

REAL ESTATE REGULATORY AUTHORITY, ASSAM
JAWAHAR NAGAR, N.H.-37
GUWAHATI- 781022

Page | 1

Case No. : RERA/ASSAM/ADJ/2024/01
Name of the Complainant : Sailendra Kumar Borah
Name of the Respondent : M/s Aarvee Associate
Ld. Counsel for the Complainant : Ms. Prity Gupta
Ld. Counsel for the Respondent : Ms. Nasima Begum
Judgement passed by : Selina Begum, Adjudicating Officer, RERA, Assam
Date of Judgement : 05.11.2024

JUDGEMENT

1. The complainant Mr. Sailendra Kumar Borah filed the instant complaint petition under section 31 read with section 71 of the Real Estate (Regulation and Development) Act 2016 in form N claiming compensation from respondent Aarvee Associates.
2. The case of the complainant which is reflected in the complaint petition is that complainant booked one flat from the respondent/promoter/builder Aarvee Associates on January 2017 and the builder respondent committed to hand over the project within 36 months that is by 2020 and accordingly an agreement was signed between the respondent and the complainant.
3. It is contented that the complainant advanced money amounting to Rs. 5,38,500/- in the form of down payment from the period of 24.01.2017 to 1.3.2017 and that he also obtained a loan of Rs. 22,61,700/- and a total amount of Rs. 28,00,200/- has already been paid to the respondent out of the total cost of the flat which was fixed at Rs. 35,90,000/- without violating a single condition stipulated in the agreement. However, the respondent has violated the commitment / promise made by him in the agreement.

4. It is contented that a complaint case was filed by him before the Real Estate Regulatory Authority on 8.12.2022 for violation of the agreement by the respondent and the Authority vide judgement dated 14.12.2023 directed the respondent/ promoter either to complete all the pending works and hand over the flat to him within a period of 45 days from the date of issue of the order and in case of failure to hand over the possession within the prescribed period the respondent/ promoter was directed to return the principal amount with applicable interest.
 5. The complainant contended that he had purchased the flat with the intention of investment and planned to give the flat on rent to a suitable family so that he would have a second earning source till he move to Guwahati to stay and live in his own flat after his elder daughter's tenth examination is over, but since last 4 years the flat has not been handed over to him which has resulted in loss of opportunity of getting rental income from the flat. It is averred that there is a clear unfair trade practices, breach of contract and deficiency in service on the part of the respondent and the complainant is entitled for compensation.
 6. The complainant also disclosed that the average life of residential building being 50 years and the super structure of the said building was completed in 2018 and now the building is deteriorating/ depreciated @ of Rs. 2% per year and he claims compensation on this count also.
 7. The complainant stated that he has to look after his parents alongwith 2 school going kids. His father was an alzheimer patient for last 13 years and after having under care of 2 nurses for last 5 years he passed away in September 2023. It is stated that his mother is in Non linvasive Ventilation (NIV), (a machine that helps in delivering oxygen via face mask) from last 6 months and she is suffering from ailment since last 7 years. It is contented that with all this responsibilities mentioned above alongwith the fraudulent act of the respondent affected his mental health as well as on the physical health and now he is suffering from high blood pressure and heavy diabetes and he is under medication.
 8. The complainant prayed for the following compensation:-
 - (i) Compensation for rental loss of Rs. 8,64,000/- from January 2020 to January 2024 calculating the monthly rent in those areas as Rs. 18,000/- p.m..
 - (ii) Compensation amounting to Rs. 3,44,985 on account of depreciation.
- 

- (iii) Compensation of Rs. 5,00,000/- for causing mental agony.
- (iv) Compensation of Rs. 30,000/- as travel expense.
- (v) To grant litigation cost of Rs.50,000/-
- (vi) To grant compensation of Rs. 28,14,726/- for failure on the part of the Respondent to hand over the project within stipulated time.

