



Chhattisgarh Real Estate Regulatory Authority, Raipur

Complaint No-M-PRO-2022-01826

**BEFORE
(FOR AND ON BEHALF OF C.G.R.E.R.A.)
(Deepa Katare, Adjudicating Officer)**

Smt. Sandhya Rani Bisi ,
W/o Shri Durga Madhab Mahapatra,
Address- Flat No. E-309, Avinash Capital Homes-II,
Ward No. 26, Kusha Bhau Thakre Ward,
Saddu, District-Raipur (C.G) **Complainant**

V/s

Shri Anand Singhania,
S/o Late Shri Santosh Singhania,
Address-R/o "Avinash House" Maruti Business Park,
G.E. Road, Raipur (C.G.) **Respondent**

Present :-

- (1) Shri Shrijan Shukla, Learned Counsel for Complainant.
- (2) Shri Shashwat Surana, Learned Counsel for Respondent.

(Project- "Avinash Capital Homes-II", Saddu, Raipur)

RERA Registered No. PCGRERA180618000227

Order dated 27.03.2023

1. The Complainant has filed instant complaint under section-31 of Real Estate (Regulation and Development) Act, 2016 in FORM-M for interest, compensation and damages to the effect that complainant is entitled for the interest @ 18% per annum on the entire amount paid by her, to the respondent, for the purchase of Apartment No. 309, Block- E in respondent's project "Avinash Capital Homes-II" (which is hereinafter referred as "the property" for the sake of brevity) situated at Mauza-Saddu, Ward No. 26, Kusha Bhau Thakre Ward, P.C. No. 44 Raipur (C.G) and compensation of Rs. 3,00,000/- (Rs. Three lakhs only) damages of Rs. 5,00,000/- (Rs. Five Lakhs only) from the respondent on the strength of agreement for sale.
2. From the rival contentions of both the parties the undisputed fact emerges in the case is that agreement for sale in February 2017 and registered sale deed were executed between the parties in respect of property.
3. Pleaded case of complainant is that in February 2017 complainant had entered into an agreement with respondent for purchase of the property in residential project "Avinash capital Homes II Apartment" for total consideration of Rs. 22,35,600/- (Rs Twenty two Lakhs, thirty five thousand and six hundred only)

and by virtue of said agreement it was incumbent upon respondent to complete the construction of apartment within 36 month i.e. by June 2019. Complainant has paid amount of Rs. 2,24,000/- (Rs Two Lakhs, twenty four thousand only) at the time of execution of agreement for sale and agreed to make piecemeal payment as per construction link plan mentioned in clause (5) of agreement for sale. Complainant always duly and diligently paid the amount mentioned in demand notice raised by respondent.

4. The complainant further contended that she also took loan from C.G. Gramin Bank and payment were made as per schedule but, respondent failed to deliver the possession as per the term agreed in agreement for sale and after the execution of sale deed possession of property was delivered to complainant on 12-08-2021, with inordinate delay. Complainant further pleaded that respondent has also withdrawn money from loan account of complainant maintained by C.G. Rajya Gramin Bank without having prior approval or authorization from complainant and there is also discrepancy in total area of apartment. In sale deed super built-up area is mentioned as 1242 sqft while in brochure it was mentioned as 1225 sqft. Complainant further advanced contentions that she has booked parking place for Rs. 1,18,000/- in the property but parking space provided by the respondent is faulty and has continuous water leakage problem. On demand for the receipt of payment made against parking space, the respondent has provided the receipt for Rs. 60,000/- and that too on account of unit brick work. Therefore, complainant has filed instant complaint for the relief (s) as referred in clause (1) of this order.
5. The respondent in his reply, beside denying the contentions of complainant vehemently, specifically submitted that the agreement for sale is a bilateral agreement wherein the complainant herself obligated to ensure compliance of the terms and conditions mentioned therein. The payments of the complainant was from the inception of the booking grossly delayed which is evident from the receipts and agreement filed by the complainant itself the complainant agreeing to buy a unit in the project in 2015 did paid the booking amount in parts and 15% booking amount was paid with delay of 603 days specifically i.e.(i) Rs. 51,000/- paid on 21.09.2015 (ii) Rs. 70,000/- paid on 25.11.2015, (iii) Rs. 1,03,000/- paid on 15.02.2016 (iv) Remaining booking amount paid on 17.05.2017 even months after executing agreement to sale.
6. Respondent further pleaded that the complainant had delayed in payments of all installment despite the schedule accepted in the agreement to sale and demands for payment raised by the respondent. In respect of the possession of the unit there were crystal clear agreement between the parties that the same would be subjected to the complainant making timely payments as per clause 5 of the agreement. Further the agreement also incorporated 6 months grace period along with exclusion of first rainy season i.e 4 months in addition to the 36 months which is being selectively quoted by the complainant, hence the scheduled possession as per the agreement also was after 45 months of agreement date that to was subjected to timely payments by the complainant and the complainant miserably failed to fulfil obligations on her part.
7. Respondent further advanced contention that the possession of the unit of the complainant has been handed over by the respondent on 12.08.2021 after execution of sale deed and after the complainant paying the agreed sale

