

REAL ESTATE REGULATORY AUTHORITY, ASSAM

JAWAHAR NAGAR, NH-27 GUWAHATI-781022

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Case No.	::	RERA/ASSAM/ADJ/2023/08
Complainant	::	Shri Pradeep Gupta
Respondent	::	M/s. Mee Infrastructure Pvt. Ltd.
Date of Order	::	29.08.2024
Judgement provided by	::	Smti. Selina Begum, Adjudicating Officer, RERA, Assam.
Name of advocate	::	Miss Prity Gupta, Ld. Advocate on behalf of complainant. Shri Nilotpal Das, Ld. Advocate on behalf of respondent.

J U D G E M E N T

The Complainant Pradeep Gupta filled instant complaint under section 31 read with Section 71 of the Real Estate (Regulation & Development) Act, 2016 in "*Form-N*" seeking compensation from the respondent, M/s Mee Infrastructure Pvt. Ltd.

The case of the complainant in a nutshell is that

- 1 The Applicant had entered into three agreements with the Respondent, bearing Agreement No. 933 and 932 dated 20/01/2016, and one supplementary Agreement No. 1847 dated 10/02/2016. The Applicant paid a total sum of Rs. 45,00,000/- in pursuance of these agreements to the Respondent
- 2 Despite receiving the substantial amount of Rs. 45,00,000/- as the sale consideration by 10/02/2016, the Respondent failed to send the agreements for signature or execute them. The Respondent was required to allot the plot, execute the

agreement, and deliver possession to the Applicant as per the law.

- 3 The Applicant had made several attempts to communicate with the Respondent to seek clarification and demand the execution of the agreements and possession of the plot. However, the Respondent repeatedly ignored the Applicant's requests and failed to provide any reasonable explanation for the delay.
- 4 The Respondent also kept postponing the execution of the Sale Deed and provided false promises to the Applicant, thereby violating Section 55 of the Transfer of Property Act, 1882.
- 5 It came to the Applicant's knowledge through various sources that the Respondent had a history of similar misconduct with other buyers, wherein they had failed to deliver the promised properties or execute the necessary documents.
- 6 The delay caused by the Respondent in executing the Sale Deed and delivering possession of the property caused immense mental stress and financial burden to the Applicant, who had planned to use the property for commercial purposes and invested his life savings into the agreements.
- 7 The Applicant's attempts to negotiate a resolution were met with indifference and disregard by the Respondent, indicating a deliberate intention to defraud the Applicant and other buyers. The Respondent's conduct and actions amount to unfair trade practices and breach of trust, thereby causing financial loss and mental agony to the Applicant.
- 8 The Respondent sold the property in question mentioned in Agreement No. 1847 dated 10/02/2016 to a third party, Uttam Kumar Jiwrajka, and five others, without notifying or obtaining consent from the Applicant. The said agreement was executed

@ Rs. 7,600.00 (Rupees Seven Thousand Six Hundred) only per square foot, amounting to Rs. 1,75,80,000.00 (Rupees One Crore Seventy-Five Lakhs Eighty Thousand) only towards the cost of Commercial Area on the first floor as mentioned and described in the schedule. Additionally, @ Rs. 2,00,000.00 (Rupees Two Lakhs) only for each parking in the ground floor of the building. The total amount for parking is Rs. 4,00,000.00 (Rupees Four Lakhs) only. However, the agreement executed with the Applicant was @ Rs. 6,500.00 (Rupees Five Thousand Seven Hundred) only per square foot towards the cost of Commercial Space on the first floor as mentioned above and described in the schedule. This clearly indicates the Respondent's dishonest intention to deceive the Applicant and make a monetary gain by selling the property at a higher price to Uttam Kumar Jiwrajka and others, while causing significant financial loss and mental anguish to the Applicant.

