



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1509 OF 2020

Subhash Bhatnagar

....COMPLAINANT

VERSUS

SRS Real Estate Ltd.

....RESPONDENT

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing:**

**12.05.2022**

**Hearing:**

**5<sup>th</sup>**

**Present: -**

Mr. Subhash Bhatnagar, complainant through VC

Respondent already ex-parte

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

This is 5<sup>th</sup> hearing of the matter. Case was discussed in brief vide order dated 09.09.2021 passed by this Authority and the same is reproduced below for ready reference:

1. While initiating his pleadings, complainant submitted that he had purchased a flat bearing no. C1/07/ph/87/701 on 29.04.2011 in the respondent's project namely SRS Pearl Heights, Sector-87, Faridabad. Total sale



consideration of the flat was ₹37,75,252/- against which complainant had already paid ₹35,60,964/-. Flat buyer agreement was executed between the parties on 13.05.2013. As per agreement, possession of flat was to be delivered within 48 months from the date of agreement i.e. by 13.05.2017. But offer of possession was made on 18<sup>th</sup> August 2017 accompanied by certain unjustified and illegal demand of ₹4,56,816/-. Due to the same, complainant did not take possession. Complainant had issued letter dated 02.09.2017 to the respondent pointing out some deficiencies in his allotted flat but no response had been received from the respondent in this regard.

Ignoring complainant, respondent had again issued demand notice dated 14.09.2017 and 06.11.2017 of ₹4,85,229/-. Other grievance of the complainant is that initially the super area of the flat was 1290 sq. ft. but in demand cum offer of possession letter dated 18.08.2017, it has been increased to 1353 sq. ft. Without giving any justification regarding components of increased area, an additional amount of ₹1,82,032/- demanded by the respondent on account of increased area which is not at all justified. Further, respondent has demanded an amount of ₹18000/- as electric meter charges, ₹20848/- as CGST, ₹20848/- as IGST and ₹43681/- as annual maintenance charges (total comes to ₹59,696/-).

So, he prayed to quash illegal demands raised by the respondent on account of holding charges, increased area, maintenance charges, CGST, SGST and interest charged for delayed payments and further agreed for possession of the flat as on where basis along with delay interest.

2. Since the respondents are stated to be confined in Neemka Jail, Faridabad, notice was served through Jail Superintendent, Neemka Jail Faridabad. However, respondent did not appear despite service of notice on 11.08.2021. Therefore, respondent is ordered to be proceeded against ex-parte.

3. After perusing relevant record and submissions of the complainant during hearing, it has been observed by the Authority that complainant is ready to take possession of his flat as on where basis. But he is disputing illegal demand of ₹4,85,228/- made by the respondent on account of following components:

- (i) basic sale price ₹2,28,578/-
- (ii) interest free maintenance security (IFMS) ₹67,650/-

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- (iii) club membership charges ₹75,000/-
- (iv) electric meter and fitting charges ₹18,000/-
- (v) development charges ₹25,893/-
- (vi) holding charges ₹14,901/-
- (vii) CGST and SGST ₹41,696/-
- (x) Interest ₹13,511/-

The disputed amounts against all components are discussed in detail and on consideration of documents available on record and submissions made by the complainant, Authority orders as below:

- i. Argument of the complainant is that basic sale price of the flat was ₹37,75,252/- at the time of execution of agreement but respondent has increased this to ₹38,62,071/- while offering possession of the flat on 18.08.2017. On perusal of builder buyer agreement dated 13.05.2013, it is revealed that the flat was booked for an area admeasuring 1290 sq. ft. Whereas respondent has increased total sale consideration of the flat on pretext of the increase in area from 1290 sq. ft. to 1353 sq. ft. Under clause 2.1 of BBA, which provides that the complainant and respondent agreed at the time of execution of BBA that any change /revision in building plans may increase or decrease the super built up area of flat and in any such event total sale price and other charges applicable on said flat shall also increase/decreased proportionately. But moot question is that respondent has not elaborated under which component area of the flat has been increased. Whether such increase has been on account of revised approved plans? If it is so, where is the revised approved plan. Therefore, Authority is of the tentative view that increased basic sale price of the flat is liable to be quashed. So is the case of interest on delayed payments.
- ii. It has been argued by the complainant that initially amount of IFMS of ₹64,500/- (@ 50/- per sq. ft.) was agreed by the respondent which is evident from payment plan annexed at page 92 of the complaint book. But later on, vide offer of possession letter dated



18.08.2017 placed at page no. 61, 62, amount of IFMS has been increased to ₹67,650/- without giving any justification. Since the super area at the time of booking was 1290 sq. ft. and no justification were given by the respondent for increased area, therefore in tentative view of the Authority, amount of ₹67,500/- is also liable to be quashed. Complainant will only be liable to pay an amount of ₹64,500/- @50/- per sq. ft on account of IFMS. In case, respondent promoter contests, he may file his justification if any.