9. The respondent after receipt of the notice resisted the claim of the complainant by filing written statement. The respondent submitted that due to some unavoidable circumstances they are unable to deliver the possession though they were directed to deliver the flat by the Learned Authority. According to him out of the 32 units of flats of the project 5 units were handed over to the land lord and out of the remaining units which are in their possession 4 units are yet to be sold and almost 95% of the project works have been completed and 35% of the payments amounting to more than Rs. 2 Cr. being yet to be paid by the purchasers, as such there is delay in handing over the flat to the complainant. According to him due to Covid – 19 outbreak there were huge loss because of shortage of raw materials, increase of price of all the materials, shortage of man power etc. and they faced hard financial crisis and suffered huge loss. According to the respondent all these reasons caused delaying handing over the flat to the complainant. He assured that purchaser's flat will be handed over by the end of July 31st.

10. It is contended further that respondent will pay Rs. 8,000/- per month to the complainant due to their inability to hand over the flat within the specified period i.e. from 01.01.2021 to 01.01.2024 as house rent.

11. In the instant case, it is the admitted position that the complainant booked a flat mentioned in the schedule of the agreement from the respondent on January 2017. The deed of agreement bearing No. 17AA298487 established the fact that the respondent M/s Aarvee Associates represented by Mrs. Manjita Kalita and complainant Shri Sailendra Kumar Bora entered into a registered agreement for sale on 03/04/2017 and the consideration amount was fixed at Rs.35,90,000/-. The complainant claimed that he paid an amount of Rs.28,00,200/- against the total consideration amount and the respondent through para 5(vi) of the WS admitted about payment of Rs.28,00,200 by the complainant against the total consideration amount fixed by the Agreement for Sale. In para 9 of the judgement of RERA Authority

passed in Case No. RERA/ASSAM/COM/2022/65 dated 14.12.2023 it is also clearly reflected that the respondent admitted receipt of Rs.28,00,200/- against the consideration amount fixed on the agreement.

12. From the documents submitted by the complainant it appears that the complainant paid a total amount of Rs.28,00,200/- till 25/08/2017 to the respondent on different dates by way of NEFT and bank loan and details of the same is described below:

- a) Rs.1,00,000/- through NEFT on 24.01.2017.
- b) Rs.1,00,000/- through NEFT on 18.02.2017.
- c) Rs.3,38,600/- through NEFT on 01.03.2017.
- d) Rs. 12,56,500/- through bank loan by way of cheque dated 21.03.2017.
- e) Rs.3,00,000/- through bank loan by way of cheque dated 19.04.2017.
- f) Rs.7,05,200/- through bank loan by way of cheque dated 25.08.2017.

13. As per clause 4 and 5 of the agreement dated 03.04.2017 the possession of the flat had to be delivered within 36 months from the date of NOC provided that buyer pay their respective dues as per the schedule. The Ld. Authority's judgment in the case No. RERA/ASSAM/COM/2022/65 shows that NOC was issued on 18.05.2016. So as per stipulated condition mentioned in the agreement possession had to be handed over within 17.05.2019. However, the said provision of clause 4 shows some events like unforeseen circumstances, act of nature, civil or military unrest, shortage of men and materials, legal impediment like Govt. restriction, force majeure etc for which period of delivery of possession can be extended. In the judgement of complaint case before the Ld. RERA Authority plea taken by the respondent regarding delay was rejected. In the case at our hand, the respondent in para 4(a) – (d) of the WS wants to justify delay by showing some reasons. Some of the reasons for delay was shown as shortage of raw materials, increase of price of all the materials, shortage of manpower etc for Covid-19 outbreak. However, the Covid-19 issues cannot be accepted as that happened in March 2020 which is much subsequent to the stipulated date of handing over of possession.