- 9 The Respondent made a monetary gain of Rs. 25,30,000.00 (Rupees Twenty-Five Lakhs Thirty Thousand) only by selling the property to Uttam Kumar Jiwrajka and others at a higher rate of Rs. 7,600.00 (Rupees Seven Thousand Six Hundred) per square foot, as compared to the rate of Rs. 6,500.00 (Rupees Five Thousand Seven Hundred) per square foot mentioned in Agreement No. 1847 dated 10/02/2016, without obtaining consent from the Applicant. The total area of the commercial space mentioned in the agreement was 2,300 square feet.
- 10 The Applicant filed a complaint before RERA, and RERA was pleased to dispose of the Complaint Case vide Judgment and Award dated 19.02.2022 passed in RERA/ASSAM/2017/267 with the following direction:

"Since the promoter failed to give possession of the apartment in accordance with the terms and conditions of agreement no. 1847, therefore, the promoter is, hereby directed under sections 18 and 2(z) of the Real Estate (Regulation and Development) Act, 2016 to return Rs. 45.00 lakh (Rupees forty-five lakh) to the Applicant along with applicable interest. The rate of interest shall be calculated under rule 17 of the Assam Real Estate (Regulation and Development) Rules, 2017 from the different dates on which the respective installments payments were received by the promoter against the consideration amount, as per State Bank of India's Marginal Cost of Lending Rate plus two percent The timeline for a refund of the consideration money along with applicable interest is forty-five days from the date of issue of this order. "

As the respondent failed to comply with the above mentioned Order of RERA, the complainant filed an execution petition. The Authority issued an order dated 29.09.2022 directing to recover an amount of Rs 45,00,000.00 (Principal Amount) + Rs. 26,29,342.00 (interest amount) for a total of Rs. 71,29,342.00 (Rupees seventy one lakh twenty nine thousand three hundred and forty two) only as arrear of land revenue exercising the power under section 40(1) of the aforementioned Act. However the said amount is not yet recovered from the respondent.

The complainant sought for the following compensation:-

Interest on Principal Amount as per the agreement executed:

- (a) The applicant claims interest on the principal amount at the rate of 15% per annum, as mentioned in Clause 5 of the Supplementary Deed dated 10/02/2016. The interest shall be calculated from the respective dates on which the instalments were received by the Respondent against the consideration amount
- (i) $\text{Rs. } 2,50,000 \times 15\% \text{ p.a.} = \text{Rs. } 2,50,000 \times 15\% \times 7.5 \text{ years} = \text{Rs. } 2,81,250$
 - (ii) $\text{Rs. } 2,50,000 \times 15\% \text{ p.a.} = \text{Rs. } 2,50,000 \times 15\% \times 7.5 \text{ years} = \text{Rs. } 2,81,250$
 - (iii) $\text{Rs. } 40,00,000 \times 15\% \text{ p.a.} = \text{Rs. } 40,00,000 \times 15\% \times 7.5 \text{ years} = \text{Rs. } 45,00,000$
 - (iv) Total Interest = Rs. 50,62,500/-
- So, the total interest on the principal amount of Rs. 45,00,000/- at the rate of 15% per annum amounts to Rs. 50,62,500/- only.
- (b) Difference in Sale Rate: The applicant seeks additional compensation for the difference in the sale rate at which the Respondent sold the property to a third party, Uttam Kumar Jiwrajka, and others, without the consent of the Applicant. The Respondent executed the sale agreement at a higher rate of Rs. 7,600.00 per square foot for the commercial space on the first floor, while the agreement with the Applicant was at a rate of Rs. 6,500.00 per square foot for the same type of space amounting to **Rs. 25,30,000.00** (Rupees Twenty-Five Lakhs Thirty Thousand) only.
- (c) Additional Compensation for Mental Anguish and Delay: The applicant seeks additional compensation for mental anguish, financial hardship, and the delay caused in fulfilling the obligations under Section 11(4)(a) and 11(5) of the Real

Estate (Regulation and Development) Act, 2016. The Respondent's failure to execute the Sale Deed and deliver possession of the property within a reasonable period has caused significant distress and financial burden to the applicant.

