



Complaint no. 2379 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2379 OF 2019

Pradeep Kumar

....COMPLAINANT(S)

VERSUS

M/s CHD Developers. Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing:

30.03.2022

Hearing:

15th

**Present through:-
Video conferencing**

Mr. Shubhnit Hans, Counsel for the complainant
Mr. Ravi Aggrawal, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

Complainant herein is seeking possession of a floor booked in respondent's project namely 'CHD Paradiso Floors' in the year 2015 for basic sale price of Rs 41,65,000/-. Complainant had paid an amount of Rs 32,99,542/- to the respondent by October 2016. Builder buyer agreement was executed on 17.07.2015 between the parties. As per clause 12 of the

agreement, possession of the floor should have been offered by 17.07.2017 whereas, actual offer of possession was sent to the complainant on 20.08.2019. Said offer was not acceptable to the complaint as according to him, the project was neither complete nor occupation certificate had been received from the concerned department. He further alleged that as per builder buyer agreement basic sale price of the unit was to be calculated at the rate of Rs 2785/- per sq. ft. However, respondent company increased basic rate to Rs 2842/- per sq. ft. without any prior intimation or giving any justification for the same. Feeling aggrieved, complainant has filed this complaint seeking possession of booked unit along with delay interest.

2. Shri Shubhnit Hans, learned counsel for complainant submitted that the unit in question had been booked by complainant in the year 2015 for a total sale consideration of Rs 41,65,000/- under construction linked payment plan. By October 2016, complainant had paid approximately Rs 33 lakh to the respondent which is more than 80 percent of the sale consideration. However, complainant stopped making further payments upon realising that the construction work at the site had been stopped and no substantial progress was taking place. Complainant requested the respondent several times regarding delivery of possession but did not receive any reply. As per buyers agreement possession of the unit was to be handed over by July 2017 but possession of the unit was actually offered after a delay of two years on 20.08.2019 without obtaining occupation certificate. Alongwith possession letter respondent issued



a demand letter of Rs 13,90,115/- which was exorbitant and unjustified. Even at the time of offering possession the unit allotted to the complainant was incomplete which is evident from the statement of accounts sent alongwith offer of possession wherein the respondent company had not raised demand which was supposed to be raised at the time of completion of plumbing and electric works. Therefore, impugned offer of possession was not a valid offer and complainant could not be forced to accept the same.

In said statement of accounts dated 19.08.2019 annexed as Annexure C-5 of the complaint book, respondent had arbitrarily increased basic rate of unit to Rs 2842.81 sq. ft from earlier rate of Rs 2785.95 sq. ft at the time of execution of agreement without providing any justification for the same. Such act on the part of respondent is unconscionable. Complainant had requested the respondent to revise the said statement and charge balance outstanding amount as per rates agreed in the agreement which is evident from email communications annexed as Annexure R-7 (colly) of the complaint book. However, respondent failed to respond to the same. Left with no choice, complainant on 25.09.2019 filed present complaint before this Authority for redressal of his grievances.

3. Learned counsel for complainant alleged that more than three years have further passed since offering possession. There are still some deficiencies in the unit. In support of his claims, he placed before the Authority latest photographs of the unit in question clearly depicting that work done by



respondent company is incomplete. Complainant is ready to take over possession of the unit upon making balance payment as per terms agreed in the buyers agreement. Therefore, learned counsel for complainant prayed the Authority that directions be issued to respondent to hand over possession of booked unit after completing it in all respect and to issue a revised statement of accounts wherein outstanding balance principal amount is charged at the rate of Rs 2785.95 sq. ft which is the rate initially agreed between both the parties. He further prayed that complainant is entitled to delay interest for delay caused in offering possession.

3. On the the hand, respondent in its written submissions pleaded that project of the respondent has already been completed and possession of the unit was offered on 20.08.2019 after obtaining occupation certificate for the tower in which unit of complainant is situated. Alongwith possession letter respondent had issued a demand letter to the complainant to clear outstanding payment of Rs 13,90,115/-. However, complainant even after repeated reminders did not come forward to make balance payment.

