



Complaint no. 1398 of 2021

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1398 OF 2021

NK Seth Gobind Arora & Anr

....COMPLAINANT(S)

VERSUS

M K Infrastructure Pvt Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:** 09.08.2022

**Hearing:** 4th

**Present through: -** Mr. Ravindra Jain, Counsel for the complainant

**Video conferencing** Mr. Manoj Vashishtha, Counsel for the respondent

### ORDER (RAJAN GUPTA-CHAIRMAN)

Complainants in this case had booked an apartment in the project of the respondent namely 'M2K County Heights' situated at sector-5, Dharuhera, Rewari on 22.07.2008. Complainants were allotted apartment bearing no. C-1302, Tower C for a total sale consideration of ₹ 23,95,055/- against which complainants have paid an amount of ₹ 22,70,396/-. Buyers agreement in respect of said apartment was executed between both parties on 05.09.2008. It is alleged by the complainants that respondent abandoned construction of Tower-C of the project and complainants were allotted another unit bearing no. 906 in

Tower-G of the project. Buyers agreement for revised apartment was executed between both parties on 30.08.2012, copy of which is annexed as Annexure C-4. As per second agreement possession of the unit should have been delivered to the complainants by February 2016. Respondent issued an offer of possession to complainants on 07.03.2016 along with a demand of ₹ 3,05,444/- which was arbitrary as complainants had paid more than 22 lakhs out of total sale consideration by 2014 itself. Complainants through letter dated 06.04.2016 annexed as Annexure C-7 demanded justification for the demand raised by respondent but received no reply. Complainants further sent legal notice dated 27.06.2016 but still received no reply, instead respondent arbitrarily issued a cancellation notice dated 10.06.2019. Feeling aggrieved complainants has filed present complaint seeking possession of flat bearing no. G-906 along with interest for delay in delivery of possession.

2. Learned counsel for complainants submitted that complainants had initially booked a flat in the project of the respondent in the year 2008 possession of which should have been delivered by the year 2012. By the year 2008 complainant had paid more than Rs 21 Lakh to the respondent towards booking of said unit. However, respondent was unable to deliver possession of unit booked in Tower C of the project as respondent had abandoned construction of said tower and rather



pressurised the complainant to shift booking to Tower G of the project. Complainants who had already invested such a huge amount in the project of the respondent was left with no choice but to agree to said change in booking of flat, accordingly both parties executed a fresh agreement for unit in Tower G bearing no. 906 on 30.08.2012. Payments made towards earlier booking were considered down payment for booking towards the revised agreement. As per said agreement respondent had offered possession of booked unit on 07.03.2016 but with said agreement respondent had raised a further demand of ₹ 3,05,444/- which is completely arbitrary and unjust as against total sale consideration of ₹ 23,95,055/- complainant had paid more than ₹ 22 Lakh by the year 2014 itself. Complainants made several representations to the respondent to revise said demands but respondent failed to respond and rather cancelled the unit of the complainants. Learned counsel for complainants submitted that respondent had initially unlawfully utilised a huge amount of ₹ 21 lakh from 2008 till 2012 without providing any compensation to the complainant for delay in delivery of possession and then pressurised complainant into shifting to a different unit. Further respondent offered possession of revised unit in the year 2016 and wrongly charged excess amount from the complainant despite receiving more than 90 % of total sale consideration by 2014.

Therefore, it is the respondent who is at fault here for indulging in unfair trade practices and for delayed delivery of possession. It is pertinent to mention that in the prayed clause of the complaint, complainant has sought relief of delivery of possession of booked unit along with delay interest or in alternate refund of paid amount along with interest. However, during proceedings learned counsel for complainant has verbally prayed for relief of delivery of possession of unit bearing no. 906 in Tower G of the project along with delay interest therefore, now the case is proceeded according to the verbal prayer of learned counsel for complainant.

