


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

Complaint no. : 4655of2021
Date of decision : 21.03.2022

1. KARAN SINGH CHETTRI
2. PRATIMA CHETTRI
R/O : H. No. R-18B,
Windsor Court,
DLF Phase-4, Gurugram
Haryana-122001.

Complainants

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सत्यमेव जयते
Versus
1. PARSVANATH DEVELOPER LTD
ADDRESS: Parsvnath Tower near
Shahdara Metro Station, Shahdara
New Delhi-110032
 2. PARSVANATH HESSA DEVELOPERS
PVT. LTD.
ADDRESS: Parsvnath Tower near
Shahdara Metro Station, Shahdara
New Delhi-110032

Respondents

APPEARANCE:

For Complainants:

Mr. Sukhbir Yadav Advocate

For Respondents:

Mr. S.M. Ansari Advocate



ORDER

1. This is a complaint filed by Mr. Karan Singh Chettri and Ms Partima Chettri (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondents/developers.
2. As per complainants, on 25.08.2006, Mr. Sukhdev Bhardwaj and Mr. Amit Bhardwaj booked a flat in respondents' project **Parsvanath Exotica**, situated at sector-53/54, Gurugram. The respondents allotted a unit No. B5-801 admeasuring 3390 sq. ft. for a total sale consideration of Rs 1,80,85,650/-.. A flat buyer's agreement (FBA) dated 08.03.2007 was executed between original allottees and respondents, in this regard. Said flat was subsequently purchased by complainants from aforesaid allottees on 22.03.2012. The transaction was endorsed in favour of complainants on 03.04.2012.
3. As per Clause 10 (a) of FBA, possession of said flat was to be delivered by the developers to the allottee within 36 months from the date of commencement of construction of particular block in which flat is located, or of receipt of sanction of building plans/revised building plans and approvals from concerned authorities.. The respondents failed to complete



- the construction work and consequently failed to deliver the possession of unit, as per agreement
4. As per the demands raised by respondents, they (complainants) made timely payment of Rs 1,79,28,453/- i.e more than 95 % of total sale consideration, along with miscellaneous and additional charges etc, but to their utter dismay, there has been no progress at the construction site.
 5. The complainants being aggrieved by delay in delivery of possession of flat, filed a complaint before The Haryana Real Estate Regulatory Authority, Gurugram (in brief the authority) being complaint No. 1945 of 2018 for refund of amount paid alongwith compensation. As the power to grant compensation lies with Adjudicating Officer, the Authority held that complainants may file separate complaint and seek compensation before adjudicating officer.
 6. As respondents failed to hand over the possession of the flat by the due date of possession i.e. 17.02.2013, the Authority vide its order dated 20.03.2019 directed respondents to pay delayed possession charges to the complainants at the rate of 10.75 % on the amount deposited by the complainants, from the due date of possession till offer of possession within 90 days of order and thereafter monthly payment of interest till offer of possession before 10th of subsequent month.

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7. The respondents issued letter of offer for fit-outs on 22.03.2018. The same increased the area of flat by 105 sq. ft, without any justification and thereby increased the cost of flat. As respondents could not carry out the finishing work of the said flat, they offered rebate of Rs 17,00,000/- to the complainants. In said letter, respondents have acknowledged the delay in possession of unit from September 2013 and credited Rs 17,62,800 in the statement of account.
8. Moreover, Shri. Sanjeev Jain, Managing Director of Respondents company, represented before the Authority that the project would be completed by 31.12.2019, as per the date mentioned in the RERA registration application submitted with the registration branch of RERA Gurugram. It is pertinent to mention that the project is still incomplete.
9. The complainants had purchased the flat with the hope that the burden of rental will go off, if they will live in their own house. But despite receipt of more than 95 % of total sale consideration, the respondents failed to fulfil their commitments.
10. There has been delay of more than 15 years from the date of booking of flat, and respondents have miserably failed to hand over the possession of unit as per the terms of FBA. The respondents have abandoned finishing of project due to which complainants are being unnecessarily harassed mentally and financially. They (complainants) are entitled to be compensated by the respondents. As per the current



market trends, the rental value of 4 BHK apartment is Rs 80,000/- to Rs 88,000/- per month. The rental loss to complainants comes out to be Rs 85,60,000/- from February 2013 to November 2021.