4. Shri Ravi Aggarwal, learned counsel for respondent submitted that occupation certificate in respect of tower in question was received on 01.06.2018, a copy of which was provided to learned counsel for the complainant. Possession letter was issued thereafter to complainant on 20.08.2019. Complainant in present complaint has defaulted in making balance



payments. Unit of the complainant is ready for possession, complainant may take over possession of the same upon making balance payments.

5. Considering submissions of both parties and documents placed on record, Authority observes that complainant had booked a unit in the project of the respondent in February 2015 and by October 2016 had paid Rs 32,99,542/- against basic sale price of Rs 41,65,000/- in accordance with construction linked payment plan. Possession of the unit should have been handed over by 17.07.2017 whereas possession was actually offered to the complainant on 20.08.2019 after a delay of two years. Alongwith said offer, respondent had issued a demand letter of Rs 13,90,115/-. On perusal of statement of accounts annexed as Annexure C-5 it is revealed that respondent had charged the basic sale price at a rate of Rs 2842.81 per sq. ft. Whereas, as per clause 1.1 of buyers agreement, basic sale price of the floor is to be calculated at the of Rs 2785.95 per sq. ft. Respondent had revised basic sale rate to Rs 2842.81 per sq. ft from Rs 2785.95 per sq. ft. without providing any justification which is unconscionable and unfair. Equity demands that respondent cannot be allowed to go beyond the terms of buyers agreement and charge additional amount, thus the unreasonable demand raised to the extent of increased base rate is deleted.

6. After receiving the impugned offer of possession dated 20.08.2019, complainant had through email notifications annexed at pages 71-73 of the complaint file requested the respondent to revise the demand raised alongwith offer of possession and to deduct the amount of delay interest payable to the

complainant on account of delay in delivery of possession from the outstanding balance amount. However, when the complainant did not receive any response from the respondent he filed present complaint before this Authority on 25.09.2019 for redressal of grievances .

7. Keeping in view the fact that this matter remained pending for the same cause of action before this Authority since September 2019 where both parties were litigating on their rights, accordingly, this period from 2019 onwards will be considered zero period in the interest of equity and justice. Authority will pass this order as if it was adjudicating upon respective rights sitting in the year 2019.

8. Now the fact of the matter is that the floor buyer agreement was executed between both the parties on 17.07.2015 and possession of the floor should have been handed over by 17.07.2017 whereas actual possession was offered on 20.08.2019. Therefore, for the delay caused in handing over of possession, Authority observes that complainant is entitled to delay interest for the period from deemed date of possession i.e 17.07.2017 till actual offer of possession i.e 20.08.2019 as per Rule 15 of HRERA Rules 2017, on the amount paid to the respondent. This amount shall be calculated of SBI MCLR as on today + 2% i.e 9.30 %. The amount of interest payable works out to Rs 6,17,719/-

Respondent shall handover possession to the complainant within 30 days of uploading of this order and issue a fresh statement of account wherein



the outstanding balance amount is calculated in accordance with the terms of agreement and duly incorporating the delay interest payable to the complainant .

9. In case complainant has defaulted in making payment of instalments in accordance with the construction linked plan, respondent is entitled to charge delay interest from the complainant from the date when particular demand was due till the date of offer of possession i.e 20.08.2019 in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR + 2%(= 9.50%).

10. In the interest of equity and justice this matter is being dealt with as if it was being adjudicated in the year 2019 , therefore demands, if any, raised on account of holding charges and maintenance charges from the date of offer of possession i.e 20.08.2019 will not be payable. 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 floor.

13. Delay interest mentioned in aforesaid paragraph has been calculated on total paid amount of Rs 31,69,124/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of Service tax amounting to Rs 1,30,418/- from total paid amount of Rs 32,99,542/- . The amount of such taxes is not payable to the builder and are 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 the interest thereon becomes payable only to the department concerned and the 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 the 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.

14. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of handing over of possession.

15. It is pertinent to mention here that respondent has not paid cost of Rs 25,000/- payable to Authority and Rs 7,000/-payable to complainant imposed vide order dated 03.12.2020. Therefore, respondent is directed to pay the same within 15 days of uploading of this order.

16. Complaint is disposed of in the above terms. File be consigned to the record room after uploading of the order on the website of this Authority.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]