- (d) Punitive Damages for Fraudulent Actions: The applicant claims punitive damages against the Respondent for their fraudulent actions, which include selling the property to a third party at a higher rate without the applicant's consent. Such fraudulent actions demonstrate the Respondent's dishonest intention to deceive the applicant and make a monetary gain at the applicant's expense.
- (e) The complainant requests a total compensation of Rs. 75,92,500/- (Rupees Seventy-Five Lakhs Ninety Two Thousand Five hundred only) and an additional Rs. 5,00,000/- (Rupees Five Lakhs) only as punitive damages for the fraudulent actions of the Respondent. The complainant believes that his compensation amount is reasonable and justified considering the financial loss, mental anguish and fraudulent conduct caused by the Respondent.

The respondent after receipt of notice contested the compensation claim of the complaint by filing written statement alleging inter alia that the case is not maintainable both in law and facts; barred by law of limitation; bad for non-joinder of necessary parties i.e., the Directors of the company. That the complainant being already agitated his grievance before the Bakijai Officer being Bakijai Case No. 5/2023 and also approached the Hon'ble Guwahati High Court in WP(C) 5817/23 which are still pending has waived his right to file the instant complainant case and that there may be conflict of

views of the Courts in pronouncement of judgements if the present complaint case is allowed to proceed. It is also contended that as the issues involved in the present application is already taken up by Bakijai Officer as well as the Hon'ble High Court so this Adjudicating Officer has no jurisdiction to try this application. The respondent denied the statements made by the Complainant in para 4(2) - 4(7) of the complaint petition. The Answering Respondent admitted the fact that an agreement was executed between the parties on 20.01.2016 to sell and transfer a commercial space mentioned in the Schedule C of that agreement. The Schedule C of that agreement is as follows:

"Proportionate share of land out of Schedule-A with commercial space in the front side of the first floor of Block-B of Amrit Regency."

In this context the Answering Respondent stated that at present also there is about 1200 sq.ft. which was conveyed to the complainant many times requesting him to perform his part of contract and take possession over the Area, but the complainant with an ulterior motive for illegal gain did not come forward.

The Answering Defendant further stated that a verbal agreement was arrived between the parties where it was agreed that the Applicant would take back the entire advance consideration amount paid and as a result a draft Deed of cancellation was prepared and forwarded to the Applicant for approval in the month of February, 2019 but the said Applicant did not come forward inspite of the agreed verbal agreement and file a complaint petition before Real Estate Regulatory Authority with concocted story and with sole intention to extort more money. At that relevant time the Respondent

also was ready to refund the advance money with benefits in equal three installment within three months but, due to the illegal intention of the Applicant he refused the said offer and continued with the proceeding before this Hon'ble Tribunal, and this Hon'ble Tribunal subsequently by its Order dated 19.02.2022 disposed the said application. It is contended that after the said order also the respondent approached the applicant to repay back the advance consideration in installment and also asked to provide his account number. Though the applicant first agreed but later on issued a letter. Respondent offered that they would pay an amount of 10 Lakhs as an installment and then will repay the entire amount by installment in 6 months. Later on he received notice from Bakijai Certificate Officer and by filing an application informed the Bakijai Officer that he needs atleast 3 months to pay the amount and submitted a cheque of 10 Lakhs and also informed about the mode and date when the amount will be deposited. However the applicant rejected the said proposal and later on filed a writ petition before the Hon'ble High Court. It is submitted that had the applicant accepted the proposal in the first attempt, till now no outstanding amount would have been pending. The respondent prayed for dismissal of the complaint filed by the complainant with cost.

The complainant in his written response to the written statement answering the para 4 of written statement submitted that the matter before the Bakijai Officer and the Hon'ble High Court differ from the compensation claimed under section 31 read with section 71 of the RERA Act and that RERA Authority vide its order dated 19.02.2022 clearly indicated that authority to grant compensation lies with the Adjudicating Officer under section 31 read with section 71 of Real Estate (Regulation & Development) Act, 2016.

