



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2003 OF 2019

Col Rajive Singh Chauhan

....COMPLAINANT(S)

VERSUS

DLF Homes Panchkula Pvt. Ltd

....RESPONDENT(S)

CORAM:

Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 24.08.2021

Hearing: 13th

Present: Mr. Sateekshan Sood, Ld. Counsel for the complainant through VC.

Mr. Shekhar Verma, Ld. Counsel for the respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Authority heard this matter at length on 21.01.2021 and had passed the following order:

"1. Complainant had purchased a residential flat (DVF-D7/11 GF #217) measuring 1450 square feet in respondent's project named 'DLF Valley, Panchkula' from original owner Mrs. Neeru Malik in September 2010. BBA was executed between original owner Mrs. Neeru Malik and the respondent on 06.07.2011 which was endorsed in favour of the complainant on 09.01.2013 after completion of all the formalities. Complainant had paid an amount of ₹39.43 lakhs against basic sale price of ₹31,68,974/-. Deemed date of possession was 05.07.2013 (24 months from BBA). Complainant stated that respondent had offered the possession on 26.10.2016 but it was not a good offer of possession as said unit was not inhabitable as certain deficiencies found in the flat due to which possession had not been taken over by the complainant till date. He further stated that the respondent was informed time and again about such deficiencies with a request to rectify the same but no action has been taken till date. Complainant has stated that there has been no delay on his part in making payments and wherever the delay has been caused, a proper email was sent to the



respondent. He further confirmed that there is no pending demand from the side of the respondent.

2. *During the course of the proceedings, complainant was directed to prove that the alleged deficiencies were existing on the date when the possession was offered to him by the respondent. In order to prove the same, complainant drew attention of the Authority at page 101 point 3 of his paper book containing details of 33 deficiencies in the said unit which were observed by the complainant on initial inspection done on 27.02.2017. Complainant further stated that he sent various correspondence to the respondent to rectify these defects, for which he also drew attention of the Authority at pages 58 to 81, 90, 91, 99, 101 of his paper book.*

3. *Complainant has pleaded that since deemed date of possession was 05.07.2013 (24 months from BBA), there has been a delay of 3 years on part of the respondent in offering possession. Thus, he has requested the Authority to grant him possession of the unit in its inhabitable condition after rectification of all the deficiencies along with delay interest from deemed date of possession.*

4. On the other hand, Ld. Counsel for the respondent has contended that he had received Occupation Certificate qua the complainant's unit on 19.07.2016 and respondent had duly offered the possession of the unit on 26.10.2016 along with final statement of accounts. But complainant has failed to take possession of the unit even after receiving various reminders from the respondent company dated 18.06.2018, 01.08.2018 and 04.05.2019.

5. With regard to deficiencies in the unit, respondent stated that the defects pointed out by the complainant were only related to maintenance. He further stated that defects in the unit were a result of delay on the part of the complainant in taking possession. The complainant was offered possession on 26.10.2016 but complainant at that time sought rebate from the respondent with respect to the additional demand made by the respondent along with the offer. The flat of the complainant is lying closed and vacant since then and maintenance issues are bound to happen in a closed flat. Respondent contended that the complainant should have



taken the possession first, after that maintenance agencies were bound to rectify the defects itself.

6. *With regard to delay in offering possession to the complainant, the respondent has stated that as per Clause 11(a) of BBA, Company endeavored to complete the construction of the said project within 24 months unless there was delay due to force majeure condition or due to reasons mentioned in 11(b) and 11(c). He further stated that there was a stay on construction in furtherance to the direction passed by the Hon'ble Supreme Court vide order dated 19.04.2012 in SLP No. 21786-88/2010. In furtherance of the above-mentioned order passed by the Hon'ble Supreme Court, construction activities at the project site had to be put in abeyance and no further activity was carried out.*

7. *Thus, following questions have arisen before the Authority which will be discussed on next date of hearing,*

1) whether delay in offering possession by the respondent can be said to be covered under force majeure conditions?

2) whether complainant should have accepted possession in 2016 regardless of the defects pointed out?"



2. In order to argue on the above questions, the complainant has submitted written arguments on 28.01.2021. In response to this, the respondent has given written submissions on 24.08.2021 along with recent photographs of the flat. After going through pleadings, oral arguments and written submissions of both the parties, the following issues have arisen before the Authority for decision:

i) Whether complainant should have accepted possession in 2016 regardless of the defects pointed out?

ii) Whether complainant is entitled to delay interest for delay in handing over possession of the flat from deemed date of possession till date of offer of possession?

