

**BEFORE THE ADJUDICATING OFFICER
THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR**

Complaint No. RAJ-RERA-C-2020-3902

Kundan Lal

Complainant

Versus

Harish Jasuja

Respondent No. 1

Rajender Wadhwa

Respondent No. 2

MNG Dreamz through its partners

Sh. Harish Jasuja And Rajender Wadhwa. Respondent No. 3

Jasuja Buliders

(Proprietor Sh. Harish Jasuja)

Respondent No. 4

Anami Buildmart

(Proprietor Sh. Rajendra Wadhwa)

Respondent No. 5

Present

Hon'ble Shri R.S. Kulhari, Adjudicating officer

Mr. Kundan Lal, applicant present in person.

Mr. Gurmoj Goel, Advocate present for respondent no. 1.

Date: 20.08.2024


(R. S. KULHARI)
Adjudicating Officer
Rajasthan Real Estate Regulatory Authority
Jaipur



ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RERA Act') read with Rule 36 of the RERA Rules, 2017 for seeking compensation.

2. It is averred by the complainant that he has booked shop no. 8 LGF in the project of respondent named as "**City Trade Center**" at Sriganganagar on the basis of brochure and advertisement made by the respondents. He has deposited Rs. 8,50,000 by way of two cheques and Rs. 8,50,000 were given in cash against the total sale consideration of Rs. 42.95 lacs. However, despite deposit of around 40%, the project was not completed. It was also alleged that the construction of the building was not made as per approved plan, more floors were constructed violating the conditions of the approved plan. Some other facilities were also not made available as agreed in the brochure.
3. Being aggrieved, the complainant alongwith other allottees have filed the complaints for refund before the Hon'ble RERA Authority. The Hon'ble RERA Authority vide order dated 13.03.2023 allowed the refund with interest @ 10% per annum from the each date of deposit till the refund. However, the complainant has lost the



opportunity of appreciation of the property which would have been of Rs. 80 lacs. Further, had the possession been given, he would have earned Rs. 22,20,000 as rent from 2014-2023. Therefore, claiming the above amount he had also claimed Rs. 15 lacs towards physical and mental harassment and Rs. 1 lac as cost of litigation.

4. A reply has been filed on behalf of the respondent no. 1 "Harish Jasuja". However, the other respondents have neither appeared nor filed any reply/ document to rebut the contention and pleadings made by the complainant.

It was stated by the respondent no. 1 that the complainant has filed a complaint before the Hon'ble RERA Authority so this second complaint is hit by the principle of "res judicata" because no complaint can be filed again on the same cause of action. A separate application was also filed on 07.11.2023, taking such preliminary objection.

5. On merits, it was stated that the complainant is alleging to have purchased shop no. 8 LGF but the same belongs to respondent no. 2 "Rajender Wadhwa". Further, the property was purchased in individual capacity by "Harish Jasuja" and "Rajender Wadhwa". The respondent No. 1 is the owner of the 365.82 sq.ft., hence the project is not required to be registered. It was also emphasized that the receipts filed by the complainant are false and fabricated which were never issued by the firm "MNG Dreamz". No



cash payment can be made above Rs. 20,000 as per Income Tax Act. A sum of Rs. 8,50,000 is shown as unsecured loan in the books of "M/s Jasuja Builders". The Hon'ble RERA Authority has already granted refund with interest, therefore, the complainant is not entitled to any relief in this complaint.

6. Heard the learned counsels for the parties and perused the records.

7. The complainant has submitted that the respondents have misrepresented from the very beginning. They have shown the project to have been approved by the Government in brochure but it was never approved. Initially 5 floors in the building were shown but the respondents have constructed 8 floors in violation of the approved plan. The other ancillary facilities as shown in the advertisement were not provided. The project was liable to be registered but respondents have not applied for the same. The complainant filed complaint for refund alongwith other allottees which were allowed by the Hon'ble RERA Authority vide order dated 13.03.2023, in which all the 5 respondents were declared to be promoters of the project and liable for refund. Before that, the Hon'ble RERA Authority vide order dated 09.05.2022 directed the promoters to get the project registered but they have not complied with the order. It was further submitted that the Hon'ble RERA Authority has allowed



the refund with interest @10% per annum but the complainant lost the opportunity to have his own shop and deprived of the appreciation in the cost. He has also suffered the financial loss and rental value alongwith physical and mental agony. Therefore, adequate compensation be granted.