3. On the other hand, respondent in its reply has submitted that complainant had applied to the respondent for advanced registration of a 2 BHK flat in any future/upcoming residential project of the respondent on 10.01.2007. Complainants had initially booked accepted construction linked payment plan but later on shifted to down payment plan to receive discount on payment of basic sale price. Thereafter an agreement dated 30.08.2012 was executed between both parties in respect of Apartment no. G-906 against total sale consideration of ₹ 23,95,055/-. As per agreement possession of the unit should have been delivered by February 2016. The project of the respondent comprises of 9 Towers and in the first phase construction of towers G, J, E & F & EWS Towers were



completed. After receiving occupation certificate for Tower G & J on 13.08.2015, respondent had issued an offer of possession to the complainants on 07.03.2016 along with a demand of payment of outstanding dues of ₹ 3,05,444/- which included demand of basic sale price of ₹ 98,971/-, ₹ 57,250/- towards Club Membership Registration Charges, ₹ 4959/- towards Utilities Connection Charges and ₹1,01,513/- towards Essential facilities charges and ₹ 42,750/- towards IFMS, all amounts payable as per agreed payment plan at the time of offer of possession. It is submitted that as per agreement possession should have been offered to complainant by February 2016 and an actual offer of possession was issued on 07.03.2016 it is apparent there has been no delay in delivery of possession on the part of respondent. Rather it is the complainant who has failed to come forward to accept possession upon payment of balance sale consideration and is thus not entitled to any relief.

4. Shri Manoj Vashishtha, learned counsel for respondent submitted that after timely completion of the project respondent had applied for occupation certificate in respect of Tower G & J of the project which was received on 13.08.2015 and thereafter respondent had issued a valid offer of possession to complainant on 07.03.2016 alongwith a demand of ₹ 3,05,444/-. Learned counsel drew attention of



Authority towards notice dated 27.06.2016 sent by complainant to respondent and submitted that in the said notice out of respective demands complainant has only raised objection against demand of ₹1,01,513/- raised by respondent towards "Essential facilities Charges" in the offer of possession dated 07.03.2016 on the ground that complainant has already paid an amount of ₹ 1,85,250/- towards EDC/IDC Charges. Further no objection towards other remaining amounts in impugned offer of possession has been raised by complainant. Similarly even in present complaint, complainants have raised a particular objection to demand raised on account of Essential facilities Charges and not the actual offer of possession. It is submitted that Essential Facilities charges are separate from EDC/IDC Charges and are to be paid at the time of offer of possession as per Article 3(B)(iii) of the agreement. Said amount has been charged in terms of buyers agreement dated 30.08.2012 . However, complainant failed to honour the payment of outstanding demand and to take possession of booked unit. Instead complainant has malafidely filed present complaint before this Authority.

Learned counsel further submitted that as per buyers agreement possession of the unit should have been delivered by February 2016 and admittedly an offer of possession was issued to the complainant on

07.03.2016. As such, there is no delay in offering possession of booked unit which was issued after receiving a valid occupation certificate on 13.08.2015. Further the demand of ₹ 3,05,444/- raised along with said offer of possession was as per the terms of agreement. Complainant vide notice dated 27.07.2016 had only raised objection to one particular demand of ₹ 1,01,513/- towards Essential facilities charges but same is also payable as per agreement. Since complainant failed to make payment of outstanding dues and obtain physical possession, respondent was constrained to issue notice dated 10.06.2019 for clearing outstanding dues which had risen upto ₹ 8,94,363/- including interest on delayed payments failing which the allotment of the unit will be cancelled. Despite notice for cancellation, complainant chose not to come forward to make payment of outstanding dues which in this case are pending since March 2016. Rather after nearly 5 years has filed a complaint before the Authority raising frivolous issues of excess amount being charged by respondent. Learned counsel for respondent submitted that complainants are not entitled to any relief instead they are duty bound to take possession after payment of due balance amount along with interest accrued for delay in making payments.

