



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA
Website: www.haryanarera.gov.in

COMPLAINT NO. 1217 OF 2019

Rupa Joshi

....COMPLAINANT(S)

VERSUS

GPM Developers Pvt. Ltd.

...RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.07.2022

Hearing: 10th

Present: -Mr. Draupad Sangwan, ld. counsel for the complainant through VC.

Mr. Anil Kumar Goel, ld. Counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case files it is observed that today is the 10th hearing of the case. Authority had captured main facts alongwith its tentative view regarding outcome of this matter. Relevant part of orders dated 15.03.2022 and 01.06.2022 are reproduced below:

Orders dated **15.03.2022**

Complainant case in brief is that he had booked a 3 BHK apartment bearing no. 601, 6th floor Tower B3 measuring 1238 sq.ft. in the respondents project against

total sale consideration of Rs. 44,31,360/- out of which complainant had paid an amount of Rs. 34,31,230/- upto December 2014. Builder Buyer Agreement was executed between the parties on 18.10.2013. As per BBA, deadline for offering legal and valid possession was 36 months plus 6 months grace period which comes to be 18.04.2017. However respondent issued offer of possession on 15.11.2017 with a demand of Rs. 14,35,614/- . On the last date of hearing i.e. 20.10.2020 ld. counsel for the complainant had submitted that offer of possession sent to them was made without obtaining occupation certificate and had requested authority to direct the respondent to send them a valid offer of possession and place on record occupation certificate obtained by them. Further same direction was reiterated via order dated 17.12.2020 i.e. to place on record all correspondence relating filing of occupation certificate, especially report given by Ld. Chief Engineer and other certifying agencies to show that the group housing building and supporting infrastructural facilities are completed at site and now the building is fit for occupation. Nothing has been placed on record by respondents as of now.

2. Today, counsel for complainant submitted that Tower B which is in question is not only delayed but no basic amenities have been constructed. On the contrary, counsel for the respondent submitted that tower has been completed and all amenities have been provided and further apprised the Authority that they have received occupation certificate also, copy of which has been emailed to the official id of Authority. Respondent have submitted that they have received occupation certificate for all towers from Town and Country Planning Department, as per approved plans. Occupation certificate submitted by the respondent mentions the following towers;

1. Block AA (Tower 1 and 2)
2. Block CC (Tower 1 - type 2)
3. Block DD (tower 1 and 2) and
4. EWS Block -EE.

Perusal of occupation certificate reveals that Tower B in which complainant tower is situated is not mentioned in the occupation certificate. However respondents stated that he has received occupation certificate for all towers but no

supportive document has been placed on record to substantiate the same.

3. Authority directs respondent to place on record any documentary evidence to substantiate their averments. Direction is also given to both the parties to place on record relevant documents, if any.

Orders dated 01.06.2022

2. Ld. counsel for the Complainant during proceedings pointed out to a typographical error in para 1 that is deemed date of possession is to be given in 30 months + 6 months grace period and arrives at 18.10.2016 instead of 36 + 6 months arriving at 18.04.2017 of order dated 15.03.2022. Accepting the same Authority agrees to amend the same in this order.

3. In the last hearing, respondent was directed to submit documentary evidence to substantiate his averment related to status of tower. Same was complied by the respondent by submitting an application dated 19.05.2022 along with an affidavit and copy of conveyance deeds of another buyer/allottee in the same tower. Respondent has further apprised the Authority by submitting that unit of the complainant is tower B3 and as per occupation certificate it falls within Block CC tower-1 type 2 and to prove the same they have submitted an affidavit along with conveyance deeds of another allottee in the same tower to prove the same.

4. However, ld counsel for the complainant has vehemently opposed the document while submitting information provided in the RTI dated 06.10.2021. Ld. counsel for the complainant during proceeding submitted an RTI filed from the office of SPIO cum District Town Planner, Faridabad dated 06.10.2021 which mentions that as per records, occupation certificate for tower namely Block -AA (02 nos.), CC Type II (01 no.), DD (02) and EWS has not been granted and challenges the occupation certificate submitted by the respondent.