14. It appears that the grounds shown for delay by the respondent are frivolous and untenable and cannot be accepted

15. In the instant case, it is clearly established that though the respondent was under the obligation as per the agreement to hand over the possession of the flat within 17.05.2019 yet the possession could not be delivered to the complainant as agreed. It is seen from the record that inspite of paying a huge amount of money amounting to Rs.28,00,200/- out of the total consideration money i.e., Rs.35,90,000/- the respondent failed to handover the flat on the stipulated date as per the agreement. It appears that due to sole default of the respondent the flat could not be handed over to the complainant. It is well settled that in such type of contract the time is always essence of the contract and therefore has to be strictly construed. Getting no other alternative the complaint compelled to move before the RERA Authority on 8th December, 2022 seeking relief of immediate handover of the flat and if not handed over then to refund the money with interest and also some other reliefs were sought. The Ld. Authority in the judgment dated 14.12.2023 passed in the said complaint bearing No. RERA/ ASSAM/COM/2022/65 arrived at the finding that the flat which was supposed to be handed over to the complainant on 17.05.2019 failed to be handed over by the respondent till date. It is also observed by the Authority that inspite of the promises of the respondent before the Authority to hand over the possession of the flat on 31st March, 2023, August 2023 etc the respondent's promises went in vain.

16. It is further observed by the Ld. Authority as follows:

"The promoter has taken a very lackadaisical attitude towards the completion of the project and has been citing new excuses on every hearing for non completion of the project 'PAN ENCLAVE'. It is also noticed that pending works are progressing at a very slow pace."

17. The Ld. Authority in the judgment directed the respondent to complete all the pending works and handover the completed apartment in all respect to the complainant within 45 days from the date of issue of the order and if the promoter fails to hand over the flat within the prescribed period then to return the principal amount with applicable interest.

18. During the hearing of the complaint case before this Adjudicating Officer on query it is informed by the complainant that he had to file a petition



for execution of the order of the Ld. RERA Authority on 27.02.2024 as the direction of the Authority dated 14.12.2023 was not followed.

19. From all the above discussions it is clear that the respondent has failed to give possession of the flat in accordance with the terms of the agreement for sale. It appears that till date the flat was not handed over to the complainant. It also appears that the direction of Ld. RERA Authority to hand over the possession within 45 days was also not followed.

20. The respondent is unable to give possession not only within the stipulated time as per the agreement but also fails to hand over the same to the complainant till date.

21. Section 11(4) of the Real Estate (Regulation & Development) Act, 2016 contemplates:

Section 11(4):-The promoter shall--(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

Section 18(1) of the Act spelt out the consequences if the builder/promoter fails to complete or is unable to give possession of an apartment, plot or building, either in terms of the agreement for Sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer, either on account of suspension or revocation of the registration under the act or for any other reason, the allottee/ buyer hold an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf including compensation in case he wishes to withdraw from the project.



Section 18(3) of the Act states that where a promoter fails to discharge any other obligation under the Act or the Rules or Regulations framed there under or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay such compensation to the allottees in manner as prescribed under the Act.

Section 19 of the Act spells out right and duties of allottees. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner provided under the Act.

Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize the right of an allottee to two distinct remedy viz. refund of amount together with the interest for a delayed handing over of possession and compensation.

22. In view of the aforementioned discussions it is clear that the failure to comply with the obligation to handover the possession of the flat to the complainant within the time as per the agreement inspite of receiving a huge amount of money squarely falls within the purview of section 18 and section 19(4) of the Real Estate (Regulation & Development) Act, 2016. The complainant is entitled for compensation.

23. Now let me discuss what should be the quantum of compensation.

At this juncture I feel it proper to go through the provision of Section 72 of the Act.

"72" While adjudging the quantum of compensation or interest as the case may be u/s 71, the Adjudicating Officer shall have due regard to the following factors, namely :

- 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.

24. On the perusal of Section 72 of the Act it is clear that the purpose behind the above factors enumerated in Section 72, which is to be taken into consideration while adjudging the compensation by the Adjudicating officer is to ensure that the compensation which is to be awarded to the aggrieved party appears to be just. In Divisional Controller KSRTC - Versus- Mahadeva Setty and Another reported in (2003) 7 SCC 197 it is held that the amount of compensation cannot be a bonanza nor a source of profit and that the compensation should be rational and to be determined by adopting judicious approach.

