

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

Complaint no. : 4676of2021
Date of decision : 21.03.2022

KISH EXPORT LIMITED
Office Address :
6315/C-6/7, Vasant Kunj
New Delhi

Complainant


Versus


सत्यमेव जयते

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 Complainant: Mr. Sukhbir Yadav Advocate
For Respondent: Mr. S.M. Ansari Advocate



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ORDER

1. This is a complaint filed by Kish Export Limited (also called as buyer) 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 complainant, on 05.10.2004, Ms. Neeta Malik booked a flat in respondents' project **Parsvanath Exotica**, situated at sector-53/54, Gurugram. The respondents allotted a unit No. B1/1102 admeasuring 3390 sq. ft. for a sale consideration of Rs 93,22,500. A flat buyer's agreement (FBA) dated 30.05.2005 was executed between original allottee and respondents, in this regard. On 07.01.2006, Mr. Rajesh Kumar Yadav purchased the said flat from Neeta Malik. Subsequently, the unit was purchased by complainant from Mr. Rajesh Kumar Yadav on 25.03.2006. The transaction was endorsed in favour of complainant on 25.03.2006
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

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building plans/revised building plans and approvals from concerned authorities.

4. As per the demands raised by respondents, he (complainant) made timely payment of Rs 92,96,959/- i.e more than 95 % of sale consideration, along with miscellaneous and additional charges etc till 14.07.2020.
5. The respondents issued letter of offer for fit-outs on 28.05.2018. 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 7,50,000/- to the complainant. In said letter, respondents have acknowledged the delay in possession of unit from May 2011 and credited Rs 9,15,300 in the statement of account. The respondent issued certificate of possession dated 18.06.2014. The complainant took the possession of the unit for fit-outs and spent additional sum of Rs 16 lacs on interior and fit-outs. The complainant has paid entire sale consideration after adjustment of rebate on balance work, and nothing is due. Till date respondents have not received the Occupation Certificate of the project/Tower and have not handed over the lawful possession of the flat.
6. The complainant being aggrieved by the conducts of respondents, filed a complaint before The Haryana Real Estate Regulatory Authority, Gurugram (in short the

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authority) being complaint No. 244 of 2018 for possession of flat alongwith interest on deposited amount. As the power to grant compensation lies with Adjudicating Officer, the Authority held that complainant may file separate complaint and seek compensation before adjudicating officer.

7. As respondents failed to give timely possession of unit by the due date of possession i.e. 01.05.2011 , the Authority vide its order dated 13.09.2018 directed respondents to deliver the possession of unit on the date committed by the respondents and to pay delayed possession charges to the complainant at the rate of 10.45 % on the amount deposited by the complainant, for every month of delay from the due date of possession till 13.09.2018 within 90 days of order and thereafter on 10th of every month of delay till the handing over of possession as mentioned in their application for registration with the Authority.
8. Moreover, Shri. Sanjeev Jain, Managing Director of Respondent 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. Despite receipt of 100 % of sale consideration, the respondents failed to fulfil their commitments.

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9. 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 complainant is being unnecessarily harassed mentally and financially. The complainant is 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 complainant comes out to be Rs 1,01,60,000/- from May 2011 to November 2021.
10. 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 complainant has sought compensation of Rs 1,01,60,000/- on account of rental loss to complainant from May 2011 to November 2021, Rs 10,00,000 for causing mental agony and Rs 5,00,000 as cost of litigation.
11. The respondents contested the complaint by filing a reply. It is contended that complainant is 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. 244 of 2018 titled as Kish Exports Pvt. Ltd. v Parsvanath Developers Ltd & Ors.** The complainant has even filed **Execution Petition No. E/5/244/2018** before the



Authority qua the judgement passed by the Authority vide order dated 13.09.2018.

12. It is further contended that complainant has not approached this Forum with clean hands and has concealed the material fact with respect to execution petition qua the order of Authority dated 13.09.2018 being adjourned sine die.

13. The complainant has tried to misuse the provisions of law to get unlawfully gain from respondents. The Authority vide its order 13.09.2018 has already awarded delay possession charges interest at the rate of 10.45 % as a cumulative compensation towards mental agony, rent, litigation cost etc. The prayer as sought by complainant 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 complainant, any additional compensation whether for loss of rent or towards the mental agony caused to complainant, cannot be granted as it would be against the interest of justice.

14. Contending all this, respondents prayed for dismissal of complaint.

15. There is no denial that present complainant had filed a complaint, before the Authority, seeking 'delay possession

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charges' and said complaint has already been decided by the Authority. Now, through complaint in hands, the complainant has sought compensation of Rs.1,01,60,000/- on account of rental loss from May, 2011 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 complainant 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

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awarded interest for delay in handing over possession, there was no justification to award additional amount of Rs.2,00,000/- by NCDRC as compensation for loss of rent.

16. 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;

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b) Due to discontinuance of his business.....

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.

17. 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

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paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed."

18. Their Lordships explained that section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both 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.
19. 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 complainant is entitled to compensation, in the manner, as provided under this Act.
20. So far as the plea of learned counsel for respondents that if compensation as requested by the complainant 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.

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delay possession charges with interest, as well as compensation, under this Act.

21. 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

22. 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 complainant. Similarly, there is no evidence showing that respondents committed any such default earlier also. So far as the loss caused to the complainant, in not getting possession of unit in question in time is concerned, as per Ld. counsel representing him (complainant) his client had hoped that after getting possession of flat in question, his burden of rental would go off and he will start living in his 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 this information after downloading the same from the website i.e. Magic Bricks.com and 99 acres. Com.

23. 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.

24. 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 complainant was at liberty to reside therein or to rent it out. But due to failure of respondents in handing over possession, the complainant was deprived of his right to live in said flat or to rent it out. The respondents, had undertaken to hand over possession by May 2011. The complainant deprived of his right for more than ten years. The complainant did not produce any reliable evidence like rent agreement of similar accommodation in or nearby localities. Rs.80,000-88,000/- claimed by complainant appears to be excessive. Quotations from websites of Magicbricks.com etc ^{are not} not a reliable evidence

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25. 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 complainant for depriving him of his right to live in his own flat or to rent out for more than 10 years as appropriate. Same is thus awarded to complainant.
26. Learned counsel for the respondents has claimed that complainant did not produce any evidence to show that he(complainant) suffered any mental agony as claimed by him and hence nothing can be awarded in the name of mental agony.
27. To deprive a person from his right apparently caused 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 complainant for mental agony.
28. Although, the complainant has not filed any receipt of payment as litigation fee of his counsel. It is evident from the record that the same is being represented by an advocate. He(complainant) is entitled to costs of litigation.
29. 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 possession till realisation of amount. Cost of litigation Rs

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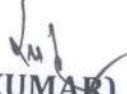


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50,000 is also imposed upon respondents to be paid to complainant.

30. 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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