

Faridabad by paying booking amount of ₹50,000/-. Later name of the project was rechristened to 'Royal Heritage'. Complainant was allotted flat bearing no. T-8/403, 4th floor, having super area of 1150 sq. ft. Copy of allotment letter has been placed on record as Annexure C-1, at page no.19 of the complaint book. Total sale consideration of the flat was fixed as ₹20,68,150/- against which the complainant had paid ₹21,00,397/- till 27.06.2013. Copies of payment receipts have been placed as Annexure C-3, at page nos. 51-61 of the complaint book. Builder buyer agreement was executed between the parties on 09.05.2011, copy of which has been appended as Annexure C-2. As per clause 28 of the agreement, possession was to be handed over within 42 months from the date of execution of builder buyer agreement i.e. up to 09.11.2014. However, respondent offered possession on 08.12.2017 i.e. after delay of almost three years. Along with offer of possession, respondent also issued a demand letter asking for an additional amount of ₹11,19,467/-. Respondent, however, did not account for the delay penalty payable for the period of delay caused in handing over of possession. Distressed by the said action of the respondent, complainant did not take possession.

2. Aggrieved from above facts, complainant has sought relief of handing over of possession of booked flat along with delay interest.

3. Respondent in his reply submitted that occupation certificate for the project was obtained on 30.11.2017. Thereafter, they offered possession to the complainant on 08.12.2017. Complainant is aggrieved by the demand

on account of EEDC and increase in super area. With regard to EEDC, the respondent submitted that Hon'ble National Commission held that respondent is entitled to collect proportionate amount of the EEDC. Moreover, bank guarantee or fixed deposit with respect to the same had already been offered to the complainant. Regarding issue of increase in super area, it has been contended by the respondent that the charges are squarely covered under the agreement executed between both the parties. It has further been submitted by the respondent that the complainant himself has failed to take the possession and has no reason to avoid payment of outstanding dues which have been raised by the respondent as per agreement despite repeated reminders. The respondent has also questioned maintainability of the present complaint on the basis of Clause 80 of the builder buyer agreement which provides for arbitration in case of any dispute between the parties.

4. After giving thoughtful consideration to the submissions of the learned counsel for both the parties, this Authority discards the argument with respect to maintainability of the complaint due to Arbitration clause as the clause provides that dispute between the parties will be referable to the Sole Arbitrator and the Managing Director of the respondent company can himself act as arbitrator or he can also appoint some other person to act as arbitrator. Section 12(5) of The Arbitration and Conciliation Act 1996, renders a person ineligible to act as an Arbitrator if he holds such relationship with any of the parties to the dispute, which falls in the categories specified in the Seventh



Schedule of the Arbitration Act. The Managing Director of company which is party to the referable dispute falls in category 5 of said schedule. Hon'ble Supreme Court in **TRF Limited versus Energo Engineering Projects Limited** has ruled that maxim " Qui facit per alium facit per se" (what one does through another is done by oneself) applies in the circumstance where the Managing Director himself has become ineligible to be appointed as arbitrator and also for appointment of another person to act as an arbitrator. The dictum of said ruling is that no person can get an act done indirectly by engaging another person as arbitrator if he himself is debarred directly from doing such act. So, the arbitration clause on which the respondent company is relying, is legally not enforceable.

5. Considering facts of the case, Authority finds that there is no dispute between the parties with respect to allotment of flat by the respondent in his project named "Royal Heritage, Sector-70, Faridabad and also the payments of ₹21,00,397/- having made by the complainant which is almost 94% of the total sale consideration. The possession of flat was to be delivered in November, 2014 but the respondent offered the possession of the same in December, 2017 after obtaining occupation certificate. Therefore, complainant is entitled to delay interest for the period of delay in handing over possession i.e. from November 2014 (deemed date of possession) up to December 2017 (date of offer of possession).



6. The complainant further disputed additional demand of ₹11,19,467/- made by the respondent. Some of the charges were acceptable to the complainant and some has been disputed i.e. electricity consumption, EEDC, interest on EEDC and pending interest.

7. Arguments of both parties have been heard. After hearing both parties, Authority orders as below:

i. The respondent is directed to pay delay interest to the complainant for delay period i.e. from 09.11.2014 (deemed date of possession) to 08.12.2017 (date of offer of possession). The Authority has calculated amount of delay interest under provisions of Rule 15 of the HRERA Rules, 2017 (SBI MCLR + 2% i.e. 9.40%) from its account branch which amounts to ₹6,09,081/-. Respondent is directed to adjust this amount from the outstanding dues to be payable by the complainant at the time of handing over possession.

ii. Respondent has been demanding ₹1,87,220/- as enhanced EDC. The Authority has observed in several cases that levy of enhanced EDC has been stayed by Hon'ble Punjab & Haryana High Court. If Hon'ble court decides this amount to be payable by the complainants, the demands in this regard can be raised by the respondent at



that stage. Till a decision in this regard is arrived at by the Hon'ble court no amount shall be charged towards the enhanced EDC. It is however, ordered that in case the Hon'ble court find this amount is payable by the allottees, the respondent shall be entitled to recover the same from the complainant/allottee.

- iii. As far as relief in respect of payment of maintenance charges is concerned, the complainant is not liable to pay maintenance charges for the period prior to the date of taking over of actual physical possession of the flat in question.
- iv. Another issue is regarding pending interest of ₹3,26,851/- on delayed payments. Learned counsel for complainant argued that 94% of the total sale consideration had already been paid by the complainant before the offer of possession. The last instalment was to be paid only at the time of offer of possession and at that time the respondent demanded for the increased area of 115 sq. ft without providing any detail for the same. Initially super area of the flat as per agreement was 1150 sq. ft. However, at the time of offering possession, respondent has increased super area from 1150 sq. ft. to

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1265 sq. ft. On perusal of statement of account dated 08.12.2017, Authority has observed that no justification has been given by the respondent regarding increase in super area. Therefore, Authority would direct the respondent to charge increased area only after providing detailed justification for it. Accordingly, pending interest on delayed payments towards the complainant if any may be calculated and statement of accounts be revised. The respondent shall not charge the interest on delay payment for the period of lis pendence.

8. Respondent is therefore directed to issue fresh offer of possession to the complainant along with revised statement of account incorporating therein delay interest as calculated by the Authority in para no.7(i) and justify the demands as discussed in para 7(ii)(iii)(iv).

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



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(RAJAN GUPTA)
CHAIRMAN



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(DILBAG SINGH SIHAG)
MEMBER