



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 525 OF 2020

Sushila Jain

...COMPLAINANT

VERSUS

Adore Realtech Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 19.07.2022

Hearing: 7th

Present: Ms. Sushila Jain, complainant through VC.

Mr.Rohan Gupta, Learned counsel for the respondent through VC.

ORDER (RAJAN GUPTA - CHAIRMAN)

Today is the 7th hearing of the case. Facts of the case has been recorded vide order dated 16.12.2021. Same is reproduced below;

1. Initiating his pleadings, Ld. counsel for the complainant submitted that complainant had booked a flat bearing no. 302 in Tower 'H' of the respondent's project namely "Adore Happy Homes", Sector-86, Faridabad, Haryana under affordable group housing scheme on 11.10.2015. Builder buyer agreement was executed between the parties on 02.11.2015. Sale price of the flat was Rs. 19,44,376/- against which an amount of Rs. 20,18,505/- had already been paid by the complainant. Ld. counsel for the complainant

further stated that as per BBA, respondent was supposed to deliver possession of said unit within 48 months from the commencement date i.e. 18.04.2015 as per clause 1.12 of BBA. Thus, due date of delivery of possession comes to 18.04.2019. Respondent had obtained occupation certificate on 07.09.2018 and thereafter, respondent had sent a letter dated 24.09.2018 to complainant-allottee for a meeting in order to take possession.

During meeting on 29.09.2018, promoter demanded an additional amount of Rs. 2,60,000/- in cash for issuance of 'No Dues Certificate' to enable the complainant to execute conveyance deeds of the flat against which complainant protested. Thereafter, complainant enquired from respondent from time to time via emails (Annexure 11-15) regarding physical possession of the flat and opposed the demand of such amount without any formal receipt. But, respondent did not send any written demand letter till 20.10.2020 that was when Authority directed respondent to send fresh offer of possession along with demand, if any, in writing within fifteen days of uploading of said orders.

Complainant further stated that respondent sent an email dated 11.11.2020 containing reminder offer letter along with additional demand of Rs. 1,96,965/- in the attachment which bears 03.07.2020 as the date of such offer. It is observed that email was sent to complainant on 11.11.2020 but reminder offer letter is ante-dated.

2. Learned counsel for the complainant also submitted that he did not take possession when offered on 11.11.2020 due to illegal additional demand raised by the respondent under different heads: (a) Rs. 56,771/- as holding charges, (b) Rs. 8,937/- as VAT charges, (c) Rs. 7578/- as labour cess, (d) Rs. 5515/- as electricity meter charges, (e) Rs. 11,800/- as common area power backup charges, (f) Rs. 11,800/- as electrical connection 2KW, (g) Rs. 1250/- as interest, (h) Rs. 24662/- as operation and maintenance cost and (i) Rs. 68,652/- as reimbursement of electrical infrastructure, amounting to a total of Rs. 1,96,965/-

and the same are illegal and arbitrary being demanded in violation of Affordable Housing Policy, 2013 especially clause (5).

Ld. counsel for the complainant further submitted that license no. 108 of 2014 issued to the respondent promoter by DGTCP, Chandigarh dated 19.08.2014 clearly stipulated under clause (o) that the licensee shall abide by the terms and conditions of the policy dated 19.08.2013. As per terms and conditions of the policy prescribed/ approved by the Town and Country Planning Department relating to Affordable Housing Projects dated 19.08.2013, promoter could charge Rs. 4,000/- per sq. ft. within the MC limits of Faridabad and Rs. 3,500/- per sq. ft. outside the MC limits. Only cost of balconies shall be in addition to the above charge which should not exceed Rs. 500 per sq. ft. up to a maximum of 100 sq. ft. Above rates shall be an all-inclusive cost of apartment.

Thus, ld. counsel for the complainant pleaded that respondent cannot claim additional charges of Rs. 1,96,965/- being in violation of Affordable Housing Policy, 2013. Any clause mentioned in BBA in violation of said govt. policy and terms and conditions of licence requires to be quashed being unsustainable in eyes of law.

3. Complainant initially prayed for relief of refund of paid amount along with interest which was subsequently amended by him through an application dated 19.07.2021 for seeking relief of possession along with delay interest for delay in handing over possession from deemed date of possession till date of actual possession. Besides, he also pleaded for quashing of illegal demand of Rs. 1,96,965/- as made by the respondent vide letter dated 03.07.2020.

He further apprised the Authority that he already took possession of the unit on 28.10.2021.

4. On the other hand, Ld. Counsel for the respondent stated that there was no delay on part of the respondent in offering possession to the complainant.

