



Chhattisgarh Real Estate Regulatory Authority, Raipur

Complaint No-M-PRO-2022-01831

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

Shri Rishi Kumar Mishra, S/o Shri C.P. Mishra,
Address-C/O Ms. Jagriti Bajpai, C-36,
Avinash Suncity, Saddu-Urkura Road,
Daldalseoni, Raipur (C.G.) **Complainant**

V/s

M/s Avinash Developers Pvt Ltd.,
Address-Avinash House, Maruti Business Park,
G.E. Road, Raipur (C.G.) **Respondent**

Present :-

(1) Shri Shashwat Surana, Learned Counsel for Respondent.

**(Project- “Avinash Sun city”, Daldalseoni, Raipur)
RERA Registered No.- PCGRERA060618000063
Order dated- 17.04.2023**

1. The Complainant has filed instant complaint under section-31 of Real Estate (Regulation and Development) Act, 2016 in FORM-M for the relief(s) which is being quoted below for the sake of clarity:-
“(i) All the common area Infrastructure should be permanent, neat and clean with quality material.
(ii) No maintenance charges should be imposed till the completion of the project or alternatively only basic actual expenses of house keeping and security should be charged till the formation of the society.
(iii) Sought compensation on bank interest and house rent on account of delay of the project.”
2. From the rival contentions of both the parties the undisputed facts emerges in the case are –
 - i. Agreement for sale dated 27.04.2015, of plot no. F-83 in “Avinash Sun City” was executed between the parties.
 - ii. Registered sale deed dated 11.05.2015, of plot no. F-83 in “Avinash Sun City” was executed between the parties.

- iii. Project “Avinash Sun City” of respondent is an incomplete project and its completion date is dully extended by Real Estate Regulatory Authority.
- iv. The maintenance of common areas of project “Avinash Sun City” is being done by respondent as association of the allottees of said project has not been formed so far.
3. Pleaded case of complainant is that in-completion of the project i.e. Avinash suncity (RERA Registered No. PCGRERA060618000063) Saddu-urkura road, daldalseoni, Raipur even after more than 7 years STP still not constructed, club house made but community hall is missing. The equipments of the club house are not properly working. The quality of road and drain cover is very poor, broken at many places however concrete road was assured by the developer. Water supply in not adequate in summer and developer is supplying water through tankers. The water pipe line is of inferior quality it is always broken and water leakage happened. Underground electrical connection is also not proper as electric shock has been experienced by residents in Garden and temple areas, street lights are always fluctuating. Main gate of the project has been changed which was expected as per project brochure and a small gate provided which is not big as assured and as the goodwill of the project. Security Automatic boom barrier not provided.
4. Complainant further pleaded that Saddu-urkura road is not operative which developer has committed and shown in their layout plan (Approved by Govt. Authority) and brochure. Housekeeping is not proper and street animals and dogs are moving in the project as boundary walls are not completed/proper. Life threatening snakes are also moving because open plots are full of jungle jhadi. As per agreement society can be decide and collect the maintenance charges but society could not be formed due to incomplete facilities and worst quality of common area infrastructure and maintenance. Maintenance charges are being collected by giving huge pressure even after incomplete project and non formation of the society. Moreover penalty is being imposing by the developer for delay/non payment of CAM. Maintenance charges also being asked from the plot owner. Complainant could not constructed the house due to delay in project by developer and paying heavy interest on plot loan and house rent from last many year. Therefore complainant has filed instant complaint for the relief (s) as referred in clause (1) of this order.
5. The respondent beside denying the contentions of complainant vehemently, specifically submitted the complainant is not a resident of project and has purchase a bare vacant plot having number F- 83 vide registered sale deed dated 11-5-2015 The complainant has been in possession of its unit since the date of registration of its plot i.e. from the way back in 2015 but till date complainant has not even started the construction of house on the his plot. Respondent further contended that the possession of the unit was handed over to the complainant at

