invoke powers conferred on Adjudicating Officer. The complaint filed by the complainant has already been adjourned sine die by Hon'ble Authority, only the prayer clause has been twisted. The actual relief sought is the same before Hon'ble Authority and the Adjudicating Officer. Adjudicating Officer has no jurisdiction to decide the relief sought by the

complainant. In view of arbitration clause, this complaint is not maintainable either before Hon'ble Authority or Adjudicating Officer and all the disputes are to be referred to an Arbitrator to be appointed as per provisions of Arbitration & Conciliation Act 1996. Respondent no.3 is not liable for any relief claimed by the complainant. The complaint is liable to be dismissed on the ground of misjoinder of parties and respondents no.1 & 2 are arrayed to settle the dispute with the complainant amicably through mutual discussions.

4. On merits, it has been stated that respondents no.1 & 2 are ready to offer apartment of choice of complainant in Tower 'A' or Tower 'B' in the same project, development work of which is in full swing and possession would be tentatively offered by next year. Respondents no.1 & 2 are not in financial position to refund the amount and hence they are offering the same type of apartments in other towers. It is denied that the complainant was offered payment plan of 30:70. The respondents have prayed for dismissal of the complaint.

5. Shri Aditya Bansal, the authorized signatory of respondent company has been impleaded as respondent 3. Though notice was sent to him for his service but it could not be delivered with the report that office was closed or door was locked. Since he was authorized signatory of respondent company, there was no need of his presence as company was being represented through counsel, notice was not sent to him again. Hence nobody appeared on his behalf.

6. Vide order dated 10.03.2021 passed by Hon'ble Authority, Complaint no.39 of 2020, filed by complainant for refund of the amount paid by him was ordered to be adjourned sine die. Vide application dated 11.10.2021 moved by the complainant, in the present case whereby relief of refund sought by the complainant was withdrawn and the complaint was allowed to be proceeded for remaining relief of compensation along with cost of litigation.

7. On the same day of withdrawing relief of refund, the complainant filed rejoinder on 11.10.2021 reiterating the averments made in the complaint and also it was stated that if the respondents were ready to settle the dispute amicably through mutual discussions, the complainant could also consider request of the respondent, if found genuine. In pursuance to offer of respondents to settle the dispute and explained by ld. counsel for the complainant, an opportunity was given to both the parties for mediation. The respondent company had offered the complainant to pay the total amount paid by him along with interest @ 7% per annum in three equal monthly installments. Later on, the offer was declined by the complainant's counsel.

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

Sarita Gupta

9. To begin with, it has been argued by ld. counsel for the complainant that the complainant Sumant Singh Ajay had initially booked 2 BHK apartment measuring 1110 sq.ft. with respondent builder Konark Rajhans Estate Pvt. Ltd., Panchkula vide application dated 01.06.2016. The complainant was allotted apartment no.F-0505. An Apartment buyer agreement between the complainant and the respondent was entered into on 16.06.2016. Both the parties had mutually agreed to change allotment of apartment from 2 BHK to 3 BHK measuring 1405 sq.ft. and the complainant was allotted apartment no.D-405. Apartment buyer agreement with regard to the changed apartment was entered into on 29.07.2016, copy of said agreement has been placed on record as Annexure-7. Basic sale price of 3 BHK unit no.D-405 was ₹30,83,975/-. Complainant was offered payment plan of 30:70. The copy of payment plan as offered by the respondent to the complainant has been placed on record as Annexure-1. Accordingly, the complainant had deposited 30% before possession of the apartment. As per Apartment buyer agreement, possession of the apartment was to be delivered by 30.11.2019. The possession of the allotted apartment no.D-405 has not been offered till date. The respondent had offered alternate apartment, which was not acceptable to the complainant. The complainant along with his family wanted to shift from Utrakhnad to Panchkula in the said apartment after possession was handed over to him. Since the possession of the allotted apartment was not offered, the complainant had no

option but to reside in a rented house and the complainant had been regularly paying rent, to which he is entitled to recover from the respondent. The complainant had also suffered cardiac stroke because of the conduct of the respondent for non-delivery of possession of the apartment and insufficiency of fund with the complainant. Ld. counsel for the complainant has prayed for granting compensation for mental torture and harassment for not giving the possession of the allotted apartment to the complainant, medical expenses incurred by him and also the rent paid by him along with litigation charges.