consideration. Further the possession of the unit in question has been received by the complainant without any objection and protest as the complainant has himself breached the payment schedule making delays in payments in respect of the sale consideration. Further the entire nation was subjected to Covid-19 pandemic thereby resulting in several Lockdowns and restriction for several months even affecting lives and business even till date, further works and office of the Respondent as well was shut down during the period of lock down and restrictions and thus considering multiple sequence of events the possession of the unit was handed over to the complainant on August 2021.

8. Respondent further pleaded that it was on request of the complainant itself and the demand notes were raised to the bank from which the complainant has obtained loan for purchase of the unit in question and amount disbursed was well within the knowledge of complainant and accepted the same. The disbursement in question being done by the concerned bank on basis of loan obtained by the complainant from the same bank cannot be relied upon by the respondent. The complainant has not even made the concerned bank party to the present case only to harass the respondent and gain undue financial advantage by stating fabricated facts. That property being registered on 12.08.2021 incorporating all payment details and despite possession of the unit also obtained by the complainant the same is being objected is a result of an afterthought without any merits.
9. Respondent further pleaded that Complainant herself is stating contradictory version that in the brochure the super built-up area is shown as 1225 sq. ft and in agreement and sale deed the same super built-up area is shown mentioned as 1242 sq. ft thus having deviation of about 17 sq. ft. (less than 2 %) and precisely no deviation in the area of agreement to sale and sale deed. That the actual super built-up area of the unit of the complainant is 1242 sq. ft. which is rightly mentioned in the agreement for sale and sale deed of which the complainant was completely aware of since execution of agreement way back in 2017. Complainant after due verification and inspection of the unit in question has executed registered sale deed of its unit and after an elapse of more than 1 year is making false and baseless averments. The respondent has never denied resolution of any issues related to faulty parking space but the same has never been mentioned or addressed to the respondent except of being mentioned in the complainant and for which the complainant has no cause of action as per the REAR Act 2016. Hence respondent requested to dismiss the complaint with heavy cost.
10. From the rival contentions of both the parties and on perusal of material on record following are points for determination to adjudicate the controversies between the parties: -
 - i. Whether the respondent has contravened the terms and the condition of agreement for sale executed in February 2017? If yes, than the consequences.
 - ii. Relief (s).
11. **Points For Determination No. (I)**– At the outset it would be appropriate to extract the various provisions of The Real Estate (Regulation and Development)

Act, 2016. Section 18 of the act governs the law pertaining to liabilities of promoter regarding return of amount and compensation, which reads as under –

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

12. It will be apt to consider the section 19 of The Real Estate (Regulation and Development) Act, which prescribes rights and duties of allottees 19, which reads as under –

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his

registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

13. Having regard to the controversy that has arisen it will also be appropriate to reproduce the relevant clauses of agreement for sale, executed between the parties in February 2017 for the sale and purchase of property, which are as under –

Clause (5) The Purchaser agrees to pay and discharge the consideration for the purchase of the said Apartment as per the following schedule

Booking	15% of consideration
Commencement of work	10%
First Floor Slab	10%
Second Floor Slab	10%
Third Floor Slab	10%
Fourth Floor Slab	10%
Fifth floor Slab	10%
Sixth Floor Slab	10%
Unit Brick Work	10%

Offer for Possession	5%
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Against above booking amount the Purchaser has paid Rs. 2,24,000/- (Rupees Two Lakh Twenty Four Thousand Only) to the Seller, receipt of which the seller hereby acknowledges.

Clause (6) The Purchaser hereby agrees and binds himself to pay all the amounts payable under the terms of this agreement immediately as and when the same become due and payable from time to time, and this time stipulation and timely payment will be the essence of this contract. In case purchaser takes the finance for the payment of consideration amount then he will be responsible to apply for bank loan with all relevant document and information and get the approval and sanction of the bank so as to enable him to pay the installment of consideration as envisaged in clause-5 above. The purchaser will be solely responsible for delay in getting approval and sanction of bank finance and also release of installment of bank loan. In all cases, if the purchaser makes delay in payment of monthly installment/construction link installment of consideration as envisaged in clause- 5 within 7 days from the date of intimation to the purchaser, he shall be liable to pay interest @ 18% per annum for such delay. If the Purchaser fails to pay monthly the installment/ construction link installment towards the payment of consideration as set out in clause-5 for consecutive 2 months then its booking for the sale of the Apartment shall automatically stand cancelled and in that case the Sellers have rights to forfeit 10% of the total amount deposited by the purchaser so far or Rs. 20,000/- whichever is higher and thereafter will return the balance amount to the purchaser only after the said apartment is booked and requisite booking amount has been deposited by the another customer.