the date of execution of the sale deed itself which has been acknowledged and accepted by the complainant himself in the sale deed of its unit. It was on the request of the complainant stating the issuance of possession letter was required for the compliance relating to its loan the possession letter was issued by the respondent to complainant. There are about 88 families residing in the project as early as from 2018 and in about 60 units houses are being constructed by the respective unit owners. The complainant as per agreed terms of the booking and as per the provision of The Real Estate (Regulation and Development) Act 2016 is under legal obligation to pay to the respondent maintenance but the complainant has been deliberately delaying the payment of maintenance. Respondent further contended that no such community hall was ever proposed or assured by the respondent on the contrary multipurpose hall was assured in the club house at the ground floor which already exist in the project as per the approved layout of the club and the same is also been used by the residents of project. Complainant further submitted that the work of STP are ongoing in the project and the respondent shall complete the project before project completion date i.e. the 30th January 2023. So the relief sought by the complainant to that respect are premature.

6. Respondent further submitted that the roads in the project have been completely constructed and developed since about last 5 years and is being used by the unit owners of the project further the same has been constructed as assured. Maintenance of roads is a part of a regular process and the proper upkeep of the same is being done by the respondent. Due to ongoing construction of about 60 houses in the project there are moment of heavy vehicles and the construction material which at some instances causes damages to the roads but the same as well, being the part of the regular maintenance is being properly looked by the respondent. The gate of the project exactly as assured has been provided and is existing in the project. The complainant is relying on the second entry of the project and has conveniently concealed the existence of the second gate which has been constructed as assured but the road which is evident from the layout of the project has not been made operation owing to the reason that the government approach road to the same gate has not been constructed by the appropriate government department till date. As the approach road to the same gate is made available respondent shall open the same gate for the use of the residents of the project. It is further submitted by the respondent that the same road has been shown in the layout plan as per the mandated provision of the approval further the same is the government /public road and not a private road, the same cannot be constructed by the respondent.
7. Respondent further contended that water pipeline as assured has been provided in the project. Broken water pipeline and water leakage being part of regular maintenance is properly done by the respondent and no such other issues are prevalent in the project. In respect of the supply of water is concerned that the

water being a natural resource the respondent has no control over the same. It has been further averred by the respondent that no such street lights or the water supply has been stopped by the respondent as there are about 88 families residing in the project. The respondent shall hand over the project to the association of allottees as per provision of The Real Estate (Regulation and Development) Act 2016 after the society has been formed by the residents. The complainant has filed this instant complaint with the sole intention to harass the respondent and to make delay in the payment of maintenance dues, which the respondent is entitled to receive from the complainant as per the terms of sale deed and also as per the provision of The Real Estate (Regulation and Development) Act 2016. Therefore respondent requested to dismiss the complaint and the complainant be directed to pay the outstanding dues of maintenance charges and interest on the delayed payment of maintenance dues

8. 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 not done the construction with the quality material as promised by him in brochure of project "Avinash Sun City"?
 - ii. Whether the respondent has not provided common amenities as promised by him in the brochure of project "Avinash Sun City"?
 - iii. Whether the complainant could not construct the house over his plot due to the delay in project by the respondent?
 - iv. Whether the respondent is entitled to receive common area maintenance charges from the complainant?
 - v. Relief(s)
9. **Points For Determination No. (IV)**– Prior to appreciation of this point for determination it is relevant to mention here that on perusal of the certificate for the extension of the registration of project, filed by the respondent, it is evident that on 04-01-2023 completion period of the project "Avinash Sun City" has been duly extended by Authority till 29-01-2024. Thus the project of respondent is an ongoing project and association of the allottees of project has not been formed so far. As pleaded by complainant that association of allottees could not be formed due to incompleteness of project but it has not been pleaded by the complainant that who is maintaining the common areas and providing common amenities to the allottees in the project. Per contra respondent specifically pleaded that maintenance of the common area is being done by the respondent as about 88 families residing in the project and there are about 60 units/plot upon which construction are being raised by respective unit owners. Having regard to the controversy it will be appropriate to reproduce the relevant clauses of the agreement for sale of plot dated 27-04-2015 and registered sale deed dated 11-05-2015. Clause (3) of agreement for sale dated 27-04-2015 reads as under:-