5. Authority is of the view that respondent has a valid occupation certificate issued by the concerned department. Moreover, they have executed a conveyance deed, of some apartments in the same tower, which proves that it is a completed project. Therefore,

Authority is of a tentative view that complainant is entitled to only possession of the unit along with delay interest and not refund. However, Authority grants a final opportunity to the complainant to file any documentary evidence to prove that occupation certificate is illegal or false to refute the claims and documents submitted by respondent.

While considering above recorded facts and oral arguments of the parties, Authority observes and orders as follow-

i. On the last date of hearing, in compliance of orders of the Authority dated 15.03.2022 respondent submitted an application dated 19.05.2022 along with an affidavit along with a copy of conveyance deeds of another buyer/ allottee of the same tower. Respondent further putforth his averments that the unit of the complainant is in tower B3 and as per occupation certificate it falls within Block CC tower-1 type 2 and to prove the same they have submitted an affidavit along with conveyance deeds of another allottee in the same tower. Thus in the light of these documentary evidence, it is quite clear and acceptable that respondent has valid occupation certificate. An opportunity was granted by the Authority to refute the claims of the respondent on the request of Ld. counsel for the complainant. But complainant has failed to do so. Today Ld. Counsel for the complainant have not argued on the issue of occupation certificate nor has raised any objection. Therefore, Authority is of view that this issue is settled and needs no further discussion.

ii. Next issue involved in the matter is related to the prayer of the complainant. Complainant has sought relief of refund. As per policy of Authority, in case the project has been completed and has also obtained occupation certificate on 31.08.2021 by competent authorities thus offer of possession given to the allottees is a legal offer. Therefore offer of possession dated 15.11.2017 can be deemed valid w.e.f. Receipt of occupation certificate. In view of above facts, the complainant is entitled to Delay Interest from deemed date of possession i.e. 18.10.2016 to 31.08.2021 i.e. date of obtaining of Occupation certificate along with possession of the unit rather refund. Respondent is directed to make a fresh offer of possession of the said unit within one month of passing of this order. Authority had already adjudicated a large number of cases, where relief of refund cannot be granted in situation where project gets completed and have obtained permission of occupation certificate or part completion certificate. Furthermore, Authority had indicated its mind in its previous order dated 01.06.2022 as reproduced above in para 5, directing that complainant is entitled to relief of possession of the unit along with delay interest.

Authority reaffirms its tentative view that complainant is entitled to possession of the unit along with permissible interest for the delayed period ranging from deemed date of possession i.e. 18.10.2016 till the date of obtaining of occupation certificate i.e. 31.08.2021 calculated @ SBI MCLR + 2% as provided in Rule 15 of the Haryana Real Estate (Regulation and Development)



Rules 2017 which arrives @ 9.70% at the time of passing of this order. Respondent shall also provide a fresh statement of Accounts after duly adjusting the amount of delay interest payable to the complainants within 30 days of uploading of this order. Such statement shall reflect the amount of payable or receivables if any by/to complainants.

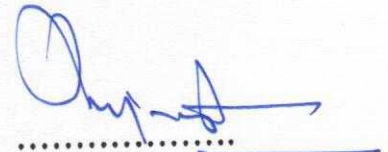
The Authority has got calculated, the interest payable to the complainant from Accounts branch of this Authority. Which is mentioned below in the following table.

COMPLAINT NO.	PRINCIPAL AMOUNT	INTEREST CALCULATED	TOTAL Amount Payable by Respondent to Complainant
1217 OF 2019	31,60,282/-	14,94,103/-	46,54,385/-

In the following complaint, delay interest is calculated after deducting EDC/IDC charges and Service tax from the total paid amount/ receipts. The amount of such taxes are not payable to the builder ~~and are~~ rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department, the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.



Case is disposed of. Files be consigned to record room after uploading of order on website of Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