11. Contending that the respondents have breached the fundamental terms of the contract, and delayed the delivery of possession, and thereby caused huge financial loss and mental agony and harassment, the complainants have sought compensation of Rs 85,60,000/- on account of rental loss to complainants from February 2013 to November 2021, Rs 10,00,000 for causing mental agony and Rs 5,00,000 as cost of litigation.
12. The respondents contested the complaint by filing a reply. It is contended that complainants are not entitled to get reliefs as sought in the present complaint, as the same has already been granted by the Authority. The issue raised in the present complaint is arising out of the same cause of action, which has already been adjudicated by the Authority in the case bearing **No. 1945 of 2018 titled as Karan Singh Chetri & Anr & Anr v Parsvanath Developers Ltd & Ors.** The complainants have even filed **Execution Petition No. E/6057/2019/19455/2018** before the Authority qua the judgement passed by the authority vide order dated 20.03.2019.
13. It is further contended that complainants have not approached this Forum with clean hands and have concealed

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the material fact with respect to execution petition qua the order of Authority dated 20.03.2019 being adjourned sine die.

14. The complainants have tried to misuse the provisions of law to get unlawfully gain from respondents. The Authority vide its order 20.03.2019 has already awarded delay possession charges interest at the rate of 10.75 %. as a cumulative compensation towards mental agony, rent, litigation cost etc. The prayer as sought by complainants in the present complaint cannot be allowed as it would amount to double jeopardy. The Hon'ble Supreme Court vide its order dated 08.03.2021 in the civil appeal bearing No. 274 of 2020, observed that in cases where delayed possession charges have already been awarded to complainants, any additional compensation whether for loss of rent or towards the mental agony caused to complainants, cannot be granted as, it would be against the interest of justice.
15. Contending all this, respondents prayed for dismissal of complaint.
16. There is no denial that present complainants have filed a complaint, before the Authority, seeking 'delay possession charges' and said complaint has already been decided by the Authority. Now, through complaint in hands, the complainants have sought compensation of Rs.85,60,000/-



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on account of rental loss from February, 2013 to November, 2021, Rs.10,00,000/- for mental agony and Rs.5,00,000/- as costs of litigation. Learned counsel representing the respondents reiterated the plea of his client well mentioned in its reply. According to him, when 'delay possession charges' have already been granted, no further relief as sought by the complainants can be allowed to latter by any court including this forum. Learned counsel relied upon a case titled as **National Building Construction Company Limited vs Sri Twivedi(2021) 5SCC 273 Civil Appeal No.274/2020**. There was a delay in handing over possession beyond the contractual stipulated time period, under Clause 20 of Letter of Allotment. A period of 2 ½ years was stipulated, which came to an end, at the end of December, 2014. An additional period of one year was granted. After which, the due date came to an end with December, 2015. The allottee filed a complaint under The Consumer Protection Act, 1986, before the National Consumer Disputes Redressal Commissioner(NCDRC). The NCDRC granted interest @10%p.a. w.e.f. July, 2015. The matter went to the Supreme Court of India where their Lordships held that once NCDRC awarded interest for delay in handing over possession, there was no justification to award additional

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amount of Rs.2,00,000/- by NCDRC as compensation for loss of rent.

17. There is no dispute over the mandate given by the Apex court.

Aforesaid complaint was filed under The Consumer Protection Act, 1986. The Parliament has passed The Real Estate(Development and Regulation) Act, 2016, which is a special Act, with specific objects including to protect the interest of consumers, in real estate sector. Section 19 of said Act describes the rights and duties of allottee(s). Sub-section 4 of same provides that allottee shall be entitled to claim refund of amount paid alongwith interest at such rates as may be prescribed and compensation in the manner, as provided under this Act from the promoter, if the promoter fails to complete or is unable to give possession of apartment/plot or the building, as the case may, in accordance with the terms of agreement for sale. Section 18 of Act of 2016 prescribes for return of amount and compensation by the promoter. According to it, if promoter fails to complete or is unable to give possession of an apartment/plot or the building, as the case may be:

- a) In accordance with terms of agreement for sale or as the case may be duly completed by the date specified therein or;
- b) Due to discontinuance of his business.....

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In such a case, he(promoter) shall be liable, on demand to the allottee..... to return the amount received by it in respect of that apartment/plot or the building, as the case may be with interest at such rates as may be prescribed in this behalf **including compensation** in the manner as provided under this Act. Both of these provisions cast obligation upon the promoter, to refund amount alongwith interest **as well as to pay compensation** in the manner, as provided under the Act.