It is stated that the respondent already got ample time to arrange the amount and their failure to do so raises questions about their commitment to resolve the matter promptly. It is submitted that Respondent's attempt to label the Applicant's action as extortion is unfounded and that with legal grounds he sought due repayment as directed by the court.

It is averred that in pursuit of rightful compensation the complainant relies on well established legal provision like Section 18 of Real Estate (Regulation & Development) Act, 2016, rule 17 of Assam Real Estate (Regulation & Development) Rules, 2017 and Section 55 of the TP Act, 1882. It is stated that it is justified to seek redressal for the financial loss, mental anguish and fraudulent conduct caused by the Respondent. It is submitted that applicant is rightfully entitled to the compensation and relief sought in his complaint petition.

It is averred that though the final order of RERA specified a clear timeline of 45 days for the repayment yet the respondent's persistent failure to comply with the RERA's Order dated 19.02.2022 compelled the Applicant to seek recourse through an Execution petition for enforcement of the Judgement and award so as to ensure timely refund of the consideration money along with applicable interest. It is submitted that the respondents subsequent attempt to negotiate in the form of 3 installment repayment plan after RERA order raised questions about their commitment to comply with the judicial directives. It is submitted that attempting to facilitate an amicable settlement, the Bakijai department overstepped its bound and thereby complicated an adjudicated matter and deeply aggrieved by the unauthorized actions of the Bakijai department he filed a writ

petition against them. It is submitted that the applicant is asserting his legal right as per court's order.

In the written argument the respondent submitted that as it appears from the application under consideration that the alleged cause of action and grounds for compensation, the applicant is not legally entitled to claim any compensation.

It is submitted that the ground of Section 18 of the Real Estate (Regulation and Development) Act, 2016; Rule 17 of Assam Real Estate (Regulation and Development) Rules, 2017 and Section 55 of Transfer of Property Act, have already been adjudicated by the RERA in Case No. RERA/ASSAM/2017/267, hence, any further adjudication on the said grounds would amount to penalizing for same issue twice and thus hit by the principle of double jeopardy. It is further argued that claim of compensation under Section 18 (2) of the Real Estate (Regulation and Development) Act, 2016 is applicable only in case of any loss caused due to defective title of land on which the project is being developed but in the instant case defective title of land is not an issue at all.

It is further submitted that the Real Estate (Regulation and Development) Act, 2016 and the Assam Real Estate (Regulation and Development) Rules, 2017 do not provide for any compensation for mental anguish and delay, punitive damage etc. as alleged and that there is no ground for exercising power under Section 71 or 72 of the Real Estate (Regulation and Development) Act, 2016.

It is submitted that in view of the above application seeking compensation is devoid of any merit and as such liable to be dismissed.

The Ld. Advocate for the complainant argued mainly on the grounds shown in the complaint petition.

In view of the pleadings of the parties and after hearing the rival contentions of the Ld. Advocate for the parties let me first discuss the issues relating to maintainability and res judicata.

Regarding the maintainability issue raised by the respondent. I feel it proper to discuss the relevant provisions of law laid down in Real Estate (Regulation & Development) Act, 2016 in this regard.

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 thereunder 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.

Correspondingly, Sec 19 of the Act spells out right and duties of allottees. Sec 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 under the Act.

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

It is contemplated in Sec 31 of RERA Act as follows:-

Filing of complaint with the authority or the Adjudicating officer

Any aggrieved person may file a complaint with the authority or the adjudicating officer as the case may be for any violation or contravention of the provision of the Act or Rules and Regulations made thereunder against any promoter, allottee or real estate agent as the case may be.

