



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 903 OF 2020

Anuj Chauhan

....COMPLAINANT(S)

VERSUS

M/s Mudra Finance Ltd.

....RESPONDENT(S)

CORAM: **Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:** 07.07.2022

**Hearing:** 6th

**Present :** - Anuj Chauhan, Complainant in person through VC.

Mr. Vineet Sehgal. Ld. counsel for the respondent.

### **ORDER (DILBAG SINGH SIHAG - MEMBER)**

While perusing case files it is observed that on the last date of hearing ld. counsel for the respondent had sought adjournment for amicable settlement. Ld. counsel for the complainant apprised the Authority that no such settlement has taken place and pressed for the relief of refund.

2. Authority had already captured the facts of the complainant vide order dated 15.03.2022. Relevant part of the order is reproduced below for reference:

1. Complainants booked a flat Unit No. 403, 4th floor located in Tower 11, measuring carpet



area 1018 sq. ft. and super area of 1515 sq.ft. by paying booking amount of Rs. 3,40,000/- in respondent's project Vipul Gardens Dharuhera, Rewari. Builder buyer agreement was executed between the parties on 11.12.2018 and as per clause 8.1.(a) of the agreement, possession was to be delivered in July 2019. Complainant has paid a sum of Rs. 13,07,008/- against total sale consideration of Rs. 32,17,053/- but possession has not been made by the respondents till date. Complainant has approached the Authority seeking relief of Refund as no offer of possession has been made yet.

3. Respondent had submitted his reply in registry of the Authority whereby he mentioned that project is complete and occupation certificate is granted by concerned competent Authority on 01.12.2014 with regard to Block No. 1,2,3,4,5,6,7 and 12 copy of same has been annexed in written statement. However in regard to tower no. 11 in which the complainant's unit is situated, respondent had applied for grant of occupation certificate on 26.06.2019 but has not received occupation certificate till date. Ld. counsel for the respondent in his oral averments submitted that the delay in applying for the tower 11 was due to some environmental clearances.

4. Authority observes that complainant had booked the apartment in the year 2018 and Builder Buyer Agreement was executed between the parties on 11.12.2018 and as per the agreement, said unit was to be delivered to the complainant in the month of July 2019 i.e. only 7 months from the date of execution of BBA. Respondent had agreed to deliver the apartment in seven months and complainant had bought the unit under this impression that unit is



ready to move in. However, respondent has applied for the occupation certificate for concerned tower in which complainant's unit is situated, on 26.06.2019 and has not received occupation certificate till date and thus cannot make a valid offer of possession. There is already a delay of 3 years and the complainant had paid only 1/3rd amount against the Basic Sale consideration.

5. Authority is of view that firstly the respondent has not been granted occupation certificate till date and without that they can not make a legal offer of possession. It is also pertinent to observe that deemed date of possession was only seven months from the date of execution of builder buyer agreement which leads to a presumption that the apartment was ready to move in. When an agreement of such a short duration for possession is executed it means that the unit is nearly to completion. It is relevant to observe that facts of the matter leads to a conclusion that complainant had agreed to purchase a unit that would be ready in seven months. When a buyer agrees to buy such a unit it also shows that, he is ready to pay full demanded money within a short period of time, as per the terms of agreement.

6. In these circumstances legitimate expectations of complainant were that an offer of possession will be made by the due date or within reasonable time there-after. However, valid offer of possession having not been made even after lapse of 3 years defeats very purpose of executing an agreement for ready to move apartment. Such agreements have to be distinguished from the agreements



in respect of other under-construction projects. In a normal under-construction project, usually delivery period is 3-4 years, in which case a delay of 1-2 years can be understood, but in a ready to move apartment, legitimate expectation of the complainant is that apartment will be delivered immediately. Delay of 3 years in such situations has to be called inordinate delay which justifies prayer for refund of the money paid as prayed for because basic purposes of booking of ready to move apartment stands defeated by such delay. In such situations even a delay of shorter period would be unacceptable.

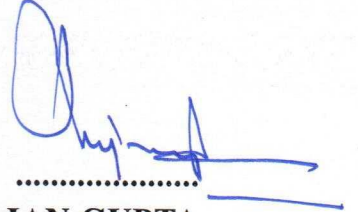
7. Therefore, this delay of more than three years amounts to substantive breach of agreement by the builder, now it is the option of complainant to either continue with the project or withdraw. Authority is accordingly of the view that due to such inordinate delay respondent has breached the contract and therefore Authority accepts the prayer of complainant and allows refund of the amount paid alongwith interest as per rules.

8. Authority allows relief of refund along with interest which is calculated in accordance with Rule 15 of the HRERA Rules i.e.@ SBI MCLR+2% (9.70%). Authority has got calculated interest from its Account branch which is shown below in the table. Respondent shall pay the entire amount within 90 days of uploading of this order.

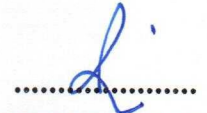
Total Amount Paid	Interest Rate (9.70%)	Total Amount to be Refunded
Rs. 13,07,008	Rs. 4,54,790/-	Rs. 17,61,798



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



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**RAJAN GUPTA**  
**[CHAIRMAN]**



.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**

