



Complaint no. 1806 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1806 OF 2019

Dinesh Kumar and Varun Jain

....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing:** 26.04.2022

**Hearing:** 17th

**Present: -** Mr. J P Singla, Counsel for the complainant  
Mr. Kamal Dahiya, Learned counsel for the respondent  
through video conferencing.

### ORDER (RAJAN GUPTA-CHAIRMAN)

Complainants in present case had booked a flat in the project of the respondent namely "Parikrama" situated in Sector-20, Panchkula in the year 2011. Total sale consideration of the flat was ₹ 55,03,750/- against which complainants had made payment of ₹.43,24,592/- by 2012. Flat buyer agreement was executed between the parties on 19.01.2011. As per clause 25 of the agreement, possession of flat should have been handed over by 19.01.2014. Complainant had opted for construction linked payment plan and since the project was not complete complainants stopped last payment of ₹ 11,79,158/-. Possession of the flat was actually offered to the complainants on 01.09.2017

alongwith additional demand of ₹ 41,67,953/- out of which an amount of ₹ 27,67,338/- has been charged by respondent as interest on account of delayed payments @ 24% per annum. Feeling aggrieved complainants have filed present complaint seeking directions to respondent to deliver them possession of their booked flat on payment of balance amount of Rs 11,79,158 and to pay interest for delay caused in handing over possession.

2. On the other hand, respondent in his written submissions has pleaded that the block in which the apartment of complainants is situated had received occupation certificate on 29.08.2017. Accordingly, possession was offered to them on 01.09.2017. Respondent contemplated to complete construction of the said unit within three years from the date of execution of the agreement or approval of all service plans whichever is later subject to timely payment by allottees. Since service plans were approved in December 2013, therefore due date of handing over of possession was December 2016. Complainants had paid only a sum of ₹.43,24,592/- till December 2012 and thereafter stopped making further payments. Therefore, complainants themselves being at fault are not entitled to any relief and thus, present complaint is liable to be dismissed.

3. In order to adjudge correctness of alleged amount of interest charged by respondent, Authority had directed the respondent to disclose in tabulated form the dates on which particular instalments became payable, the



date on which such instalment was actually paid and the method adopted for calculating interest there on.

4. This matter was last heard on 15.09.2021 when vide order passed on said date Authority had made following observations;

*"3. So, the case is adjourned with a direction to the complainants to file a statement disclosing therein the details of all notices/letters which they had received for payment of installments and the dates on which they had actually paid the installments. The respondent on the next date of hearing will also produce the proof about the dispatch of notices to the complainants for payment of each instalment as also the proof of service of said notices upon the complainants. Since the installments were payable per construction linked plan, the respondent is also directed to produce on next date of hearing the documents capable of proving that installments were demanded from the complainants on achieving the stage of construction as mentioned against each instalment in the payment schedule."*

5. Case was adjourned for hearing on 26.04.2022 i.e today for arguments in respect of payment of instalments and quantum of interest being charged by respondent. Today, however, Shri J.P Singla, learned counsel for complainants and Ms Navneet, learned counsel for respondent jointly submitted that they will file written arguments in this case on the basis of which this matter may be disposed of. Accepting the request of both parties, Authority had



given one week's time to file their written submissions, if any, to enable Authority to adjudicate the matter failing which the case will be decided on the basis of available facts.

6. Despite lapse of the time awarded, both parties have failed to file their respective written submissions. Therefore, this matter is being decided on the basis of available facts and submissions.

7. After perusing all the facts and documents placed on record, Authority observes that by the year 2012 complainant had paid more than 75 % of total sales consideration barring payment of last instalment of Rs 11,79,158/- stating that as per construction linked plan further payment was due upon completion of construction work. Deemed date of handing over of possession of unit was in the year 2014 however, actual possession was offered to the complainants on 01.09.2017 along with additional demand of ₹ 41,67,953/-. Out of said demand, respondent has charged an amount of ₹ 27,67,338/- as interest on account of delayed payment at a rate of 24% p.a which is exorbitant and unconscionable. Though respondent had issued offer of possession to complainants after receiving occupation certificate but said offer cannot be called a good offer because of the unjustified and exorbitant demands raised by the respondent. Complainants could not have been forced to accept such an offer and make payment of such a huge amount. Thereafter respondent also issued reminder letters dated 30.07.2018 & 20.07.2019 annexed at pages 53 & 54 calling upon the complainants to pay outstanding dues. However,



complainants themselves did not communicate with the respondent or raise any objections against exorbitant interest being charged on account of delayed payments. Onus was on the complainants to honour demands raised in accordance with the terms of the buyer's agreement and if they had any reservation regarding the quantum of interest, they should have conveyed the same to the respondent.