5. After hearing both parties and pursuing documents placed on record, it is observed that complainant had booked a unit in the project of

the respondent for which buyers agreement was executed between both parties on 05.09.2008. As per said agreement possession should have been delivered by the year 2012. However, instead of delivering possession, the respondent pressurised the complainants into shifting their booking to Tower G of the project as allotted Tower C was not being constructed. Thereafter both parties entered into a revised agreement dated 30.08.2012 according to which deemed date of possession was February 2016. Respondent after completing the project received occupation certificate on 13.08.2015 and accordingly issued offer of possession to complainant on 07.03.2016 without any delay. Alongwith said offer of possession respondent issued a demand of ₹ 3,05,444/- which was objected by complainant as being unjustified particularly the demand raised on account of Essential facilities Charges. Complainant made written submission to respondent for revision of impugned demand. On the other hand it is submitted by respondent that said demand was raised in accordance with the terms of buyers agreement and complainant was under obligation to fulfil those demands and take possession. As per the submission of respondent, complainant in its complaint has raised no objection to offer of possession dated 07.03.2016 or any other demand except the amount of ₹ 1,01,513/- charged towards Essential facilities charges on the ground that





complainant has already paid an amount of ₹ 1,85,250/- towards EDC/IDC Charges. Highlighting the terms of Article 3(B)(iii) respondent explained that Essential Facilities charges are separate from EDC/IDC Charges and are to be paid at the time of offer of possession. Considering the submission of respondent and perusing Article 3(B)(iii), Authority observes that said amount has been charged as per terms of agreement dated 30.08.2012 and complainant was under obligation to honour the demands and take possession of booked unit.

6. Considering rival contentions of both parties, Authority concludes as follows:

- (i) Firstly with regard to the plea of learned counsel for complainant for awarding interest on the payments received by respondent for the period from 2006 till signing of second agreement i.e 30.08.2012, Authority observes that a valid Builder buyer agreement was executed between both parties on 05.09.2008 according to which possession of booked unit should have been delivered by 2012. By July 2008 itself, complainant had paid an amount of ₹ 21,74,922/- out of total sale consideration of ₹ 23,95,055/-. Thereafter in the year 2012 instead of



offering possession respondent had rather pressurised the complainants to shift their booking to a different unit in Tower G of the project as the original allotted tower i.e Tower C was not being constructed by respondent. By that time complainant had already invested a huge amount of their savings in the project of the respondent were left with no other option but to acquiesce to said change. On the other hand it is submitted by respondent that complainant had initially tentatively booked a 2 BHK unit in the project and were later on allotted a suitable unit in Tower G. Respondent has categorically denied pressurising the complainants into shifting their booked unit.

However, in Apartment buyers agreement annexed at page 28 of the complaint it is clearly mentioned that the agreement dated 30.08.2012 "is executed in supersession in view of previous Apartment Buyer Agreement dated 05.9.2008 in view of change in apartment from c-1302 Tower C measuring 1425 sq. ft to G-906 Tower G 1425 sq.ft.



Authority observes that complainants who had already booked a unit measuring 1425 sq ft in the project would have had no reason to shift their booking after 4 years of allotment to a different unit of same size and without any additional features unless they had no other option due to default on the part of respondent in not developing Tower-C in which original apartment was booked. Further respondent in its written submissions has himself admitted that out of 9 towers respondent in the first phase of th development began construction of Tower G, J, E & F & EWS. Further, in absence of any rebuttal from the respondent Authority is inclined to to agree with complainant that Tower C in which original allotment was made, was abandoned by the respondent and accordingly complainants were made to shift to Tower G. Authority, therefore concludes that original allotment was cancelled/changed unilaterally by respondent. Respondent used their dominant position and utilised a huge amount of ₹21 Lakh from 2008 till 2012. It is nowhere



submitted that any compensation was paid to the complainants in respect of said amount.