10. To rebut the arguments of ld. counsel for the complainant, it has been argued by ld. counsel for the respondent that the construction of tower-D in which the apartment was allotted to the complainant was not completed for the reasons beyond the control of the respondent. Even in that eventuality, construction of towers A & B was completed. The complainant was offered alternate apartment either in tower A or in tower B, as per option of the complainant. Despite that he did not agree to take the possession in tower A or B. During the course of mediation, the complainant was offered refund of whole amount paid by him along with interest @ 7% per annum. Even that was not acceptable to the complainant. Since the alternate apartment in other tower has been declined by the complainant and even the offer of refund along with interest @ 7% per annum has also been declined by the complainant, he is not entitled to receive the compensation under any head.

11. Perusal of record shows that on application filed by the complainant, 2 BHK apartment F-0505 was allotted to the complainant. Apartment buyer agreement was executed between them on 16.06.2016. Later on, with consent of both the parties, apartment was changed from 2 BHK to 3 BHK measuring 1405 sq.ft. and the complainant was allotted apartment no. D-405. Apartment buyer agreement was again executed between them on 29.07.2016. Out of basic sale price of ₹30,83,975/-, the complainant had paid an amount of ₹9,89,960/- being 30%. Copy of apartment buyer agreement dated 29.07.2016 has been placed on record as Annexure-7. As per clause-9 of the said agreement, possession of apartment was to be handed over within a period of 36 months from the receipt of first installment against allotment of the said apartment and grace period of six months from the date of start of construction of the tower. As per details supplied by ld. counsel for the complainant, the first installment of ₹1.00 lakh was paid on 01.06.2016. The period of 36 months has to be counted from 01.06.2016. As per Annexure-7, apartment buyer agreement dated 29.07.2016, grace period of six months is also to be taken into consideration. After taking 36 months from 01.06.2016 the date of deemed possession comes to 31.05.2019. After adding six months of grace period, it comes to 30.11.2019. Though ld. counsel for the respondent has argued that the exemption of Covid-19 is also to be granted, yet till 31.05.2019 or 30.11.2019, there was no Covid-19 and exemption for any time on this ground cannot be

given. Deemed date of possession would be considered as 30.11.2019. It is not disputed that the respondent had offered alternate apartment in other tower A or B, yet it is the option of the complainant whether to accept the same or not. The complainant did not accept the offer of possession of alternate apartment in tower A or B. The respondent was also ready to refund the total amount paid by the complainant along with interest @ 7% per annum, yet rate of interest was not acceptable to the complainant. So far as refund of total amount paid by the complainant is concerned, the complaint filed by the complainant seeking refund is already pending before Hon'ble Authority and has been adjourned sine die as jurisdiction to deal with refund matters is pending adjudication before Hon'ble Apex Court. Admittedly possession of the allotted apartment has not been offered till date. The complainant has suffered mental harassment and agony for all these months. It is also apparent that amount of ₹9,89,960/- was deposited by the complainant till 30.01.2018. As per apartment buyer agreement, deemed date of possession is 30.11.2019 but possession of the allotted apartment has not been offered till date. Meaning thereby amount of ₹9,89,960/- deposited by the complainant was being utilised by the respondent till date i.e. date of passing of order which can be termed as wrongful gain to the respondent and wrongful loss to the complainant. Since the possession has not been offered till now, it can be said to be continuous default on the part of respondent. It would be in the interest of the justice if compensation to be paid to the complainant is determined after

taking into account the default for a number of years from 30.11.2019 to 06.01.2022 i.e. 2 years + 1 month and 6 days. The compensation is quantifiable. In 2020 SCC online SC 667 titled as Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and others vs DLF Southern Pvt.Ltd., it has been observed by Hon'ble Apex Court in Para no.55 that

the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective apartments with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of occupation certificate.

The amount of compensation under the head of mental agony and harassment is computed on the amount deposited by the complainant @ 6% per annum as:-

S.No.	Amount (in ₹)	Period	Rate of interest	Total (in ₹)
1.	9,89,960/-	30.11.2019 to 06.01.2022	6%	₹1,24,979/-

12. The next head under which the complainant has sought compensation is medical expenses to the tune of ₹1,84,209/-. It has been argued by Id. counsel for the complainant that on 04.10.2020, due to financial stress caused by non-availability of apartment, the complainant had suffered cardiac

stroke. He has placed on record copy of invoice history and payment details of medical expenses as Annexure-4, which shows that the complainant was admitted in Medicity Hospital, Uttarakhand on 04.10.2020 and was discharged on 07.10.2020. Though under head of charges, cardiac emergency, angiography, PTCA, stent charges and wire charges have been mentioned, yet by merely placing on record bills of any hospital with regard to cardiac stroke, it does not stand proved that the cardiac stroke to the complainant was because of stress caused to him because of not handing over possession of apartment in Asha Panchkula Project, Sector 14, Panchkula, project of respondent. He has also not clarified that the said amount of ₹1,84,209/- was not claimed by him from Insurance Company. The complainant has also not placed on record any prescription slip or admission slip or history of the disease on the basis of which it could be proved that cardiac stroke was as a result of stress caused to him for not giving possession of apartment by the respondent. The complainant has failed to prove nexus between cardiac stroke suffered by him and anxiety or mental pressure caused to him because of not handing over possession of the allotted apartment. In the absence of any such proof, it can be said that the complainant is not entitled to medical charges to the tune of ₹1,84,209/- under the head medical expenses.