8. Authority observes that in this case both parties are at fault, therefore it would be just and fair that rights and liabilities of both parties are settled as in the year 2017. Such view has been taken by Authority in a similar complaint pertaining to the same project of the respondent's i.e Complaint no. 1154 of 2020 titled 'Babita Mittal Vs Suncity Projects Pvt Ltd'. Considering the principle of equity and justice the period from 2017 onwards will be considered zero period. Authority passes this order as if it was adjudicating upon respective rights sitting in the year of 2017.

9. As per the builder buyers agreement entered between the parties, possession of the flat should have been handed over by 2014. However, actual offer of possession was sent to the complainants on 01.09.2017. Therefore, for the delay caused in handing over of possession, complainants are entitled to delay interest for the period from deemed date of possession i.e 19.01.2014 till offer of possession i.e 01.09.2017 as per Rule 15 of the HRERA Rules 2017, on the amount paid by them till the deemed date of possession. This amount shall



be calculated @ 9.40% i.e SBI MCLR as on today + 2% . Delay interest so payable to the complainants works out to Rs 14,60,118/-.

10. With regard to the offer of possession dated 01.09.2017, additional demand of ₹ 41,67,953/- was raised by the respondent out of which an amount of ₹ 27,67,338/- had been charged as interest on account of delayed payments at an exorbitant rate of 24% per annum. Therefore said offer of possession cannot be called a good offer and complainants were right in not accepting the same, and refusing to make payment of ₹ 27,67,338/- being charged on account of interest at an unconscionable rate of 24%. However, complainants should have approached the respondent raising objections to the alleged demand but complainants failed to do so. On perusal of demand/reminder letters placed on record from page 41 to 54 of reply, it appears that respondent had raised demands consistent with progress of construction work at the site. Respondent had been communicating stages of construction to the complainants and demanding remaining amounts as per agreed plan but complainant failed to service those demands raised from 2012 onwards. In case they had any grievances complainants should have made payment of outstanding balance sale consideration and assailed the interest component. Therefore, in case complainants have defaulted in making payments in accordance with the construction linked plan, respondent would be entitled to charge delay interest from the complainants from the date when particular demand was due till the



date of offer of possession i.e 01.09.2017 in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR + 2%(= 9.40%) at Simple interest.

11. In the interest of equity and justice, this matter is being dealt with as if it was being adjudicated in the year 2017 , therefore demands raised on account of holding charges and maintenance charges from the year 2017 onwards will not be payable. Thus demands raised in this regard are quashed. Accordingly, after adjusting payable and receivable amounts, respondent will issue a final statement of accounts in accordance with the principles laid in this order and handover possession to the complainants within 45 days of uploading of this order. Complainants shall pay the balance due amount and take possession of their booked flat.

12. Delay interest mentioned in aforesaid paragraph payable by respondent to complainant has been calculated on total paid amount of ₹ 42,88,659/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of Service tax amounting to ₹ 1,01,556/- from total paid amount of ₹ 43,90,215/-. Though in complaint file complainant has claimed to have paid the respondent an amount of ₹ 43,24,592/- however, as per the receipts annexed by the complainant and ledger account statement in complaint book the total amount paid by the complainant comes to ₹ 43,90,215/-. Total paid amount has been calculated as per the receipts annexed by the complainant and the ledger account and service tax has been deducted as per the demand letter sent alongwith offer of possession. The amount of such



taxes is not payable to the builder, rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department, interest thereon becomes payable only to the department concerned and builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

13. If the complainants feel aggrieved from the statement of accounts to be issued by the respondent, they will be at liberty to approach the Authority for assailing the said statement of accounts.

14. Case is disposed of. Order be uploaded on the website of Authority and file be consigned to the record room.



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



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