Therefore, Authority observes that for such deficiency in services on part of respondent, complainant deserves to be awarded interest @ SBI MCLR+ 2(=9.8%) on entire amount paid from the date of making respective payments upto the date of execution of second Builder- Buyer Agreement.

For this period the interest amount has been got worked out from Accounts department as shown in table below.

S. No	Paid amount (in ₹)	Period	Amount of Interest (in ₹)
1.	3,00,000/-	24.11.2006 to 29.08.2012	1,69,634/-
2.	2,00,000/-	17.02.2007 to 29.08.2012	1,08,525/-
3.	16,76,922/-	22.07.2008 to 29.08.2012	6,74,558/-



Accordingly, Authority orders that the respondents shall pay ₹ 9,52,717/- as interest to the complainants on the amount received between 2006 to 2012.

(ii) The second question is in regard to the revised agreement executed between both parties in respect of unit bearing no. 906 in Tower G of the project. Authority observes that after completing construction of the project and receiving occupation certificate dated 13.08.2015 in respect of Tower G & J, respondent had offered a valid offer of possession on 07.03.2016 to the complainants along with a demand of ₹ 3,05,444/-. However, complainants raised objections against said demand particularly in respect of demand of ₹ 1,01,513/- charged towards Essential facilities charges. It has been submitted by respondent that the demand raised towards Essential facilities charges has been charged in terms of Article 3(B)(iii) of the buyers agreement. No objection has been raised by complainants in regard to validity of offer of possession. In case the complainants had objections to demand of ₹ 1,01,513/-, they should



have accepted said offer of possession assailing the impugned demand.

With regard to offer of possession dated 07.03.2016, Authority observes that as per terms of agreement dated 30.08.2012, possession of booked unit should have been delivered by February 2016 and an actual offer of possession was issued to the complainant on 07.03.2016 after receiving occupation certificate on 13.08.2015. Said offer was a valid offer of possession without any delay and of a completed unit. Further with regard to contention of complainants towards demand raised on account of essential facilities charges, it is observed that said demand has been made in accordance with terms of buyers agreement executed between parties. Complainant should have honoured said demand and accepted offer of possession dated 07.03.2016. Even at present the unit stands in the name of complainants and is ready and available for possession subject to payment of balance amounts.



On the other hand, in view of continuous default on the part of complainant in making payments, respondent had issued a final notice for cancellation of allotment on 10.06.2019 whereby complainants were requested to make payment of outstanding amount by 25.06.2019 and obtain possession failing which the allotment will be cancelled. In the event of failure of complainants in honouring said demand, respondent should have cancelled the allotment of complainants and returned the paid amount after deducting earnest money. However, the respondent failed to do so and kept on utilising the amount paid by complainants. Further respondent failed to reply to the objections raised by complainant vide letter dated 27.07.2016 in respect of impugned demand and rather kept on issuing demand letters. Respondent has retained and unjustly utilised an amount of more than ₹ 22 Lakh since 2014.

(iii) Since in present complaint both parties have defaulted in complying with their respective obligations, Authority in the interest of

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equity and natural justice freezes the right of both parties in the year 2016 and present matter is being dealt as if in the year 2016 itself. In such light, Authority observes that the offer of possession dated 07.03.2016 is a valid offer of possession and complainant is liable to honour entire demand of ₹ 3,05,444/- so raised by respondent. Complainant shall accept said offer of possession within 30 days of uploading of this order failing which respondent will be entitled to take further action in accordance with the terms of agreement. Along with said offer of possession respondent will issue a statement of accounts clearly mentioning the amount of interest payable to complainant as calculated in para 6(i) of this order (=₹9,52,717/-) after adjusting the remaining balance amount that is to be paid by complainant to respondent( =₹3,05,444/-) . Amount of interest payable to complainant works out to ₹ 6,47,273/-.





(iv) Further demand raised on account of holding charges and maintenance charges are quashed as the same will not be payable in the year 2016.

7. Complaint is disposed of in above terms. File be consigned to record room after uploading of the order on the website of this Authority.



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



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