Sub section 1 of Sec 71 speaks that for the purpose of adjudging compensation under Sec 12, 14, 18 & 19, the authority have to appoint in consultation with the appropriate Govt, a judicial officer not below the rank of District Judge as an adjudicating officer to hold enquiry.

Hon'ble Supreme Court in M/s Newtech Promoter and Developer Pvt Ltd Vs State of UP & Ors reported **in Civil Appeal Nos. 6745 to 6749 of 2021 arising out of SLP (Civil) Nos. 3711 to 3715 of 2021 dated 11.11.2021**, in paragraph 86 clearly reflected that when question of seeking relief of adjudging compensation and interest thereon comes under Sections 12, 14, 18 & 19, the adjudicating officer exclusively has the power to determine keeping in view the collective reading of Sec 71, r/w Sec 72 of the

Act. It is also made clear that when it comes to refund of amount, and interest on the refund amount or directing payment of interest for delayed delivery of possession or penalty and interest thereon, it is the regulatory authority which have the power to examine and determine the outcome of the complain.

It appears from the case at our hand that the instant case has been filed u/s 31 r/ws 71 of the Act before the adjudicating officer whereby the claimant sought for relief of compensation for failure on the part of the respondent to deliver possession as per the stipulated time mentioned in the sale agreement inspite of handing over Rs. 45 Lakhs as advance out of the total consideration money to the respondent. In view of clear provisions of Sec 71 of the RERA Act and in view of the law laid down by Apex Court in M/s Newtech Promoter it is clear that regarding the complaint seeking relief of adjudicating compensation and interest thereon u/s 12, 14 18 & 19, the adjudicating officer has the power to decide. So, on the backdrop of the above provision of RERA Act and law laid down by the Apex Court for adjudicating such a prayer for compensation with interest, it is obviously the adjudicating officer who has the adjudicating power in such matter. So it is crystal clear that the submission of the respondent that the complaint is not maintainable has no leg to stand.

Regarding the issue related to res judicata raised by respondent my view is that matter before the Bakijai Officer and Hon'ble High Court differ from the compensation matter. The Bakijai proceeding is the process of recovery of the amount directed to be recovered from the respondent by the Real Estate Regulatory Authority due to default in refunding the consideration money with interest to the complainant by the respondent as directed by the RERA Authority vide order dated 19.02.2022 passed in ASSAM/RERA/2017/267. This Bakijai

proceeding is not related to any compensation matter. The matter before the Hon'ble High Court is related to delay in recovery of the said amount by the Bakijai Officer.

Real Estate Regulatory Authority only passed order relating to refund of the consideration money with interest as provide u/s 18(1) of the Act. So proceeding before the RERA Authority is no way involved with compensation. Rather Ld. RERA Authority in specific word reflected in their order that power for awarding compensation lies with the Adjudicating Officer u/s 71 of the Act and Authority advised the complainant to file separate complaint in Form "N" under Rule 37(1) of Assam Real Estate (Regulation & Development) Rules, 2017 if he desires before the Adjudicating Officer for compensation.

In view of the above discussions I have no hesitation to hold that complaint case is not barred by res judicata.

Now let me come to the point whether the complainant is entitled for compensation.

The 3 agreements executed by the respondent and the complainant bearing no. 932 and 933 dated 20.01.2016 and supplementary agreement no.1847 dated 10.02.2016 shows that conditional agreements were made between them to cover circumstances that could arise in case some of the agreements fell through.

In the case of agreement no. 933 sale and transfer of commercial space in front of ground floor was subject to permission for additional FAR by the GMDA.

Ld. RERA Authority in their judgement referred above came to the finding that as GMDA did not grant permission so the agreement no. 933 cannot be enforced.

In case of agreement no. 932 the sale and transfer of commercial space in front side of 1st floor was subjected to Addl. FAR by GMDA. RERA Authority held that as respondent did not get additional FAR so respondent could not construct the flats relating to agreement 932 and for this reason land owner terminated the development agreement no. 11255/2016 dated 26.09.2016 and power of attorney no. 3801/2016 dated 26.09.2016 made with the respondent and so agreement no 932 cannot be implemented.

