



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 365 OF 2019

Krishna Buildestate Pvt. Ltd.

....COMPLAINANT(S)

VERSUS

M/s Hamilton Heights Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 20.07.2022

Hearing: 9th

Present: Mr. Subhash Chander Sharma, ld. counsel for complainant.

Mr. Sylvester, proxy counsel for respondent.

ORDER (RAJAN GUPTA – CHAIRMAN)

1. While perusing case file, it is observed that complainant booked a residential apartment in the project of the respondent namely "Hamilton Heights" situated at village Palla on Tilpat Palla Road, Sector 37, Faridabad on 22.08.2015. Builder Buyers Agreement was executed on the same day i.e.,

22.08.2015. He was allotted Flat no. 204, Tower C, 2nd floor measuring super area of 2147 sq. ft. No date for delivery of possession is mentioned in BBA. Complainant alleges that respondent promised to deliver possession of the unit upon receiving the total sales consideration. Complainant has paid Rs. 1,21,03,000/- against total sales consideration of Rs. 1,02,78,850/-. Complainant has further alleged that respondent does not have a valid Occupation certificate in respect to the tower in which complainant's unit is located. Therefore, complainant seeks refund of the entire amount paid by him for the unit to respondent along with delay interest.

2. Thereafter, written submissions were also filed by complainant wherein they submitted that they have made more than 100% payment to the respondent. Rs. 20 lacs have been paid at the time of execution of BBA, which has been duly acknowledged vide clause 2.1 of the BBA. Thereafter, payment of Rs. 50 lacs has been made on 18.09.2015 and 20.09.2015, and finally a payment of Rs. 1,03,000/- has been made on 07.01.2016 on account of TDS. Copy of receipts of payments are annexed as Annexure P-2 of the complaint book. Thus, total amount paid by them comes to Rs. 1,21,03,000/- against total sales consideration of Rs. 1,02,78,850/-. Hence, nothing remains payable by complainant with respect to the booked apartment. Rather respondent should refund excess amount paid by the complainant. Further, complainant outrightly denied that they ever took locks/keys of the flat.



They further submitted that complainant's unit is situated in Tower C and respondent is making false assertion that they applied for grant of occupation Certificate qua Tower C. Copy of intimation with respect to grant of occupation Certificate, which is annexed as Annexure R-2 of reply clearly pertains to Tower B, and not Tower C. Therefore, nothing has been placed on record by respondent to prove that construction of Tower C is complete; or proving that they have applied for Occupation Certificate. Therefore, they are not in a position to handover possession of booked unit to the complainant. This frustrates the very purpose of BBA executed between the parties. Thus, complainants are pressing for refund of amount paid by them to respondent promoter.

3. On the other hand, reply was filed by respondent on 22.04.2019 vide which they claimed that complainants have not made entire payment of Rs. 1,21,03,000/-. An amount of Rs. 9,67,896/- is still outstanding. They further stated that locks/keys of the said flat have been in possession of the complainants from last 2 years; occupation certificate for part project was granted in 2015 and application has been submitted by respondent for grant of OC w.r.t. tower in which complainant's flat is situated. Occupation Certificate is likely to be granted in the near future. Copy of intimation of the same from concerned department is annexed as R-2 of the reply book.

4. Written submissions were also made by respondents wherein they submitted that they have received a payment to the extent of Rs. 1,01,03,000/-

only with respect to unit in question. He specifically denies to have received a payment of Rs. 1,21,03,000/- from the complainant. He denied a payment of Rs. 20 lakhs made by the complainant to him. Furthermore, it was decided between the parties that possession will be handed over after receiving full payment from complainant and information of same was conveyed to complainant.

5. After going through the facts and circumstances and oral as well as written submissions of both parties, Authority observes as follows:

- i. Firstly, a payment of Rs. 20 lacs has been made by the complainants at the time of execution of BBA. Same has been recorded in clause 2.1 of BBA, dated 22.08.2015, annexed as Annexure P/1 of the complaint book. Thereafter, further payment of Rs. 1,01,03,000/- was made to the respondent promoter against total sales consideration of Rs. 1,02,78,850/-, within one month of execution of BBA. Receipts of the same has been annexed as P-2 of complaint book. This shows that complainant had booked a ready to move in apartment. BBA dated 22.08.2022, executed between the parties does not mention a specific date for delivery of possession. However, it is clearly evident that complainant had made a huge payment of Rs. 1 crore in 2015 itself ,i.e., within 1 month of entering into BBA. Complainant has made payment of Rs. 1,21,03,000/- till 07.01.2016 to the respondent for booked unit. It is 2022 and no offer of possession to the complainant has been made by respondent till date.



- ii. Secondly, respondent has claimed that he has applied for grant of Occupation Certificate qua Tower C and same would be granted to them by concerned department in a short span of time. To support his averment, respondent referred to Annexure R-2 of their reply book, to prove that they applied for Occupation Certificate qua Tower C. However, study of the document reveals that Annexure R-2 pertains to Tower B and not Tower C. Therefore, no substantial evidence has been placed on record by the respondent promoter to show that application has been made by them for grant of Occupation certificate qua Tower C of the project in dispute. This clearly explains that occupation certificate is yet to be obtained and they are not in a position to deliver lawful possession of unit to complainant.
- iii. Thirdly, Authority observes that it was a ready to move apartment. BBA was executed in 2015. Complainant has already made full payment to the respondent. Legitimate expectation of complainant therefore, was that an offer of possession will be made by due date or within reasonable time. A valid offer of possession having not been made even after lapse of more than 6 years defeats very purpose of executing an agreement. Inordinate delay of more than 6 years in such situations would justify prayer for refund of money paid because basic purpose of booking of ready to move apartment stands defeated by such delay.



6. In the circumstances, Authority allows refund of the money paid by the complainant along with interest as provided in rule 15 of the RERA Rules, 2017.

Authority directs the respondent to refund entire principal amount of Rs. 1,21,00,000/- to the complainant. Authority has got calculated interest payable to the complainant, which works out to Rs. 81,26,176/-. This interest has been calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 9.80%. Now, respondent has to pay a total amount of Rs. 1,21,03,000/- + Rs. 81,26,176/- which comes out to be Rs. 2,02,29,176/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

9. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]