As per terms of the Affordable Housing Policy, 2013, project was required to be completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. He had got building plans approved from DGTCP on 03.04.2015 and had got environment clearance from the State Environment Appraisal Committee in the 118th meeting held on 03.03.2015. Respondent further submitted that he had obtained Occupation Certificate for the project on 07.09.2018. Thereafter, he offered possession to the complainant on 24.09.2018 within 4 years from date of approval of building plans. Complainant deliberately avoided taking possession, being aware of additional demand which is evident from his alleged emails written to the respondent from time to time. Thus, he is not liable to pay any delay interest to the complainant for delay caused by the complainant himself in taking possession of the unit. Respondent also refuted allegation of demanding additional money from complainant in cash only.

5. As far as additional demand made by respondent vide email dated 11.11.2020 is concerned, respondent stated that such demand had been made by him within the ambit of Builder Buyer Agreement. He brought attention of the Authority to BBA clauses 2.5, 2.6, 9.1, 9.5, 11.2 and 16.4 in order to justify demand of VAT; labour cess; electricity meter charges; common area power backup charges; electrical connection 2KW; interest; reimbursement of electrical infrastructure and operation and maintenance cost.

6. After considering oral as well as written submissions of both parties, Authority prima facie is of the view that before disposing of the case, following issues need to be argued in detail:

(a) whether BBA executed between promoter and allottee is legally sustainable if some of its provisions contravene terms and conditions of licence and approved govt. policy?

(b) whether a promoter be allowed to charge any amount exceeding the sale price fixed by the government at time of grant of licence?

Both parties are directed to submit their respective written submissions on above issues at least 15 days before next date of hearing with an advance copy to the opposite party.

5. The case was fixed for hearing on 19.07.2022 wherein both parties put forth their rival contentions essentially reiterating the facts that had already been observed and recorded by Authority in its previous orders as reproduced above. Both counsel had further sought time to furnish certain other findings in support of their respective contentions. Authority had given both parties an opportunity to present submissions if any by way of written submissions. Complainant filed their written submission on 26.07.2022 whereas respondent filed their written submission on 25.07.2022

6. Authority after considering all rival contentions of both parties and perusing the written submissions observes and concludes as follow:

(i) The principle argument raised by complainant is that the demand of Rs. 1,96,965/- raised by respondent vide letter dated 11.11.2020 on account of holding charge, maintenance and operation cost amounting, sewage treatment plant, electrification charges and common area power backup charges etc. are contrary to the provision of Haryana Affordable Housing Policy 2013 and were never described in the terms of agreement. It is alleged that respondent had forced the complainant into executing a one sided unilateral builder buyer

agreement after receiving approx. 25% against total sale consideration of flat. Also at the time of signing of the agreement respondent did not even had environmental clearance.

Upon receipt of demand vide letter dated complainant approached the Senior Town Planner vide letter and e-mail dated 09.06.2020, complaining about the additional amount being demanded by the promoter and delay in the possession of the flat on this pretext. After much follow up with the Director, CTP, STP Faridabad; DTP Faridabad, a response was received from DTP Faridabad on 30.06.2020.

"It is informed that as informed to your telephonically, the matter regarding the delay in possession is subject of Bilateral Agreement. As per the directions of Hon'ble Supreme Court, the Department cannot intervene in such matters, however, the mail received from you stands forwarded to concerned colonizer with the direction to redress the same as per rule. it is advised that you may approach the Court of LAW/HRERA in the matter in case, the builder fails to abide by the terms and condition of Bilateral Agreement executed with you. It is informed that as per record, no reply of the mail sent to the builder regarding your complaint has been received till date in this office."

Therefore, for the above mentioned reasons complainant had filed present complaint seeking directions against respondent for quashing the impugned demands.

(ii) In rebuttal it is submitted by respondent that project 'Adore Happy Homes' is governed by the terms and conditions of the policies of Affordable

Housing Policy, 2013 to be read with various amendments issued by the Department of Town and Country Planning, Haryana from time to time to the said policy. Further the rights and obligations of both promoter and allottee are to be governed by the terms of builder buyer agreement. Respondent provided a point wise clarification pertaining to each of the demand being contended by complainant. Brief of which is reproduced below;

- a) Relying upon clause 1.11,1.24,1.30, 1.42, 1.43 and 2.2 of Builder Buyer Agreement dated 02.11.2015. It is submitted by the respondent that charges under the head of Sewerage Connection Charges (SCC), Electricity Connection Charges (ECC), maintenance charges Electric meter charges, VAT etc. are liable to be paid by complainant. Therefore, the demands raised by respondent towards these charges is valid and genuine and complainant has failed to honour the demands
- b) Respondent/ promoter has provided a total of 3KW electricity load for the project out of which 1KW load is free and from the own resources of respondent whereas additional 2KW electricity load the allottees are to bear additional charge of Rs. 10,000/-. Therefore, complainant is liable to pay this.
- c) Respondent has borne a cost of Rs.2.41 crore for augmentation of electrical infrastructure from nearest electricity

substation to site. Per head charge of each allottee had been calculated as Rs.58,180/- which was an additional cost to be incurred for providing the continuous and uninterrupted electricity supply to the allottees.

d) With regard to the environmental clearance it is submitted that the project had been granted licence for development on 19.08.2014 and the environmental clearance of the said project was received on 03.03.2015. As per the terms of the Affordable Housing Policy, 2013 the Developer/ Respondent had to complete project within four years from the date of grant of environmental clearance. Occupation certificate for said project was received on 07.09.2018 and thereafter complainant was offered physical possession on 25.09.2018 much prior to the date of handing over the physical possession.