8. On the contrary, learned counsel for the respondent no. 1 contended that in the original complaint earlier "Harish Jasuja" and "Rajender Wadhwa" were made respondents. Thereafter, the firm "MNG Dreamz" was added and in the latest application dated 18.08.2023, the proprietorship firm "Anami Buildmart" and "Jasuja Builders" were also arrayed as respondents. So it is not clear, against whom the complainant is pressing his claim.

9. The next contention was that the Hon'ble RERA Authority has already allowed the refund with interest and no liberty was given to file the complaint for compensation. Therefore, this complaint is not maintainable on the same cause of action.

10. It was further canvassed that the property in question was purchased in the individual names of "Harish Jasuja" and "Rajender Wadhwa" and the alleged shop no. 8 was in the ownership of "Rajender Wadhwa" so respondent no. 1 is not at all liable for any compensation. Further, the amount was deposited by the complainant with the "Jasuja Builders" which has been shown in its books as



unsecured loan, so respondent no. 1 "Harish Jasuja" cannot be held liable in his individual capacity for any transaction made with "Jasuja Builders". The property in the name of "Harish Jasuja" is 365.82 sq.ft., so the said project was not liable to be registered. Therefore, the respondent no. 1 is not at all liable.

11. Having heard the learned counsels for the parties and considering the material available on record, it is evident that the respondent nos. 2 to 5 have neither appeared nor filed any reply so the pleadings and the documents furnished by the complainant remained unrebutted qua these respondents. Only respondent no. 1 "Harish Jasuja" has contested this complaint.

12. The contention that against whom the complainant is pressing his claim, is devoid of force after the conclusion of the Hon'ble RERA Authority arrived at in the refund application of the complainant. The Hon'ble RERA Authority has recorded the findings as under :-

"From the Table above, it also becomes clear that all the five respondent-promoters have, in their actual operations, acted as one single entity. Payments were received either by Shri Rajendra Wadhwa or by Shri Harish Jasuja or jointly by both of them, either in the name of their proprietorship firms (Anami Buildmart/Jasuja Builders) or in the name of their partnership firm (MNG Dreamz). All the five respondents have been held to be the promoters; and, by virtue of Explanation to section 2(zk) of the Act, are jointly



liable for the functions and responsibilities of promoter provided under the Act. As such, we are not concerned as to who, out of the five respondent-promoters, actually received the payment, but it is certain that all five are jointly responsible for all the payments received from the allottee-complainants.”



13. Since the Hon'ble RERA Authority has found all the 5 respondents jointly responsible for refund of the amount, therefore, this issue cannot be reagitated and pondered over before this Tribunal. Accordingly, all the respondents are liable for the compensation, if the complainant is found entitled for the same.

14. With regard to the argument that the booked shop does not belong to the respondent no. 1 and the project is not liable to be registered is also of no avail. For decision on the issue of registration, the Hon'ble RERA Authority is the competent forum as per scheme of RERA Act. In the order dated 09.05.2022 passed in the complaint no. 2019-2818 the Hon'ble RERA Authority has concluded that the project is liable to be registered in the following terms:-

“In view of the above observations and findings, we hereby hold that the impugned project ‘City Trade Center’, located at 1A, Public Park, Sriganganagar, is required to be registered under section 3 of the Act as an ongoing project.

Shri Harish Jasuja and Shri Rajendra Wadhwa, who are the landowners and have acted as developer promoters

of the project, are promoters of the project in their individual capacity and also as partners of M/s MNG Dreamz claimed to have been dissolved. Since the Act and the Rules provide for registration of a project in phases, the said promoters can choose to register the impugned project as two independent phases/projects, with Shri Harish Jasuja acting as the main promoter and Shri Rajendra Wadhwa acting as the other (joint) promoter of one phase, comprising the apartments constructed on the land of Shri Jasuja's ownership; and Shri Rajendra Wadhwa acting as the main promoter and Shri Harish Jasuja acting as the other (joint) promoter of the other phase, comprising the apartments constructed on the land of Shri Wadhwa's ownership. If the impugned project is registered as one single project, then either of Shri Harish Jasuja and Shri Rajendra Wadhwa can choose to be the main promoter applicant, the other being shown as another promoter jointly liable to allottees in the project."