Clause (7) The Seller shall only carry out the works for which the Purchaser pay the corresponding installment & after receipt thereof. The Seller is not bound to carry out any other irrelevant work. In case of timely payment of installment as envisaged in clause (5) above. The construction of apartment would be completed by the seller within a period 36 months excluding first rainy season with a grace period of six month.

Clause (8) After receiving the full payment according to this agreement, the Seller will arrange for the execution and registration of sale deed in favour of the Purchaser in the office of the Deputy Registrar, Raipur (C.G.). However, the possession of the Purchaser's Apartment would be given to the Purchaser only after the receiving complete payment as per clause (3) above.

Clause (21) That the seller shall complete the construction of purchaser apartment within 36 months i.e. up to June 2019 subject to the condition that the purchaser shall strictly adhere to the time payment of installment as envisaged in clause (5) & (6) above.

14. An over all reading of above referred clauses of agreement for sale makes it crystal clear that time stipulation and timely payment was the essence of the agreement for sale i.e. timely payment of the installment, as per construction link plan, was condition precedent for delivery of possession. Complainant specifically pleaded that she has duly and diligently made all timely payment of installments as per construction link plan, but the respondent failed to deliver the possession within the agreed time i.e. by June 2019. Per contra respondent pleaded that schedule possession of the property was after 45 months from the date of agreement for sale that too was subjected to timely payment by complainant which the complainant has miserably delayed. Registered sale deed dated 12-08-2021 executed between the parties incorporates all the payment details mentioned under the head of memorandum of payment. Bare perusal of memorandum of payment reveals that last payment of the installment of Rs. 5,50,000/- (Five lakhs fifty thousand only) was made by complainant to the respondent on 22-07-2021 and the same has been duly admitted and acknowledged by both the parties in sale deed itself, which corroborate the version of respondent and fortifies the fact of late payment. As per clause (8) of agreement for sale, the possession of the property had to be delivered to complainant only after receiving of full and final payment as per clause (3) i.e. on payment of entire consideration amount of Rs. 22,35,600/- (Twenty two lakhs thirty five thousand six hundred only).
15. After the payment of last installment on 22-07-2021, the registered sale deed was executed between the parties and the possession was delivered on 12-08-2021 without any delay. Thus in view of conspectus facts adumbrated above and considering the contractual obligation of the parties the factual position emerges is that complainant herself has not adhere to timely payment of installment as per clause (5) and (6) of agreement of sale to which respondent can not be held accountable. As the timely, full and final payment was sine qua non to the execution of registered sale deed and delivery of possession, which has not been complied by complainant herself therefore question of compensation, interest and damages for mental harassment and litigation expenses whatsoever does not arises as no one can take advantage of its own lapse.
16. Apart from this complainant contended that parking space provided by the respondent is faulty and there is continuous water leakage problem over there and the same was communicated to authorized person of the respondent but was not resolved. Per contra respondent pleaded that the respondent has never denied the resolution of any such issue but the same has never been communicated to him except of being mentioned in the complaint and for which the complainant has no cause of action under the Real Estate (Regulation and Development) Act. In support of her version the complainant has not adduced any evidence of any such communication or any supporting document pertaining to water leakage in allotted parking space. So for the want of evidence in this regard complainant is not entitled for any relief on this count.
17. One thing which cannot be marginalized and blinked away is that mandate ingrained itself in the statutes has not been complied by the complainant herself. Provision of the section 31(2) of Act reads with the rule 35 and the content of the FORM-M mandates for the verification of the content of complaint. Instant complaint has been filed by the complainant without any due verification which is clear violation of above mentioned provision of the Real Estate (Regulation

and Development) Act and rules. On this count alone i.e. for the non compliance of said mandatory provision of law, the instant complaint is liable to be dismissed. The fallout of above discussion is that complainant has failed to prove that respondent has violated the terms and conditions of the agreement for sale and caused the delay in giving the possession of property to the complainant

18. **Points For Determination No. (III)**– As complainant has failed to prove her claim, she is not entitled to any relief she prayed for.
19. With the above this instant complaint stand dismissed.

Raipur

Dated : 27-03-2023

Sd/-
(Deepa Katare)
Adjudicating Officer
Real Estate Regulatory Authority
Chhattisgarh Raipur