In the supplementary deed no. 1847 it was agreed that in case FAR was not granted by GMDA for area referred to in the Deed of Agreement no 933 dated 20.01.2016 and no. 932 dated 20.01.2016 then the respondent would allot about 2200 per square feet including super built up area in the 1st floor of Amrit Residency (G + 6) on the roadside. The Ld. Real Estate Regulatory Authority held that as this building was constructed by respondent therefore this agreement 1847 is implementable. Ld. Real Estate Regulatory Authority relying upon the copy of sale deed no 13278 dated 05.11.2018 accepted the submission of the complainant that the property mentioned in agreement 1847 was sold off by the respondent to one Uttam Kumar Jiwrajka and 5 others and came to the finding that respondent did not adhere to the arrangement made in the supplementary agreement no. 1847. Real Estate Regulatory Authority directed the promoter to return Rs. 45,00,000/- along with applicable interest as the promoter failed to give possession of the apartments to the complainant in accordance with the terms of agreement no. 1847.

These findings of the Real Estate Regulatory Authority is not challenged before the higher Authority.

From all the three documents of agreement to sale bearing no. 932, 923 and 1847 it is established that total amount of Rs. 45,00,000/- was paid by the complainant in pursuance of the agreements for purchasing commercial space. All the above mentioned agreements were conditional to cover circumstances which may arise if some of the agreements fell through. As already discussed from Real Estate Regulatory Authority's detailed discussions it is found that only deed no. 1847 was implementable. As per the supplementary deed of agreement bearing no. 1847 dated 10.02.2016 the commercial space mentioned in the deed ought to have hand over within 36 months from the date of execution of that deed with a grace period i.e. within 09.08.2019, the commercial space ought to have handed over to the complainant. The condition for payment of balance amount was at the time of execution of the sale deed and handing over the possession to the complainant. However neither the possession was handed over nor sale deed was executed inspite of repeated request of the complainant; rather he sold the same to 3rd party. Real Estate Regulatory Authority also came to the same finding in the complaint file before them vide case no. ASSAM/RERA/1017/267 and directed respondent to refund the consideration amount of Rs. 45,00,000/- with interest. In view of the above discussion it is clear that the failure to comply with the obligation by the respondent/promoter to hand over the possession of the flat within the stipulated time inspite of receiving advance amount of consideration money squarely falls within the purview of Section 18 (1) Real Estate (Regulation & Development) Act, 2016 and

the complainant under the provision of Section 18 (1) of the Act r/w 19 (4) is entitled for compensation.

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

At this juncture I feel it proper to go through the provision of Sec 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.

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.

In Wg. Cdr. Arifur Rahman Khan And..... vs DLF Southern Homes Pvt. Ltd. the Hon'ble Supreme Court held as follows:

"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."

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.

The complainant sought for compensation for mental anguish, financial hardship and delay caused in fulfilling the obligations under section 11 (4)(a) and 11 (5) of the Real Estate (Regulation & Development) Act, 2016. It is stated that significant distress and financial burden has been caused to the complainant due to respondents' failure to execute the sale deed and deliver possession of the property.

In the instant case the complainant paid a huge amount of money amounting to Rs. 45.00 lakhs vide two cheques dated 20.01.2016 and two cheques dated 17.02.2016. However, the builder failed to comply with his part of the agreement and failed to handover the agreed commercial space to the petitioner instead the same was sold to a third party. The builder neither refunded the aforesaid amount to the complainant nor handed over possession of any built up commercial space to the complainant as per the agreement. Under the above circumstances he was compelled to approach RERA Authority and though the RERA Authority vide order dated 19.02.2022

directed the respondents / builder to refund the advance consideration amount of Rs. 45 lakhs with applicable interest thereon yet the respondent failed to comply with the said direction and ultimately RERA Authority passed order dated 29.02.2022 directing the Deputy Commissioner, Kamrup(M) to recover the amount of Rs. 71,29,342/- as arrears of Land Revenue. However till today the amount could not be recovered and complainant had to file a writ petition.