“The purchaser hereby agrees to purchase plot no. F-83 at AVINASH SUN CITY admeasuring approximately 1453 sq.ft. equivalent to 135 Sq.Mtr. on the said land and better described in the map annexure here to and marked therein by red boundary lines, and plans of which are duly seen and approved by the purchaser, for a consideration of Rs. 12,35,000/- (Rupees Twelve Lakhs Thirty Five Thousand only). The purchaser will pay the amount to the seller as mentioned below:-

Cost of purchaser’s Plot ----- Rs. 12,35,000/-

Maintenance charges up to January 2019 ----- Rs. 43,590/-

Society formation charges ----- Rs. 5,000/-

Total = Rs. 12,83,590/-”

10. In page number 6 and 7 of registered sale deed dated 11-05-2015 following clause which reads as under:-

“यह कि, सम्पूर्ण भूमि पर विकास कार्य पूर्ण होने के उपरान्त सभी भूखण्डधारी अथवा भवन स्वामियों द्वारा रेसीडेंट एसोसिएशन “इसे इसके पश्चात् एसोसिएशन कहा गया है” का गठन किया जावेगा जिसके द्वारा सामान्य उपयोग एवं सुखाधिकार की भूमि एवं रास्ते का रखरखाव के खर्च आदि के लिये एसोसिएशन जो भी नियम एवं शर्तें बनायेगा उसे सभी भूखण्डधारी एवं भवन स्वामी मानने के लिये बाध्य होंगे। वर्तमान में भूमि का रखरखाव विक्रेता के द्वारा किया जा रहा ही जिसके लिये क्रेता ने विक्रेता को जनवरी 2019 तक की अवधि का रखरखाव व्यय का भूगतान कर दिया है उसके आगे के रखरखाव व्यय का भूगतान क्रेता एसोसिएशन को अनिवार्यतः करेगा। उक्त शुल्क को न पटाने पर एसोसिएशन से भविष्य में क्रेता उक्ता भूखण्ड के विक्रय हेतु अनापत्ति प्रमाण पत्र प्राप्त करने का अधिकारी नहीं होगा।”

11. Thus an overall reading of above referred clauses of agreement for sale and registered sale deed of the plot and the pleadings of the parties, the following factual position emerges that vide agreement for sale dated 27-04-2015 complainant has agreed to pay the maintenance charges for common area to the respondent up to January 2019. Same fact has been reiterated by the parties in the registered sale deed dated 11-05-2015 that the complainant has paid agreed maintenance charges up to January 2019. Said fact is corroborated by the receipt of the respondent dated 07-05-2015 filed by the complainant himself. It has been admitted and acknowledged by the both the parties in registered sale deed itself that after January 2019 complainant shall **compulsorily** pay the maintenance charges of common areas to the association of allottees of the project. Thus the complainant, after January 2019, is under the contractual obligation to pay the maintenance charges of common areas to the allottees of project. It has also been

clearly mentioned in the registered sale deed dated 11-05-2015 itself that association of allottees of the project shall be formed only after the completion of project. It is pertinent to mentioned here that project of the respondent is still at incomplete stage and its completion date has been duly extended by the authority up to 29-01-2014. Therefore for the want of completion of project of respondent the association of allottees of project could not be formed.

12. Complainant has filed possession certificate dated 15-12-2021 signed by both the parties. At this juncture it is appropriate to reproduce the contents of possession certificate which reads as under:-

“In furtherance to registered sale deed dated May 2015, Plot No F-83 situated at our residential colony AVINASH SUN CITY, Daldal, Seoni, Raipur (C.G.) is complete in all respect.

This Plot is being handed over to Mr. Rishi Kumar Mishra, S/o- Shri C P Mishra, R/o- Raipur

We confirm receipt of Maintenance charges for above mentioned Plot no-F-83 till 31/03/2021

We hereby confirm that Mr. Rishi Kumar Mishra & family members or the tenant residing in the project are entitled for CLUB MEMBERSHIP of (AVINASH SUN CITY).

