



Complaint no. 1292/2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1292 OF 2018

Vinod Kumar

....COMPLAINANT

VERSUS

Ansal Housing and Construction Ltd.

....RESPONDENT

**CORAM: Shri Rajan Gupta
Shri Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 09.04.2019

Hearing: 4th hearing

Present: - Shri Vibhor , Counsel for complainant

Shri Abhinav Kansal, Counsel for respondent

ORDER (ANIL KUMAR PANWAR- MEMBER)

Respondent, herein, allotted a residential plot No, A-141 measuring 358.79 sq. meters situated in his project named "Ansal Town" Sector-20, Rewari to Shri Ashok Kumar. Allotment letter dated 25.08.2007 and builder buyer agreement dated 01.06.2008 were issued in favour of Shri Ashok Kumar. Basic sale consideration of the plot was fixed at Rs. 16,15,553/- and the allottee was liable to pay other charges such as EDC, VAT etc. besides the said price. He has already paid Rs. 17,56,097.68 to the respondent. The present complainant had purchased the said plot from Shri Ashok Kumar and the respondent had endorsed the transfer of the plot in his name vide letter dated 05.07.2008.

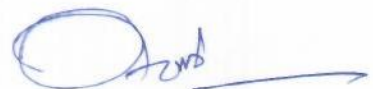
2. The complainant's grievance is that he had been paying all the amount demanded by the respondent but the respondent who was duty bound to deliver him possession within a reasonable period, has failed to deliver the possession till date. Another grievance of the complainant is that respondent had charged compound quarterly interest @ 21% on the delayed payments. His prayer is now for issuance of directions to the respondent to deliver possession alongwith delay compensation and for refund of the exorbitant interest amount of Rs. 94000/- and Rs. 46,693.32/- charged from him.

3. The respondent resisted the complaint by raising preliminary objections to the effect that all the reliefs claimed in the present complaint are in the jurisdiction of the Adjudicating Officer and the Authority even otherwise has no jurisdiction



for the reason that the respondent has been since granted part completion certificate on 08.11.2017. On merits, respondent's plea is that the development works in the project had been completed and he is ready to offer possession to the complainant subject to payment of balance outstanding amount. The respondent's plea regarding the alleged exorbitant interest is that the complainant has paid Rs. 94,000/- and since the other amount of Rs. 46,693.32/- was paid by the original allottee, he has no right to complain against the said amount in the present case.

4. The respondent in this case requested the Authority to allow him time to amicably settle the dispute with the complainant. The Authority has, accordingly, offered him two opportunities. Today, the Authority was apprised that the respondent has offered an alternative plot No. A-64 measuring 500 sq. meters to the complainant because plot of the size which was allotted to the complainant was not available. The complainant is ready to accept the offer and take possession of the bigger plot provided the price for the excess area of 150 sq. meters is charged at the circle rate. The respondent, on the other hand, submits that he is entitled to charge price for the excess area at the market rate. The Authority is of the considered opinion that when the respondent had agreed to allot a plot measuring 350 sq. meters and he, for whatever reason, is now offering him a bigger plot in place of the plot of the size as agreed upon, the respondent can be directed to only charge the price which the government agency is considering as the prevalent price of the land located in the area in question, which in government parlance is called circle rate. So, the Authority directs the respondent to deliver possession of the



alternative plot bearing No. A-64 to the complainant subject to his paying the additional price of the excess area of 150 sq. meters at the circle rate fixed by the Deputy Commissioner, Rewari.

5. Now coming to the question concerning the interest charged at the delayed payment of demanded dues raised against the complainant. The respondent has not categorically denied the complainant's version that he had charged compound interest @ 21% per annum. Rather, the respondent without disputing that the complainant had paid him interest of Rs. 94,000/-, has raised a plea that the complainant will have no right to question the amount of Rs.46,693.32/- charged as interest from the original allottee. Undeniably, the complainant had purchased the rights of the original allottee and the respondent had endorsed such transfer in his favour vide letter dated 05.07.2008. So, the complainant for all intent and purposes had stepped into the shoes of the original allottee and he will be entitled to challenge even the propriety and legality of the exorbitant amount charged as interest irrespective of the fact whether the amount was paid by him or his predecessor in interest i.e. the original allottee. This Authority, on the basis of law laid down by the Hon'ble Supreme Court, has ruled in deciding various complaints that the promoter's act of charging exorbitant interest on the delayed payments is unconscionable and that a reasonable rate of interest chargeable on the delayed payments shall not exceed 9% per annum. So, the respondent is directed to re-calculate the interest on the delayed payments @ 9% per annum and he shall adjust



the excess amount of interest towards the balance payment payable by the complainant for the excess area of 150 sq. meters.

6. The buyer's agreement was executed between the parties on 01.06.2008 and the respondent in terms of said agreement was liable to deliver the possession to the complainant within a reasonable period of time. Since no specific date was agreed between the parties for delivery of possession, the reasonable period of time shall be construed as the period which in ordinary course of time is required for completion of a real estate project. Such construction period, in the opinion of the Authority, shall not exceed three years. The promoter after completing the project is required to obtain the completion/occupation certificate before actually delivering the possession to the allottees. A period of six months, thus, is further required to be added to aforesaid three years for under-going such formalities as are required for obtaining of a completion/occupation certificate. So, the Authority is of the considered opinion that the reasonable period of time within which the respondent in this case should have offered the possession to the complainant deserves to be taken as 42 months i.e. three and a half years. Thus calculated, the deemed date of possession comes to 01.12.2011. The respondent till date has not offered possession to the complainant and he is, therefore, liable to pay the delay compensation to the complainant at the same rate at which he has been held entitled to charge interest i.e. @ 9% per annum on the amount already collected from the complainant till the date of actual delivery of possession.



7. The complaint is, accordingly, **disposed of** in the terms stated above. File be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]