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 from the date of execution of the agreement with a grace period of 6 months the complainant paid such a huge amount. The complainant invested his hard earned money for purchasing the commercial space so, as to earn for his livelihood by starting business in the said commercial space. Since the complainant had not been able to get possession of the commercial space and his dream to run business in the said space inspite of investing such a huge amount failed, rather the commercial space was sold to a third party. So the mental suffering which he suffered for not getting the commercial space for the fault of the respondent can easily be imagined. Moreover pecuniary loss is also definitely suffered by the complainant.

The harassment of the complainant could be gauged from the fact that a huge amount of Rs. 45 lakhs was spent by him to purchase a commercial space 8½ years ago but the possession was not delivered to him and it was sold to a third party on 05.11.2018. In spite of selling the commercial space to 3rd party the respondent did not inform the complainant and did not return back the advance amount of consideration money paid by the complainant. So definitely the hard earned money of complainant was inappropriately utilized by

the respondent, for some other purpose All these acts of the respondent definitely caused mental stress, anxiety and harassment to the complainant. It is obvious that his dream to start business in the said commercial space shattered. Such act on the part of the respondent had definitely made the complainant to run from pillar to post and he had to file several cases during last 4 / 5 years and for this also he suffered mental harassment. The complainant had to file a complaint before the RERA Authority on 2017 and inspite of RERA Authority's direction vide order dated 19.02.2022 to return the money with interest, till date he could not get the money. Bakijai officer also till now could not recover the amount and the complainant had to approach the Hon'ble High Court.

It appears that the complainant who invested his hard earned money could not recover his hard earned money with interest till today. The complainant definitely faced anxiety and harassment for all these reasons.

The Ld. Counsel for the complainant strenuously argued that if the consideration amount paid by the complainant would not have been paid to the respondent then the complainant would have earned substantial amount on account of interest by investing the money in some saving schemes. It is further submitted that he could have earned a handsome amount if he would have invest the money in some other aspect. It is also submitted that if he would get the commercial space then he would have earned a handsome amount by using the same for running a business or by way of letting the said space. It is also argued that if he would have got possession of the commercial space then by this time the value of the same would have enhanced to a great extent. It is submitted that for the above account complainant is entitled for opportunity loss.

I found force in the above submission of Ld. Counsel for the complainant.

It is also apparent that the complainant definitely faced financial hardship after investing such a huge amount 8 ½ years ago, so now it is also not possible for him to arrange for another commercial space / flat as the cost of flats in such a locality will increase to a greater extent after elapse of 8 ½ years. It is obvious that during the interval of 8 ½ years there is substantial rise in the Real Estate in relation to develop colony near the project in question. Besides by this time the cost of construction material also increased to a great extent. So all these facts show that definitely there would be great difficulty on the part of complainant to arrange for another commercial space.

It appears that the respondent utilized the hard earned money of the complainant for some other purpose and not for fulfilling their obligation to the complainant as per the agreement. Respondent unlawfully kept the huge amount of money of the complainant who spend his hard earned money for getting a commercial space to start business and such act of the respondent is completely unfair. The money is withheld till today. From the above discussion it appears that it amounts to disproportionate gain to the respondent or unfair advantage made by the respondent as a result of the default.

The claimant in heading 5(a) of the complaint petition sought for interest on the principal amount at the rate of 15% per annum as mentioned in clause of the supplementary agreement dated 10.02.2016 and on the basis of the said calculation claimed total interest of Rs. 50,62,500/- on the principal amount of Rs. 45,00,000/-

Clause 5 of the above agreement shows that in the agreement there is a condition showing liability on the part of the respondent

promoter to pay interest @ 15% to the complainant after the completion of 3 ½ years period from the execution of the deed 932, 933 dated 20.01.2016 or the paying the rent for duration of delay period. The complainant was not paid the interest or rent though there is provision in this regard as mentioned in clause 5 of the agreement for sale regarding delay in handing over possession.