As per your request you will be entitled for 3KW electrical loads for permanent electrical connection.

Therefore, Mr. Rishi Kumar Mishra is the new owner of Plot No. F-83 shall discharge all recurring financial obligations with respect to Plot no. F-83 which will be incurred in future.”

13. Thus on bare perusal of above mentioned possession certificate it becomes crystal clear that both the parties had duly admitted and acknowledged the fact that plot number F-83 of the complainant situated at project of respondent was completed in all respect on the date of issuing possession certificate i.e. 15-12-2021. It had been also admitted and acknowledged by the parties that plot has been handed over to complainant i.e. the complainant is in physical possession of his plot since then and the complainant shall discharge the all recurring financial obligation with respect to his plot which will be incurred in future.

14. It is pertinent to mention here the provision of The Real Estate (Regulation and Development) Act 2016 relating to the duties of the promoter which reads as under –

“Section 11 (4) The promoter shall—

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;”

15. Under the rule 11 clause (7) of Chhattisgarh Municipal Corporation and Municipalities (Regulation of Colonizer, Terms and Conditions) Rules, 2013, there is an analogous provision which reads as under-

“The colonizer must ensure the compliance of the following: (a) A Resident's welfare Association must be formed within three months of receipt of the completion certificate or when fifty percent of the dwelling units have been sold, whichever is earlier; (b) Till such time as a Resident's welfare Association has been formed, the colonizer shall be responsible for maintenance of the colony. (c) The colonizer shall ensure that all relevant rules and byelaws relating to all types of waste including but not limited to solid waste, construction and demolition waste, hazardous waste etc, are complied with, and shall be liable for payment of user charges as may be fixed by the municipality from time to time.”

16. At this juncture it will also be relevant to mention the duties of allottees under section 19 of The Real Estate (Regulation and Development) Act 2016 which reads as under –

“Section 19 (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.

Section 19 (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).”

17. It is relevant to mention here that both the parties have admitted the fact in their pleading that association of allottees has not been formed so far. It has been established earlier that the complainant has taken the possession of plot and the respondent is maintaining the project. Thus principal laid down in foregoing provision of section 11 of The Real Estate (Regulation and Development) Act 2016 read with the analogous provision of rule 11 clause (7) of Chhattisgarh Municipal Corporation and Municipalities (Regulation of Colonizer, Terms and Conditions) Rules, 2013, makes it clear that till the formation of association, promoter shall be duty bound for maintaining the essential services on reasonable charges as the maintenance of civil common amenities of any project

could not be deferred or kept in abeyance till the liability of its payment is fixed for or decided. In view of principal of quasi contract the complainant is liable to pay the expenses incurred by the respondent towards the maintenance of common areas of the project. Hence the complainant has failed to establish that respondent is not entitled for common area maintenance charges from him as a formation of association of allottees is not the condition precedent for the payment of maintenance charges in the light of above mentioned laws. Accordingly point for determination number 4 is being decided in affirmation.

18. **Points For Determination No. (III)**– As established earlier that the possession of the plot was handed over to the complainant on 15/12/2021 vide possession certificate and on the perusal of content of said possession certificates it is clear that it has been acknowledged and admitted by both the parties that the plot of complainant on the date of issuing certificate was complete in all respect. On perusal of the letter dated 09-10-2017 issued by the respondent and submitted by the complainant it is evident that respondent has communicated to complainant for starting the construction of house over his plot in 2017 itself. Complainant has not pleaded in his complaint that why he has not started the construction of house over his plot f-83 despite of above communication dated 09-10-2017 and the possession certificate dated 15-12-2021 issued by the respondent.
19. In his written final argument complainant argued that he is residing in the same colony as a tenant and beneficiary of the project common area as tenant not as a plot holder which he own. He is using the common area as a tenant and paying the rent to the landlord and they have already paid the maintenance to the respondent. Statement made by the complainant in his final written argument further fortifies and corroborate the version of respondent that the project is in such a stage where house can be constructed and other unit holder, including the complainant himself, and total 88 families are residing in the project of respondent though the project is stated to be incomplete. In view of above it is established that the complainant himself has not started the construction of house over his plot and he himself willfully residing in the same project on the rental basis for which respondent cannot be held accountable and responsible. Thus the complainant has failed to establish that due to delay in the project by the respondent he is unable to construct the house over his plot. Accordingly, the point for determination number 3 is being decided in negative.
20. **Points For Determination No.(I) & (II)**– For the sake of convenience and to avoid repetition, both point for the determination are being decided together. Pleading of the complaint regarding the lack of STP, community hall, poor quality of roads and drain, inadequate water supply, broken water pipeline, improper underground electric connection, movement of stray animals in common areas etc. all could be ascertained only upon the site or spot inspection

