



Complaint no. 3034 of 2021

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 3034 OF 2019

Shilpi Gupta

....COMPLAINANT(S)

VERSUS

M/s Omaxe Pvt. Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:** 26.04.2022

**Hearing:** 11th

**Present through:** Mr. Amit Gupta, Representative of the complainant.

**Video conferencing** Mr. Munish Gupta, Learned counsel for the respondent

### ORDER (RAJAN GUPTA-CHAIRMAN)

Complainant filed present complaint seeking possession of a plot bearing number 854 , Block E having area of 487.25 sq. yds in respondent's project namely Omaxe City initially booked by one original allottee M/s Sophia Exports Ltd on 26.05.2004. Thereafter, buyer's agreement was executed between subsequent allottee Mrs. Achla Pahwa and respondent on 30.03.2013. As per said agreement possession was to be delivered upto 30.09.2014. All rights pertaining to said property were purchased by complainant from Mrs. Achla Pahwa on on 17.05.2013. Respondent had acknowledged transfer of

rights in favour of complainant for said property on 04.07.2013. An offer of possession was issued to complainant on 19.07.2013 with a demand for clearing outstanding dues of Rs 3,35,052/- which was paid by complainant on 12.08.2013. However, despite paying entire amount respondent failed to handover physical possession of booked unit. Complainant has prayed for issuing directions to respondent to deliver her physical possession of booked unit along with delay interest for delay in delivery of possession.

2. Respondent in his written submission has stated that project has been completed and completion certificate was received on 25.06.2015. Offer of possession was sent to complainant on 19.07.2013 but it was the complainant herself who did not come forward to take over possession and execute sale deed. Further learned counsel for respondent has admitted to having received full payment from complainant against booked unit.

3. In light of fact, when full and final payment has already been made and project is already complete, Authority vide order 20.02.2020 had directed respondent to get conveyance deed executed immediately and complainant was directed to assist the respondent through the process.


Thereafter, during the course of hearing on 16.12.2020 respondent apprised the Authority that the area of booked unit has been decreased from 487.25 sq. yds to 479.94 sq. yds. He further apprised that respondent has obtained a date on the portal of revenue department for executing sale deed. It



is pertinent to mention that sale deed for the unit question was executed in favour of complainant on 18.12.2020.

4. On hearing dated 17.02.2021, complainant submitted that after execution of conveyance deed his grievance is confined to two issues i.e return of amount proportionate to decreased area of unit and interest on account of delay in delivery of possession. After hearing both parties, Authority had observed and directed as follows-

*“It is evident from the order dated 16.12.2020 that the respondent in the course of hearing held on the said date had informed the Authority that the area of the plot had reduced from 487.25 Sq. Yds. to 479.94 Sq. Yds. and the date obtained from the portal of the Revenue Department was 18.12.2020 for the execution of the sale deed. So, the respondent was directed to execute the sale deed in favour of the complainant on 18.12.2020 on payment of proportionate balance price and the complainant was directed to appear before the Sub Registrar alongwith funds for paying the balance price and registration charges. The amount of excess price can only be allowed to the complainant, if he satisfies the Authority that some excess amount was paid to the respondent. The complainant has not disclosed in his pleadings the exact amount which he had already paid to the respondent and he has also not produced before the Authority the sale deed executed in his favour. Without the details of the exact amount paid to the respondent and the details of the amount which had been cited as the total consideration in the sale deed, it will not be possible for the Authority to hold that the excess amount beyond the one which was payable in respect of reduced area of the plot had been paid. So, the complainant is directed to file the complete particulars of the various amounts paid to the respondent till date and has also to file a copy of the sale deed.”*



5. Today, Shri Amit Gupta, representative of the complainant submitted that at the time of booking, area of the plot was 487.25 sq. yds. which had later been reduced to 479.25 sq. yds. He submitted that as per orders of the Authority he has filed calculation sheet dated 04.04.2022 in the office of Authority and excess price which the respondent has to return to him is Rs 49,801/-. He requested that directions be issued to respondent to return the same.

6. Authority vide order dated 17.02.2021 had directed the complainant to file a copy of sale deed and complete particulars of the amounts paid by her to the respondent so as to ascertain whether any excess amount was paid by the complainant to the respondent. However, for the next two hearings no one appeared on behalf of the complainant nor any document was filed by her. Then on hearing dated 03.02.2022, Shri Amit Gupta, appeared on behalf of the complainant and was again directed to file requisite documents in the registry of the office. Despite availing several opportunities and after a gap of more than one year, complainant has failed to file the sale deed executed between both parties or some other relevant document in support of her claim regarding refund of excess amount in respect of reduction in area of the unit.

Further on perusing the calculation sheet dated 04.04.2022 filed by the complainant regarding refund of amount it is observed that complainant has mentioned an amount of Rs 49,801/- that is to be refunded to her wherein, Rs 45,048/- is to be refunded in respect of reduction in area of unit and an amount



of Rs 4,753/- as refund of stamp duty (totalling to Rs 49,801/-). However, complainant has failed to provide justification as to how this amount has been calculated.

8. Considering facts and circumstances stated above, Authority observes that conveyance deed for the plot in question has already been executed between both the parties on 18.12.2020. Complainant had consciously executed the conveyance deed and accepted the terms and conditions on payment of proportionate balance price. In the execution of conveyance deed lies the culmination of the agreement entered between the parties. After conveyance deed has been executed all formalities are completed and there remains no contractual obligations. In case complainant was not satisfied with the terms of conveyance deed, she could have submitted the same before Authority. Complainant was given a number of opportunities but she neither produced a copy of sale deed nor raised any protest in respect of the same.

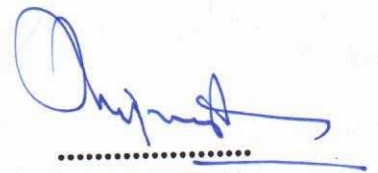
Authority vide order dated 17.02.2021 had given an opportunity to the complainant to file a copy of sale deed and prove her claim for refund of amount in respect of reduced area but the complainant failed to do so despite having several opportunities. Further in documents dated 04.04.2022 complainant has failed to provide justification in respect of refund of an amount of Rs 49,801/-. Till date complainant has not filed any document to establish her claims in regard of refund of amount for reduction in area, in view of the



Authority any claims, in case remaining, were already settled between both parties at the time of execution of conveyance deed .

9. Complainant had also raised a plea regarding delay interest payable to her on account of delay in delivery of possession. Authority had directed the complainant to furnish relevant documents in support of her claim. However, despite availing several opportunities, complainant has not filed any documents to prove her case. Therefore, Authority finds itself unable to adjudicate on the issue pertaining to the claim of complainant regarding delay compensation payable to her for delay caused, if any, in delivery of possession.

10. For the reasons mentioned above and due to lack of documentary evidence this complaint is dismissed. Case is disposed of. Order be uploaded on the website of Authority and files be consigned to record room.



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



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