(iii) It is further argued by respondent that possession was offered to the complainant in 2018 itself however it is the complainant who did not come forward to take possession and further failed to honour the demands.

(iv) In light of this situation Authority observes that a builder buyer agreement is a sacrosanct document which governs the right and obligations of both the respondent and allottee. In this case respondent promoter had issued the complainant an offer of possession after completing the construction of the

project and grant of occupations certificate. Complainant who at the time of signing said agreement had agreed to adhere to the terms and conditions later on failed to honour the demands raised by respondent.

7. A perusal of clause 1.11, 1.24, 1.30, 1.42, 1.43 and 2.2 of Builder Buyer Agreement dated 02.11.2015 reveals that the complainant has expressly agreed to pay all the charges such as VAT charges as labour cess, electricity meter charges, common area power backup charges, electrical connection 2KW, operation and maintenance cost and reimbursement of electrical infrastructure. Clauses are reproduced below for reference;

Clause 1.11, "Charges" shall mean and refer to collectively to all the charges including but not limited to External Development Charges (EDC), IDC (Infrastructure Development Charges), Interest Free Maintenance Security Deposit (IFMS), Sewerage Connection Charges (SCC), Water Connection Charges (WCC), Electricity Connection Charges (ECC), Fire Fighting Charges (FFC), Registration and Stamp Duty Charges (RC) and any other charges as may be determined by the Developer but subject to the terms and conditions of the policy. The Charges shall also include such amounts as may be determined by the Developer in its sole and absolute discretion owing to any revision or enhancement of any of the aforesaid Charges or levy of any new or additional charges of any kind by any Authority w.r.t. the AGH Colony, whether applicable retrospectively or prospectively.

ii. Clause 1.24,

"Government Dues" shall mean and include but not limited to any taxes (like service tax, etc.), levies, cesses or any other charges levied by an Authority(ies) including any enhancements or revision thereof, whether retrospectively or prospectively w.r.t. the AGH Colony;

iii. Clause 1.30,

"Maintenance Agreement" shall mean an agreement to be executed between the Purchaser(s) and the Developer or the Maintenance Service Provider (as defined hereinafter), being nominee of the Developer, in the standard format prescribed by the Developer or its appointed agency or nominee (Maintenance Service Provider), which is applicable and binding for all the owners and occupants of the units/flats in the AGH Colony. The agreement shall be executed for the purposes of upkeep and regular maintenance of the AGH Colony as a whole as the Flat derives its prestige, esteem and appeal from the ambience and high standards maintained at the AGH Colony and the proper up-keep and maintenance is an inseparable aspect of such prestige, esteem and appeal of the Flat;

iv. Clause 1.42:

"Statutory Dues" shall mean and include all, but not limited to taxes, levies, cess, charges, assessments, municipal taxes, property tax, infrastructure augmentation charges, infrastructure development tax, VAT, service tax, stamp duty/fines/penalties, any fresh incidence of tax and any other statutory charges etc. to be levied by any Authority, including any enhancement of such taxes or dues by the State Government or the Authority, even if they are retrospective in effect as may be levied on the AGH Colony, including any interest demanded and payable by the Developer.

v. Clause 1.43:

"Tax Amount" shall mean all such sums as are paid to any of the Authority by the Developer on account of making an allotment of the Flat to the Purchaser(s) including but not limited to service tax.

vi. Clause 2.2:

The purchaser(s) shall pay a total sum calculated at the Allotment Price on the Carpet Area of the Flat along with Rs. 500/- per sq. ft. over the Balcony Area along with such other Charges as may be determined by the Developer subject to the terms and conditions of the policy including any of its subsequent amendment or modifications thereof. The Purchaser(s) shall be further liable to pay such Statutory Dues as may be applicable on the Consideration payable in respect to the Flat.

8. Authority is of view that complainant is liable to pay all these charges as per terms and conditions of builder buyer agreement was executed between parties with their free consent and now complainant cannot dispute these charges. Therefore, Authority is unable to accept the contentions of the complainant and thus this case is dismissed and disposed of.

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



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RAJAN GUPTA
(CHAIRMAN)



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DILBAG SINGH SIHAG
(MEMBER)