18. The Apex court through a recent judgment given in case titled as **M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors Etc in Civil Appeal No.6745-6749 of 2021** referred both of aforesaid provisions i.e. Section 18 and 19 of the Act and observed as follow-

"22 If we take a conjoint reading of sub-section(1),(2) and (3) of Section 18 of the Act, the different contingencies spelt out therein.(A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed;(C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act: (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed."



19. Their Lordships explained that section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both of these provisions recognise right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.
20. As described above, according to Section 18 and 19 of the Act, also relied upon by three Judges Bench of the Supreme Court of India in case referred above, it is clear that apart from interest on delayed possession charges, the complainants are entitled to compensation, in the manner, as provided under this Act.
21. So far as the plea of learned counsel for respondents that if compensation as requested by the complainants is granted, the same may amount to double jeopardy for his client, as the same has already been directed to pay delayed possession charges is concerned, I am not in consonance with the learned counsel in this regard. As discussed above, in case, where the promoter fails to hand over possession of unit to the allottee, as per agreement entered between him/it and the allottee, the latter has both the remedies i.e. delay possession charges with interest, as well as compensation, under this Act.

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22. As per Section 72 of Act of 2016, following factors are to be taken in account by the Adjudicating Officer while adjudging the quantum of compensation:

- 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

23. There is nothing on record to show if any disproportionate amount is gained by builders, by not handing over possession of unit in question to the complainants. Similarly, there is no evidence showing that respondents committed any such default earlier also. So far as the loss caused to the complainants, in not getting possession of unit in question in time is concerned, as per Ld. counsel representing them (complainants) his clients had hoped that after getting possession of flat in question, their burden of rental would go off and they will start living in their own house. Unit in question is stated to be a dwelling house comprising four bedrooms, one drawing/dining room, one kitchen and four toilets, total area admeasuring 3390- sq ft. It is submitted by learned counsel that rent of such accommodation in nearby localities is Rs 80,000 - Rs 88,000/- per month. He collected

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this information after downloading the same from the website i.e. Magic Bricks.com and 99 acres. Com.

24. On the other hand, as per learned counsel for respondents, when the authority has already allowed interest for delayed possession, the amount of rent cannot be granted.

25. It is a matter of common sense, of which a court can take judicial notice that value of rupee is declining every year, due to inflation. Perhaps, provision to award interest is to compensate a person in equalising value of rupee. Due to this reason, award of interest cannot be termed as compensation. If respondents had handed over possession of flat in question in agreed time, the complainants were at liberty to reside therein or to rent it out. But due to failure of respondents in handing over possession, the complainants were deprived of their right to live in said flat or to rent it out. The respondents had undertaken to hand over possession by February, 2013. The complainants deprived of their right for more than nine years. The complainants did not produce any reliable evidence like rent agreement of similar accommodation in or nearby localities. Rs.80,000- Rs 88,000/- as claimed by complainants appears to be excessive. Quotations from websites of Magicbricks.com etc ^{are} not a reliable evidence.



26. On the basis of afore-discussed facts, this forum considers to award Rs 10,000 per month from the due date of possession till date of actual possession as compensation to the complainants for depriving them of their right to live in or to rent it out their own flat for more than 09 years as appropriate. Same is thus awarded to complainants.
27. Learned counsel for the respondents has claimed that complainants did not produce any evidence to show that they (complainants) suffered any mental agony as claimed by them and hence nothing can be awarded in the name of mental agony.
28. To deprive a person from his right apparently causes mental agony to the sufferer. It is not necessary that such person should have suffered mental illness. A sum of Rs.1,00,000/- is awarded to the complainants for mental agony.
29. Although, the complainants have not filed any receipt of payment as litigation fee of their counsel, it is evident from the record that the same are being represented by an advocate. They (complainants) are entitled to costs of litigation.
30. The respondents are directed to pay all these amounts i.e. Rs.10,000/- per month from the due date of possession till date of actual possession, plus Rs.1,00,000/- within 90 days from today, along with interest @ 9.3 % p.a. from due date of

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possession till realisation of amount. Cost of litigation Rs 50,000 is also imposed upon respondents to be paid to complainants.

31. A decree sheet be prepared accordingly.

File be consigned to the Registry.

21.03.2022


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram



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