25. In **Wg. Cdr. Arifur Rahman Khan And..... vs DLF Southern Homes Pvt. Ltd.** the Hon'ble Supreme Court held that "Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation."

"The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss."

26. In the light of the above laws laid down by the Apex Court and taking into account the criteria/factors to be taken into consideration, as contemplated in Section 72 of the Act while granting compensation, now let me determine the quantum of compensation which the complainant is entitled.

27. The complainant who is the flat purchaser invested his hard-earned money and the money obtained from financial institution/bank on loan with the hope that he would get the flat within the stipulated time. He had paid a huge amount of purchase price to the builder on time and he is required to pay the EMI regularly with high rate of interest for the said loan. Indirectly the purchaser played the role of financier to the builder at high risk on the honest belief that he would get the possession of his dream house within the agreed time. If he would not have lured by the builder by keeping the provision of delivery of possession within the stipulated time then he might not

have agreed for purchasing the flat. It appears that as lured by the respondent that they will hand over the possession of the flat on time within a period of 36 months the complainant paid a huge amount to the respondent and a large portion of the said amount was obtained by him on loan from bank with a huge interest. To have his own sweet house is the dream of every family and to fulfill the dream the complainant invested the huge amount of money. In spite of elapse of 5 years from the stipulated date of delivery of the possession of the flat the flat was not delivered.

28. It is found that the respondent assured the complainant to have his own house on 17.05.2019 but the possession has not yet been delivered. The complainant had to fight a legal battle before the RERA Authority by filing a complaint case for delivery of possession. It appears that in spite of the clear direction of RERA Authority vide order dated 14.12.2023 in the complaint case bearing No. RERA/ASSAM/COM/2022/65 the respondent neither hand over the possession of the flat to the complainant within 45 days of the order nor refunded back the money with interest as a result of which the complainant had to approach the RERA Authority for execution/enforcement of the order.

29. In the abovementioned case the Ld. Authority observed that the respondent has taken a very lackadaisical attitude towards the completion of the project and has been citing new excuses on every hearing. The execution case bearing No. RERA/ASSAM/EXE/2024/01 is still pending for enforcement/execution of the order. It appears that in the Execution case before the RERA Authority also the respondent assured to hand over the flat by August 2025. However, now the respondent in clear terms expressed during hearing before this Adjudicating Officer on 27.09.2024 that they will not deliver the flat to the complainant. So it is clear that the respondent has no intention to hand over the possession rather delaying tactics has been applied to comply with the order of the Ld. RERA Authority and for these causes also the complainant faced unnecessary mental harassment.

30. So it is apparent that the complainant had to run from pillar to post for getting possession of his dream house and he had to fight a legal battle during last 3 years. The complainant definitely faced mental harassment for the acts of the respondent. The complainant who has to look after

his whole family with school going children, ailing mother who is under non invasive ventilation and who had to also look after his ailing father till his death on September 2023 as disclosed in the complaint petition definitely faced more stress and mental anxiety for non delivery of the flat even after elapse of several years from the stipulated date of handing over the possession inspite of investing a huge amount. The aspect of mental agony and harassment suffered by the complainant can be inferred from the above act of the respondent and a judicial notice can also be taken about a constant mental harassment caused to the complainant who is deprived of taking possession of the flat which is a lifelong dream for the complainant and for which he had invested a huge money sacrificing some other important need of the whole family.

31. It is also apparent that now it will be very difficult for the complainant to arrange another flat at Guwahati as cost of flat in Guwahati has increased to a great extent now a days. It is obvious that during the interval of 7 years there is substantial rise in the REAL ESTATE SECTOR in relation to develop colony near the project in question or any other prime place in Guwahati. Besides by this time the cost of construction materials also increased to a great extent. So all these facts show that definitely now there would be a great difficulty on the part of the complainant to arrange another flat at Guwahati. All these facts show that the complainant has suffered tremendous mental harassment for the act of the respondent depriving him from getting possession of the flat inspite of investing a huge amount of money.

