



Complaint no. 322 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 322 OF 2021

Narender Kumar Juneja

....COMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 10.08.2022

Hearing: 6th

Present through:- Mr. Arjun Kundra, Learned counsel for the
Video conferencing Complainant
Mr. Munish Gupta, Learned counsel for the
respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

Complainant has filed present complaint seeking possession of a unit booked in the project of respondent namely, Shubhangan, situated in Sector-4 Jhajjar in the year 2012. Total sale consideration of the flat was ₹33,09,779/- against which complainant has made a payment of

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₹28,82,831/- to the respondent by september 2016. Builder buyer agreement was executed on 01.03.2014. As per clause 40(a) of the agreement, possession of flat should have been delivered by 31.08.2015. On 13.11.2020 respondent offered possession of said flat for carrying out fitting and finishing works after a delay of more than five years alongwith additional demand of ₹9,60,720/- out of which ₹3,06,505/- was charged on account of delayed payment interest.

2. Learned counsel for the complainant submitted that possession of the unit should have been delivered by 2015 but even after more than five years construction on the project is still going on and possession has been offered by respondent without obtaining occupation certificate. Alongwith said offer of possession, respondent has raised a further demand of Rs 9,60,725/- including interest on delayed payments including GST charges. In said statement, complainant raised objection to Rs 51,000/- charged on account of metre cost and Rs 50,000/- for power backup equipment cost alleging that respondent has charged exorbitant amount without providing any justification for the same. Vide order dated 03.02.2022, Authority had directed the respondent to provide justification for charging such exorbitant amounts but respondent has not filed any justification till date.



Learned counsel for complainant further submitted offer of possession dated 13.11.2020 cannot be called a valid offer as it was issued without receiving occupation certificate and even at that time construction works were still in progress. Therefore, he prayed the Authority to issue directions to respondent to offer him possession along with delay interest for delay in offering possession.

3. On the other hand, Mr. Munish Gupta, learned counsel for respondent submitted that construction of the project has been completed by respondent and possession of booked unit was offered for fit out works to complainant in the year 2020. However, it is the complainant in who is at fault for not coming forward to take possession upon making payments of outstanding balance. Out of total sale consideration of ₹33,09,779/-, complainant had only paid an amount of ₹28,82,831/-. Learned counsel drew attention of Authority to payment schedule annexed at page 52 of complaint file and submitted that as per payment plan three more instalments remained to be paid by complainant, of which the first two were to be paid at the time of completion of external plaster of floor and at start of flooring. The third instalment was to be paid at the time of offer of possession. Accordingly, respondent had raised demand letters in the year 2017 for payment of said instalments but complainant failed to pay the same. He submitted that on account of



default on the part of complainant, respondent is entitled to charge interest for delayed payment from the complainant.

4. In view of above submissions, Authority observes that as per buyers agreement possession of flat should have been delivered by the year 2015. Though an offer of possession was issued to complainant in the year 2020 but said offer cannot be sustained as it was issued without obtaining occupation certificate. As per submission of respondent construction of project in question has been completed and the units are now available for handing over of possession. Since no valid offer of possession has been made to complainant till date therefore, complainant is entitled to delay interest for the period from deemed date of possession i.e 31.08.2015 till a valid offer of possession is issued to complainant after obtaining occupation certificate as per Rule 15 of the HRERA Rules 2017 i.e @ SBI MCLR + 2% (=9.80%) . Upfront delay interest payable to complainant from deemed date of possession till date of order i.e 10.08.2022 @ 9.80 % works out to ₹ 16,62,488/- and further monthly interest of ₹ 21,017/- till valid offer of possession is issued to complainant after obtaining occupation certificate.

Delay interest mentioned in aforesaid paragraph has been calculated on total paid amount of Rs 25,25,059.51/-. Said amount has been worked out after deducting charges of taxes paid by complainant on

account of Service tax amounting to Rs 1,00,921.28/- and EDC/IDC amounting to Rs 256,000/- from total paid amount of ₹28,82,831/-. Total paid amount and charges on account of service tax and EDC/IDC charges has been calculated on the basis of statement of account issued by respondent annexed at page 62 of complaint. The amount of such taxes is not payable to the builder, 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, interest thereon becomes payable only to the department concerned and builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

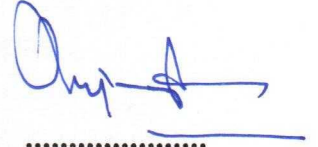
5. Further with regard to objections raised by complainant on charges levied on account of metre cost and power backup equipment cost, although as per buyers agreement said charges are payable by the complainant but the amount of both these charges appears to be on higher side and respondent has failed to provide justification for these amounts. With regard to metre cost, it is observed that respondent is entitled to charge only the actual expenses incurred at the time of

installation of metre and further charges levied on account of power backup equipment cost should be charged on pro rata basis of actual expenses from all the allottees.

6. On the other hand, as per payment schedule annexed at page 52 of complaint file, it appears that complainant failed to service payment of instalments raised by respondent in adherence to agreed payment plan. Therefore, for the said failure in making payments by complainants, respondent is entitled to charge delay interest from the complainants from the date when particular demand was due till the date complainant services those demands in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR + 2%(= 9.80%)

7. Considering all submissions and observations laid down in preceding paragraphs, Authority directs respondent to issue a fresh offer of possession to complainant after receiving occupation certificate alongwith a fresh statement of accounts in accordance with the principles laid down in this order.

8. With these directions, cases are disposed of. Order be uploaded on the website of Authority and files be consigned to record room



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

