



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1519 OF 2020

Reena Mago

....COMPLAINANT

VERSUS

M/s Mapsko Builders Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag singh Sihag

Member

Date of Hearing: 26.07.2022

Hearing: 7th

Present: Mr. Ketan Antil, ld. counsel for complainant through VC.

Mr. Akshat Mittal, ld. counsel for respondent.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Case of complainant is that she booked a unit in the project of respondent namely "Mapsko City Homes" situated in Sector 26, 26A and 27, Sonipat. Vide

allotment letter dated 02.01.2014 complainant was allotted Floor no. 370, Ground Floor, MA Block admeasuring built-up area of 1374 sq. ft. Floor Buyer Agreement was executed between the parties on 20.07.2012. As per clause 14 (a) of BBA, possession of the unit was to be delivered within 24 months from the date of execution of the BBA, therefore, deemed date of possession comes to 20.07.2014. Total sales consideration for the unit was Rs. 34,82,266/-. Complainant has paid Rs. 37,00,000/- against the total sales consideration. Grievance of the complainant is that she made full payment in respect of the unit as demanded by respondent, but respondent had offered the possession on 18.12.2019 with a delay of 5 years. Complainant took possession of the apartment on 17.02.2022 after making payment of Rs. 1,80,000/- on 24.01.2020 and Rs. 1,22,664/- on 19.02.2020. She also alleged that respondent while giving offer of possession did not furnish copy of Occupation Certificate in respect to the unit. She has filed this complaint with the prayer that respondent be directed to pay interest for the delay caused in handing over possession for period from 20.07.2014 till 18.12.2019.

2. Respondent filed their reply on 30.01.2021 wherein they have stated that complainant has concealed the fact that possession for the unit was offered to complainant on 04.02.2016 (Annexure R-1). Occupation Certificate qua the unit in question was duly applied on 07.02.2016 and was obtained on 10.07.2017. After receipt of Occupation Certificate, a reminder letter dated 18.12.2019 was also sent

to complainant for taking possession of the booked unit (Annexure R-3). Furthermore, complainant has taken physical possession of the unit on 17.02.2020. Respondent denies that there was delay of 5 years on part of respondent for handing over possession of the unit because offer of possession was given in Feb, 2016.

3. Both parties put forth their oral arguments during the hearing. Mr. Ketan Antil, Id, counsel for complainant also submitted written statements wherein it has been submitted that complainant never received alleged letter of offer of possession dated 04.02.2016. Said document has been created by respondent only to defeat claim of the complainant. No receipt of service of the said letter has been placed on record by respondent. Furthermore, even if an offer letter dated 04.02.2016 was sent by respondent, the same was invalid offer of possession for the reason it had been issued before obtaining Occupation Certificate. In all scenarios, valid offer of possession can be said to have been made only on 18.12.2019 which shows delay of 5 years on part of respondent.

4. After going through facts and circumstances of the case, Authority observes that complainant had taken possession in February, 2020, therefore now the only issue that remains in the present complaint is regarding payment of delay interest. Complainant claims that they received offer of possession on 18.12.2019 whereas the deemed date of handing over of possession was 20.07.2014, therefore,

they are entitled to delay interest from 20.07.2014 to 18.12.2019. On the other hand respondent claims that they had given offer of possession on 04.02.2016 (Annexure R1) and had received Occupation Certificate for the unit on 10.07.2017, and had also sent a reminder on 18.12.2019 (Annexure R-3) to take possession. As offer of possession was given on 04.02.2016 and Occupation Certificate pertaining the unit was received on 10.07.2017. Hence, they can be made liable to pay delay interest for period ranging from 20.07.2014 to 04.02.2016.

5. Perusal of case file reveals that respondent had sent an offer of possession on 04.02.2016 (Annexure R-1). Said offer was made before receiving occupation certificate, therefore it can not be called a valid offer. Later, respondent received Occupation Certificate on 10.07.2017. Thereafter respondent sent a reminder dated 18.12.2019 to complainant for taking possession of the booked unit by referring to their previous offer of possession. Therefore, Authority observes that offer of possession dated 04.02.2016 gains validity as soon as Occupation Certificate was received by the respondent. Complainant should have taken the possession on or after 10.07.2017 i.e., the date of receiving Occupation Certificate.

Authority had dealt with the issue of date of offer of possession in its previous order dated 30.06.2021, relevant part of which is reproduced below:

“2. First issue is delay interest which is payable to the complaint from the deemed date of possession to date on which actual possession was taken on 17.02.2020.

Respondent's plea on the other hand is that he has offered possession to the complainant on 04.02.2016 vide letter at Annexure R-1 and the delayed interest is therefore payable only from deemed date of possession i.e. July 2014 to date of offer of possession i.e. 04/02/2016.

3. The Authority is of the considered opinion that the allottee is obliged to accept possession only if the same is handed over after obtaining occupation certificate. Although, the offer of possession was made in February 2016 but the fact remains that the respondent had obtained occupation certificate on 10/07/2017 is valid offer of possession will be deemed to have been made on 10/07/2017 considered, the complainant is entitled to delayed interest from 20/07/2014 to 10/07/2017.”

7. Accordingly, complainant would be entitled to delayed interest from 20.07.2014 to 10.07.2017 @ SBI MCLR + 2% i.e., 9.80%. Complainant claims to have paid Rs. 37,00,000/- however, she has submitted receipts of Rs. 31,28,256/- including Rs. 2,04,000/- towards payment of EDC/IDC. Amount of EDC/IDC is excluded while calculating interest. Complainant paid Rs. 3,02,664/- at the time of taking possession i.e., in the year 2020 which is also excluded while calculating interest. Accordingly interest payable by respondent to complainant comes out to Rs. 8,50,833/-. This matter is disposed of with

direction to respondent to pay the calculated delay interest to complainant within 90 days of uploading of this order.

8. **Disposed of** . File be consigned to record room after uploading of this order on website of this Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