- iii. As far as charges of club membership are concerned, Authority is of view that respondent cannot recover club charges until and unless club becomes operational after its construction. No justification regarding these charges has been attached along with statement of account. Therefore, these charges will be applicable as and when club becomes operational.
- iv. As far as charges of ₹18,000/- is concerned, if the complainant wants to make his own arrangement, then the said amount liable to be waived off.
- v. It has also been argued by the complainant that initially an amount of ₹5,30,190/- was charged by respondent as development charges which was agreed by the respondent which is evident from payment plan annexed at page 92 of the complaint book. But later on, vide offer of possession letter dated 18.08.2017 placed at page no. 61, 62, amount of development charges has been increased to ₹5,56,083/-. But no detailed justification has been given by the respondent why these charges have been increased. Therefore, Authority on this issue also is of the tentative view that complainant will be liable to pay increased development charges of ₹5,30,190/-.
- vi. An amount of ₹14,901/- being charged by the respondent on account of holding charges. Factual position of the case reveals that possession was offered by the respondent to the complainant on 18.08.2017 after receiving OC on 19.07.2017 along with certain unjustified demand. On perusal of the case file, a new fact came into the knowledge of Authority that department of Town and Country Planning has already cancelled occupation certificate



(OC) vide its letter dated 30.10.2018 which is annexed as page no.74 of the complaint. Therefore, Authority held that this building is without occupation certificate and offer of possession made by the respondent is illegal. It has also been stated by the complainant that flat is not complete in all respect as certain deficiencies were existing. For this reason, complainant did not take possession and had filed present complaint. Considering the fact that OC stands cancelled and flat is not in a habitual condition, Authority is of tentative view that holding charges cannot be levied on the complainant. However, no justification has been given by the respondent, the complainant, therefore will not liable to pay these charges at present.

vii. Respondent has charged an amount of ₹41,696/- as CGST and SGST. As per builder buyer agreement, deemed date of possession comes out to 13.05.2017 and the GST Act came into force on 01.07.2017. So, GST cannot be charged by the respondent. For this reason, GST charges of ₹41,696/- are liable to be quashed.

4. Since respondents are confined in jail. Despite successful service of notice, none has appeared on behalf of them nor any reply has been filed despite granting opportunity. In these circumstances, Authority decides to proceed against respondent ex parte. As complainant is ready and willing to take possession of his flat as on where basis, therefore, he is directed to take possession through DTP, Faridabad and in the presence of representative of DC, Faridabad. Remaining issues, if any will be decided later. Copy of this order be served to respondent through Jail Superintendent. In case, respondents have any objections, the same may be filed before the next date of hearing and copy of the same be supplied to the complainant in advance.

5. Case is adjourned to **06.10.2021**.

2. In the previous hearing, it was apprised by the complainant that he had already taken over possession of his flat on 14.01.2022 in the presence



of official of District Magistrate, Faridabad and pointed out several deficiencies which would be removed in order to make the flat in habitable and living condition. He was also directed to file list of deficiencies along with expenses likely to be incurred by him to remove those deficiencies.

3. Today, complainant has filed estimate of expenses prepared by chartered engineer which amounts to ₹4,50,760/- along with GST and the same is taken on record.

4. Facts and circumstances of the captioned complaint are exactly similar to the matter already disposed of by this Authority vide order dated 15.09.2021 in complaint no. 68 of 2020. Operative part of such order is reproduced below for ready reference:

1. \*\*\*

2. \*\*\*

3. In the aforesaid circumstances, the Authority in the course of previous hearing had ordered that possession to the complainant be delivered as on where basis through District Magistrate and District Town Planner, Faridabad.

4. Today, the complainant has apprised the Authority that he had already obtained possession of his flat. According to him, there are several deficiencies in the flat which need to be rectified. He has submitted a report prepared by Chartered Accountant revealing that an expenditure of ₹4,98,850/- is likely to be incurred for rectifying the deficiencies.

5. In view of above circumstances and report of Chartered Accountant, the Authority allows the complainant to rectify the deficiencies at his own level and will maintain a proper record of the entire expenditure incurred thereon. The amount of





expenditure actually incurred on rectifying the deficiencies will be liable to be adjusted against the outstanding dues recoverable from the complainant. The respondent will be liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e. 25.03.2017 to the date on which the complainant had taken over the possession i.e. 26.03.2021 at the rate prescribed in Rule 15 of HRERA Rules, 2017.

6. The amount of delay interest payable to the complainant for the above referred period was got calculated by the Accounts Branch of this Authority on the basis of details of payments disclosed by the complainant. Said amount has been worked out of ₹17,40,248/- and the same will also be adjusted towards the outstanding dues payable by the complainant.

7. The complainant will be liable to pay the balance dues in terms of BBA as and when the statement of all payable and receivable amounts is served upon him by the respondent company. It is made clear that the respondent company will be entitled to charge interest @ prescribed under Rule-15 of HRERA Rules, 2017 on the amount which the complainant had not paid on time as per payments schedule attached to the BBA.

8. The complainant will be at liberty to file a fresh complaint for challenging any amount which according to him is not payable to the respondent per terms of BBA. The Authority will adjudicate upon the propriety and legality of such impugned demand at the appropriate stage.

9. \*\*\*

5. Respondent will be liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e. 13.05.2017 to the date on which the complainant had taken over the possession i.e. 14.01.2022 at the rate prescribed in Rule 15 of HRERA Rules, 2017. The amount of delay interest payable to the complainant for the above said as calculated by accounts branch of the Authority works out to ₹15,65,439/-.

6. Case is **disposed of** accordingly in the same terms. File be consigned to record room after uploading o order on website.



.....  
(RAJAN GUPTA)  
CHAIRMAN



.....  
(DILBAG SINGH SIHAG)  
MEMBER