13. The next head under which compensation has been claimed by the complainant is the rent paid by him. It is the argument of learned counsel for the

complainant that if possession of the allotted apartment would have been given, he could have shifted from Uttarakhand to Panchkula in his own apartment. Since the possession of allotted apartment has not been offered, the complainant along with his family had to stay in rented house at Uttarakhand. Ld. counsel for the complainant has placed on record copy of rent deed dated 18.04.2016 for the period from 20.04.2016 to 19.03.2017 as Annexure-5 and the address of the rented house has been mentioned as Tower No.C-1-1, Apartment No.32, Metropole City, Rudrapur, Tehsil Rudrapur, District Udham Singh Nagar, 263153 (Uttarakhand). This is pertinent to mention here that this rent deed is for a period of 11 months and monthly rent is ₹10,500/-. It is relevant to point it out here that this rent deed is pertaining to the period 20.04.2016 to 19.03.2017. In the present case, the complainant had entered into apartment buyer agreement initially on 16.06.2016 and after change of the allotted apartment from 2 BHK to 3 BHK on 29.07.2016. As per agreement, possession of the apartment was to be delivered on 30.11.2019. Prior to deemed date of possession, the complainant is not entitled to claim rent as compensation. Though the rent deed dated 18.04.2016 is for a period of 11 months i.e. with effect from 20.04.2016 to 19.03.2017, yet he has placed on record copy of statement of bank account issued by Canara Bank, Rudrapur, Uttarakhand as Annexure-6 in which the rent paid by the complainant to the same landlady has been shown from December 2019 to January 2021. Ld. counsel for the complainant has also placed on record

another copy of rent deed dated 13.03.2021 for the period 15.03.2021 to 14.02.2022. The address of the rented house has been shown as Ward No.13, D1 D2, Pragati Vihar Colony, Civil Lines, Rudrapur, District Udham Singh Nagar and the rent has been shown as ₹10,000/- per month.

14. Since it is proved on the record that possession of allotted apartment has not been delivered to complainant till date and the complainant was compelled to live in rented house at Uttarakhand, from where he wanted to shift to Panchkula, it would be in the interest of justice that amount of rent claimed by him for these months is given to him. Statement of bank account (Annexure 6) shows that in December 2019, January- February 2020, the rent paid has been shown as ₹10,989/- per month, for the month of March 2020 and April 2020, the rent paid has been shown as ₹12,087/- per month, for the month of May, June, July, August, November 2020 and January 2021, the rent paid has been shown as ₹13,296/- per month. Since March 2021, the rented house has been changed and the address of new rented house is Ward No.13, D1 D2, Pragati Vihar Colony, Civil Lines, Rudrapur, District Udham Singh Nagar. The rent paid to new landlady has been shown as ₹10,000/- for the month of March 2021, ₹14,000/- each for the month of June and August 2021. For remaining months, no document has been submitted by ld. counsel for complainant. Though total amount of rent paid by the complainant from December 2019 till August 2021 comes to ₹1,74,917/- as per statement of bank account, but the complainant in

his prayer has claimed rent as ₹10,000/- per month and also rent agreements dated 18.04.2016 and 13.03.2021 executed between complainant and land lady (Annexure-5 and Annexure-3) respectively show that rent agreed between the parties was ₹10,500/- per month and ₹10,000/- per month. So the total amount of rent as claimed by the complainant comes to ₹1,40,000/-. The amount of ₹1,40,000/- is ordered to be paid by the respondent to the complainant in the form of compensation under the head rent claimed and paid by the complainant.

15. A sum of ₹25000/- is awarded to the complainant as cost of litigation.

16. The total compensation comes to ₹1,24,979/- under the head mental agony and harassment + ₹1,40,000/- amount of rent + ₹ 25,000 cost of litigation = ₹2,89,979/- (Rupees Two Lakh Eighty Nine Thousand Nine Hundred Seventy Nine only).

17. In these terms the complaint is partly allowed. The respondent is directed to pay an amount of ₹2,89,979/- (Rupees Two Lakh Eighty Nine Thousand Nine Hundred Seventy Nine only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

Saeela Aupta

18. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

06.01.2022

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This order contains 15 pages (fifteen pages) and all pages have been checked and signed by me.

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