32. The complainant in his complaint petition clearly mentioned that he purchased the flat with the intention that after purchase he shall give the flat on rent till he moves to Guwahati after his eldest daughter completed her 10th Examination. According to the complainant non delivery of the flat has resulted in loss of opportunity in getting income by way of rent. He claimed Rs.8,64,000/- as rent loss till January 2024 calculating the monthly rent as Rs.18,000/- per month. But, the complainant has failed to adduce any documentary evidence regarding the fact what amount of house rent is prevalent in that locality where the flat exist. However, it is clear that the complainant could have earned a handsome amount by way of letting the flat on rent if he would

have got possession of the flat on time as stipulated in the agreement.
So, complainant suffered from pecuniary loss also.

33. He invested the money in 2017. Already 7 years has been elapsed but he neither got the flat nor the money returned back. It is also clear that the claimant could have earned a handsome amount if he would have invest the money in some other aspect. So for not handing over the property the complainant suffered from opportunity lost. The complainant has definitely suffered financial losses due to the respondent's failure to hand over the possession of the flat. Apart from these the complainant who managed bank loan to purchase the flat definitely faced financial constraint as he had to repay the loan with high rate of interest.

34. It appears that the respondent by not handing over the possession of the flat to the complainant inspite of investing a huge amount of money by the complainant has misutilised the hard earned money of the complainant. The respondent unlawfully kept the huge amount of money invested by the complainant. It is already discussed in para 29 that the respondent has no intention to hand over the possession of the flat to the complainant. Definitely this flat now will be sold by the respondent to some other person at a much higher rate depriving the complainant. This amounts to disproportionate gain or unfair advantage.

35. Considering all the above aspects as discussed above relating to mental agony/sufferings/harassment, faced by the complainant and disproportionate gain or unfair advantage made by the respondent, opportunity loss, financial loss etc. caused to the complainant by the respondent and also taking into account the fact that already Real Estate Regulatory Authority passed judgment for refund of the consideration money with interest, the Adjudicating Officer following the criteria enumerated in Section 72 of the Real Estate Regulation & Development Act, 2016 and relying upon the principle laid down by the Hon'ble Supreme Court in various judgement discussed above hold that the complainant is entitled for compensation @ 4% per annum on the amount of Rs.28,00,200/- paid by the complainant from the date of each payment to the respondent till date of this order.

36. The complainant sought for granting travelling expenses of Rs.30000/- and amount for loss of work while attending the hearing of this case.

37. Complainant who is a resident of Dhekiajuli as revealed in title page of the complaint petition is also entitled for an amount of Rs.20,000/- as travel expenses as he had to travel to Guwahati from his residence at Dhekiajuli on several occasions for hearing and to consult his lawyer.
38. Complainant is also entitled for an amount of Rs. 25,000/- as litigation cost.
39. The respondent is directed to pay the above amount to the complainant within 45 days from the date of passing this judgement failing which the respondent shall be liable to pay interest @8% per annum on the compensation amount from the date of disposal of this complaint till realization.

The present complaint is disposed of accordingly.

Given under my hand and seal on this 5th day of November, 2024.

Sd/-

(Selina Begum)
Adjudicating Officer,
RERA Assam

Memo No. RERA/ASSAM/ADJ/2024/01/64-75,

Dated. 05.11.2024

Copy to:

1. Shri Sailendra Kumar Borah, Ward No.8, Tamuli Road, Dhekiajuli, Assam-784110.
2. M/s Aarvee Associates, H.No.86, Opp. Manasa Mandir, Rukminigaon, Guwahati, Assam-781022.
- ✓ 3. Website i/c RERA Assam to upload the order.
4. Office Copy.


Registrar i/c

Real Estate Regulatory Authority
Assam, Guwahati-22

---ooOoo---