15. So far as the issue of deposit of amount with respondents and receipt of Rs. 85,000 instead of Rs. 8,50,000 is concerned, although, the documents furnished by respondent no. 1 reveal that Rs. 8,50,000 has been shown as unsecured loan in the books of "Jasuja Builders" and the receipts were issued by the "MNG Dreamz" but there is categorical finding of the Hon'ble RERA Authority on this aspect that total 17 lacs were paid and for the purpose of receipts all the 5

respondents have "acted as one single entity". Therefore, it was upto the respondents to decide in which name the cheque was to be taken and how the entries are to be reflected. The complainant had nothing to do with the inter se accounting of the respondents. So this issue also does not require any further analysis and consideration. The orders passed by the Hon'ble RERA Authority on 09.05.2022 and 13.03.2023 have not been set aside or modified by the Hon'ble Appellate Tribunal. Therefore, there is no reason to take a different view.

The contention that the present complaint is not maintainable because of principle of "res judicata", is also not tenable. The jurisdiction of the Hon'ble RERA Authority and that of this Tribunal are independent and distinct. There is no necessity to grant any liberty by the Hon'ble RERA Authority for entertaining the complaint for compensation. This controversy has been set at rest by the Hon'ble Supreme Court in the judgment of **M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others** (Civil Appeal No(s). 6745-6749 of 2021, 2021 (11) ADJ 280) at (Para 86). Thus, even if the Hon'ble RERA Authority has allowed the refund the complainant may file the claim for compensation for financial loss, physical and mental agony etc. If it is proved on the basis of the cogent evidence produced in this behalf, the allottee may be




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awarded compensation. In the instant case, the project was neither registered nor any offer for possession was given and even there is no evidence on record to demonstrate that any demand was raised by the promoter from the complainant and he was at any fault. Therefore, no fault can be attributed towards complainant. The Hon'ble RERA Authority has observed that the complainant has deposited 17 lacs and the project has become illegal on account of non-registration as also for violation of the layout plan, having raised more floors. Thus, the promoters have violated the provisions of Section 18 and 19 of the RERA Act and thereby they are liable to pay the compensation to the complainant.

17. Adverting to the assessment of compensation the complainant has pressed for rental loss, appreciation in the cost of property alongwith other factors. However, since he has opted to withdraw from the project, therefore, the issues of possession and thereby loss of rental income and lacks of promised amenities etc. have become redundant and irrelevant. In case at refund, the theory of restitution applies whereby the complainant has to be restituted in its original position by way of compensation, more particularly with regard to appreciation in the cost and loss of opportunity. In this context the Hon'ble RERA Authority has already allowed interest @ 10% per annum but in my opinion that is not

sufficient to recoup the financial loss caused to the complainant on this whole transaction. Had this amount been invested somewhere else the complainant would have got at least 12% return on the deposited amount as prevalent in the market. Conversely, if the respondents have taken loan from any other financial institution they would have paid more than 12% p.a. Therefore, it is deemed appropriate to award difference of 2% of interest on the deposited amount as compensation towards financial loss caused to the complainant.

18. Apart from this, the complainant has lost the opportunity cost and has suffered physical and mental agony because of the deficiency in service caused by the respondents. Therefore, the complainant is also entitled to get the compensation on this count which is quantified to be Rs. 1 lac lump sum considering the facts in its entirety.

19. Further, the complainant has incurred the cost of litigation for filing the complaint before the Hon'ble RERA Authority as well as before this Tribunal for no fault on his part. Therefore, respondents are also jointly responsible to bear the cost of litigation which is quantified to be Rs. 20,000.

20. Accordingly, the complaint is allowed against all the five respondents jointly in the following manner:-



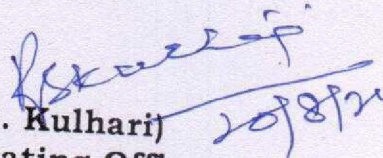
R/S

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- (i) All the respondents are directed to pay interest @ 2% p.a. simple as compensation in addition to the interest allowed by the Hon'ble RERA Authority, on the deposited amount from each date of deposit till the date of payment.
- (ii) The respondents shall also pay Rs. 1,00,000/- as lump sum on account of deficiency in service, loss of opportunity and mental agony caused to the complainant.
- (iii) The respondents shall further pay Rs. 20,000/- towards cost of litigation to the complainant.
- (iv) The compliance of this order shall be made within 45 days, failing which the complainant shall be free to file execution application in accordance with law.
- (v) The order be uploaded on the website of RERA and also sent to all the parties by registered post. File be consigned to records.

Date - 20.08.2024


(R.S. Kulhari)
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