

Vineet Ruia and Anuradha Ruia (Appellant)

Vs

Geeta Ganesh Promoters (P) Ltd (Respondent)

Before the Ld. Regulatory Authority under the West Bengal Real Estate (Regulation and Development) Rules, 2021.

4. Facts of the Case

The Appellants had visited the construction site of M/s Geeta Ganesh Promoters (P) Ltd (hereinafter referred to as the "Promoter") with their project under name and style "RARE EARTH" situated at 93 Moulana Abul Kalam Azad Sarani, PS Phoolbagan, Kolkata – 700054 on or about 28th February 2020 and upon finding the project almost complete and the site office confirming that the possession will be given in March 2020 itself, deposited a cheque of Rs.11,00,000.00 (Rs. Eleven Lakh only)

However, on 5th March, one of the directors of the Promoter Mr. Gopal Prasad invited the Appellants to visit their office whereas the first appellant Mr Vineet Ruia (hereinafter referred to as the Appellant) went to meet the Promoter and finalized the deal. It was decided that the Appellant will make full payment on 6th March and the Promoter will hand over one set of keys of the Apartment no. 11B of Tower 5 of the said project RARE EARTH to the appellant for starting the fit out works in the said Apartment.

Accordingly, the full amount of Rs.2,46,29,910 (Rs.Two Crore Forty Six Lakh Twenty Nine Thousand Nine Hundred Ten only) was paid along with a GST deposit of Rs.29,50,608 (Rs.Twenty Nine Lakh Fifty Thousand Six Hundred Eight only) out of which, the GST input cost benefit was to be passed on to the appellant at the time of possession of the Apartment.

Since the entire process of payment took only one day, the promoter requested for time to prepare the Agreement for Sale. The appellant had already checked the proforma uploaded by the promoter on the website http://hira.wb.gov.in/project_details.php?procode=14141000000000

While in the meantime, there was a lockdown since the last week of March 2020, a few months later, the promoter called the appellants to sign the Agreement for Sale and immediately after their signing, took the copies back for the promoter to sign. The signed copy was finally received thereafter, after a few months. On or about 18th July, 2021, the appellants scrolled through the Agreement for Sale to find that the format of the Agreement for Sale was largely different at different intermittent points while keeping the main format of the proforma uploaded on the above-mentioned website intact. It has been smartly and cleverly done so that the person having a glance may not even have a chance to notice the points of change. The appellant brought it to the notice of the promoter on the very next day.

A copy of the said Agreement for Sale is annexed herewith and marked with the letter "P2"

A copy of the proforma for the Agreement for Sale uploaded on the RERA website is also annexed herewith and marked with the letter "P3"

In the meantime, the appellant kept on requesting the promoter to hand over the possession of the Apartment but the promoter kept on requesting for time. The appellant informed the promoter that he had made the full payment only after the promise that the Apartment will be handed over within March 2020 and he is in dire need of the Apartment as his old age parents are returning from the USA in March and have problem in climbing stair cases (the existing house of the appellant does not have elevators and his mother needs knee replacement).

The promoter kept on delaying the possession by asking for a fortnight or a month in spite of the fact that he has already given possession to several other people. The reason for such discrimination is not known. Now, the appellant is agonized, deeply harassed and finds no other option than to approach the Regulatory Authority.

The appellant also states that he has been allotted two Ground Covered Car Parking/Garrage and One Open Car Parking/Garrage. The provision of open car Parking/Garrage has been struck off by the Hon'ble Supreme Court as it was never allowed under the RERA Act. The appellant is ready pay the difference amount for the allotment of the Covered Car Parking/Garrage in lieu of the Open Car Parking/Garrage. The Promoter has not covered the Ground Covered Car Parking/Garrage on three sides as per the RERA Act.

A copy of a few correspondences made by the Appellant (all of which remain un-replied till date) to the Promoter are enclosed herewith and marked with the letter "P4"

5. Relief Sought

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following reliefs:

1. The Promoter be directed to give immediate possession of the said Apartment to the Appellants
2. The Promoter be directed to allot a Ground Covered Car Parking/Garrage in lieu of the Open Car Parking/Garrage
3. The Promoter be directed to correct the Agreement for Sale to match the same with the proforma submitted with the RERA Authorities.
4. The Promoter be directed to ensure that the Conveyance Deed be honestly prepared so as to match with the rules of RERA Act
5. The Promoter be directed to pay an amount of interest amounting Rs.43,72,634.12 (Rs. Forty Three lakh seventy two thousand six hundred thirty four and paise twelve only) which is calculated on an annual compound basis as per the act covering SBI PLR + 2% from 1st June 2020 till 31st July 2021 after giving a grace of two months on account of lockdown and not calculating on a monthly basis, within 45 days hereof
6. The Promoter be directed to make further payment of interest for the delayed period beyond 31st July 2021
7. The Promoter be directed to refund the input benefit amount GST which became due on 1st April 2020 along with interest amounting Rs.33,36,216.50 (Rs. Thirty Three Lakh Thirty Six Thousand Two Hundred Sixteen and Paise Fifty only) calculated at 11.25% if the profit margin of the

promoter is 25% in the project. However, if the profit margin is more, the appellant leaves it on the Regulatory Authority to decide the amount of refund.

6. Prayer for Interim Order

Pending final decision on the complaint, the complainant seeks issue of the following interim order:

1. The promoter be directed to handover immediate possession of the Apartment along with the Car Parkings/Garrages

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