As per section 18(1) proviso of Real Estate (Regulation & Development) Act, 2016 when allottee doesnot intent to withdraw from the project he shall be paid interest for every month of delay till the handing over of the possession at such rate as provided under the Act.

As per M/s Newtech Promoter and Developer Ltd, as discussed above it is the Real Estate Regulatory Authority who has the power to direct payment of interest for every months delay in delivery of possession when the buyer doesnot want to withdraw from the project. Real Estate Regulatory Authority in the complaint case however getting no scope for implementation of the agreement as discussed earlier directed the respondent to refund the consideration money with interest.

The Ld. Advocate for the complainant also prayed for additional compensation of Rs. 25,30,000/- which according to him is the difference of sale rate at which respondent sold the commercial space to a third party without the consent of the complainant. But on perusal of the copy of the sale agreement made with the third party dated 3rd July, 2015 which was submitted by the complainant and the copy of the sale deed of the said land bearing no. 13278 executed in favour of the 3rd party which is in the record of RERA/ASSAM/2017/767 the final consideration amount paid for the

same land was found to be Rs. 60,00,000/- and not Rs. 1,75,80,000/- as agreed in the agreement for sale. Hence the question of granting the difference amount as claimed by the complainant do not arise.

It has been strenuously argued on behalf of the respondent that Real Estate Regulatory Authority had already granted interest on the amount of refund of the advance consideration money (i.e on Rs 45 Lakhs and so the complainant is not entitled for any further amount in this compliant case. This argument cannot be accepted. Under the provision of Real Estate (Regulation & Development) Act, 2016 due to the default of the respondent / promoter in handing over the flat within the time as stipulated in the agreement, the complainant / buyer is entitled for a three fold relief / remedies on withdrawing from the project i.e. 1) refund of the amount paid; interest on the said amount as per provisions of section 18(1) of the Act which can be granted by Real Estate Regulatory Authority and also compensation under section 18(1) of the Act which should be adjudged by the Adjudicating Officer taking into consideration the factors enumerated in section 72 of the Act.

In Arifur Rahman's case cited above the Hon'ble Supreme Court found default of the promoter to hand over the possession within the time stipulated in the agreement and held that the allottee Appellant No 1 and 2 are entitled for compensation @ 6% per annum on the consideration amount already paid. The Hon'ble Supreme Court also held that the said amount shall be in addition to the amount which have been paid over or credited by the Developer at the rate of Rs. 5% per square feet per month.

Considering all the aspect as discussed above relating to mental agony / suffering / harassment, disproportional gain or unfair

advantage made by the respondent, opportunity loss etc. caused to the complainant and also taking into account the fact that already Real Estate Regulatory Authority passed judgement for refund of the consideration money with interest, I 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 complainant is entitled for compensation @ 4% per annum on the amount of Rs. 45,00,000/- paid by the complainant from 10/02/2016 till date of this order.

Complainant is also entitled for an amount of Rs. 25,000/- as litigation cost.

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 @ 9.3% per annum on the compensation amount from the disposal of this complaint till realization.

Sd/-

(Selina Begum)
Adjudicating Officer

Real Estate Regulatory Authority,
Assam, Guwahati

Memo No. RERA/ASSAM/ADJ/2023/08/

Dated :-29.08.2024

Copy for information and necessary action to:-

1. Shri Pradeep Kr. Gupta, Gupta Hardware, Near Gopal Boro High School, Ganeshguri, Dispur, Ghy-06.
2. M/s Mee Infrastructure, Bharalumukh, Ghy.
3. Website i/c for uploading the order.
4. Office File.

Sd/-

Registrar, i/c

Real Estate Regulatory Authority,
Assam, Guwahati