3. As regards first issue i.e., whether complainant should have accepted possession in 2016 regardless of the defects pointed out, Authority observes that the proof submitted by the complainant with regard to existence of deficiencies in the unit at the time of offer of possession by the respondent are only in the form of email and letters written by the complainant to the respondent. No third-party report has been attached by the complainant to show that the defects pointed out by him actually existed in the unit on 26.10.2016. Complainant has also not attached any photograph of the flat as it existed in 2016 to prove the same. Thus, it is very difficult for the Authority to ascertain at this point of time as to whether the defects pointed out by the complainant actually existed 5 years ago. In absence of any concrete proof,



the Authority is not in a position to give any finding as to whether the complainant should have accepted possession in 2016 regardless of the defects pointed out. However, as per photographs now placed before the Authority by the respondent, the flat appears to be ready for possession. Deficiencies still if any, shall also be removed by the respondent. Therefore, the respondent is directed to hand over possession of the flat to the complainant without any further delay.

4. As regards second issue i.e., whether complainant is entitled to delay interest for delay in handing over possession of the flat from deemed date of possession till date of offer of possession i.e. 26.10.2016, the contention of the complainant is that as per clause 11 and clause 14 of BBA, the respondent was duty bound to complete construction of the unit and offer possession of the same within 24 months from date of execution of BBA which comes to 05.07.2013. However, possession has been offered to him on 26.10.2016. He is, therefore, entitled to delay interest for delay in handing over possession of the flat from 06.07.2013 to 26.10.2016. On the other hand, contention of the respondent is that as per Clause 11(a) of BBA, Company endeavored to complete the construction of the said project within 24 months unless there was delay due to force majeure condition or due to reasons mentioned in 11(b) and 11(c). "Force Majeure" has been defined under BBA as follows:

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"Force Majeure" shall mean any event or combination of events or circumstances beyond the control of the Company which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which adversely affects the Company's ability to perform its obligations under this agreement which shall include:

- (a) acts of God i.e. fire, drought, flood, earthquake, epidemics, natural disasters;*
- (b) explosions or accidents, air crashes and shipwrecks, act of terrorism;*
- (c) strikes or lock outs, industrial dispute;*
- (d) non-availability of cement, steel or other construction material due to strikes of manufacturers, suppliers, transporters or other intermediaries or due to any reason whatsoever;*
- (e) war and hostilities of war, riots, bandh or civil commotion;*
- (f) the promulgation of or amendment in any law, rule or regulation or the issue of any injunction, court order or direction from any governmental authority that prevents or restricts a party from complying with any or all the terms and conditions as agreed in this Agreement; or***
- (g) any legislation, order or rule or regulation made or issued by the Govt. or any other authority or if the competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for the Said Independent Floor/ Said Building/ Said Project or; if any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority(ies) become subject matter of any suit before a competent court or for any reason whatsoever;*
- (h) any event or circumstances analogous to the foregoing.*

Ld. Counsel for the respondent further pleaded that since there was a stay on construction in furtherance to the direction passed by the Hon'ble Supreme Court vide order dated 19.04.2012 in SLP No. 21786-88/2010, construction activities at the project site had to be put in abeyance and no further activity was carried out. Thus, the period during which the stay

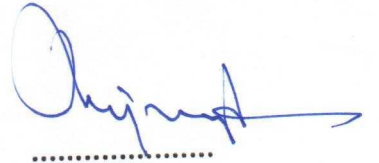


operated i.e. from 19.04.2012 to 12.12.2012 shall not be counted towards calculating 24 months from BBA within which the respondent was expected to complete construction works and offer possession of the unit to the complainant. Thus, he pleaded that deemed date of possession should be extended by a period of 238 days from 05.07.2013.

5. After appreciating oral as well as written arguments of both the parties, the Authority is of the view that as per Clause 11(a) of BBA, the respondent was expected to complete the construction of the said project within 24 months unless there was delay due to force majeure condition or due to reasons mentioned in 11(b) and 11(c). Considering the definition of "force majeure" as mentioned in the agreement, the Authority accepts the contention of the respondent that deemed date of possession shall be considered to be 01.03.2014 and not 05.07.2013 due to stay of 238 days by the Hon'ble Supreme Court on construction activities at the project site. Therefore, the complainant is entitled to payment of delay interest for delay in handing over possession of the flat from deemed date of possession i.e. 01.03.2014 till date of offer of possession i.e. 26.10.2016 which comes to Rs. 9,74,762/- as per rule 15 of HRERA Rules, 2017.

6. Authority, thus, directs the respondent to hand over the possession of the flat to the complainant immediately. Further, the respondent is directed to pay delay interest of Rs. 9,74,762/- to the complainant for delay caused in handing over the possession from 01.03.2014 till 26.10.2016. Case

is **disposed of** in the above terms, with a direction to both the parties to comply with order of the Authority within 45 days of uploading of the order on website of the Authority. Files be consigned to the record room and order be uploaded on website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]