by the Commissioner. Though in relief clause (6) complainant requested RERA to depute technical team to visit project but during the pendency of complaint case, complainant has neither submitted the application for the appointment of Commissioner nor deposited requisite fees for the Commissioner. Facts of the pleading of complainant in this regard could not be corroborated and established for the want of Commissioner report. It is noteworthy to mention here that burden of proving the fact of complaint lies upon the complainant himself only which the complainant has failed to discharge. Complainant cannot shift his burden upon the RERA or opposite party. Moreover, complainant has not submitted the affidavit of any unit holder, resident, allottees of the project in support of said fact of his pleading. Photographs of the roads and the construction site submitted by the complainant pertains to which place is not clear i.e. whether the photograph are of respondent project or of some other place. Hence no reasonable inference could be drawn on the strength of photographs submitted by complainant.

21. It is relevant to mention here that the complainant has not submitted complete brochure of the project and any other supporting evidence, from which it could be reasonably ascertained that what quality and standard of material of construction was promised and assured by the respondent and what quality of material of construction he has used or is using in the common areas of the project. For the want of standardization of construction material it could not be established that the construction material used by the respondent is of standard or below/poor standard. As far as the pleading of complainant regarding the replace or the change of main gate of the project by the small gate and. Sadhu Urkura Road is not operative which the respondent has committed and shown in the approved layout plan are concerned it is pertinent to mention here that for the want of supporting evidence like complete brochure on which complainant has placed the reliance, copy of the approved layout or any agreement complainant has failed to establish the same. Thus in view of above discussion, the complainant has failed to substantiate his pleading with the iota of evidence that the respondent has not done the construction with the quality material and has not provided the common amenities as promised by the respondent in brochure of his project "Avinash Sun City". Accordingly, the point for determination 1 and 2 are being decided in negative.
22. **Points For Determination No. (V)**– As regard relief (s) claimed, complainant in his relief clause (5) has prayed for the compensation on account of bank interest and house rent paid by him. Complainant pleaded in this regard that he has paid heavy interest on the plot loan and the house rent from the last many years. But in support of his version complainant has not submitted any evidence in this regard like bank loan agreement, bank statement regarding the sanction and deposit of plot loan, payment receipt of rental charges, agreement of rent/lease deed etc. Complainant has also not specified the amount of compensation. As it

has been held earlier that the respondent is not accountable for the complainant's inability to construct the house over his plot, therefore, in view of facts adumbrated above, the question of compensation on this count does not arise. It is worthwhile to mention here that the provision of section 31 read with the Rule 36 of the The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint for relief of compensation which has not been complied with by the complainant. Therefore for the want of appropriate complaint relief claimed by the complainant could not be granted.

23. Respondent pleaded that complainant be directed to pay the outstanding dues of maintenance charges and interest on the delayed payment of maintenance dues. It is worthwhile to mention here that the provision of section 31 read with the Rule 35 of the The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint before the Authority, which has not been complied with by the respondent. Therefore for the want of appropriate complaint relief claimed by the respondent could not be granted.
24. As complainant has failed to prove his claim, he is not entitled to any relief he prayed for.
25. With the above instant complaint stand dismissed.

Raipur

Dated: 17-04-2023

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