



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1245 OF 2020

B P KUSHWAHA

....COMPLAINANT

VERSUS

Maxheights Township And Projects Pvt. Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 11.05.2022

Hearing: 8th

Present through video call: - Adv. Nihul Pratap Singh, learned counsel for the complainant

Sh. R. Kartikeya, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that complainant in this case has sought possession of a flat bearing no.MF-112, in Tower-17, booked in the year 2013 in respondent project namely, "Max Heights Metroview

Apartments”, Sonapat. He has already paid ₹ 41,16,376/- against basic sale price of ₹39,41,125/-. In support of the contention of payment of an amount of Rs. 41,16,376/-, complainant refer to receipts issued by the respondent which are placed on record as Annexure C- 3 at page no. 39-49 of complaint book. As per agreement dated 20.08.2013, respondent had committed to deliver possession by 19.02.2017. Despite lapse of six years from the deemed date of possession, respondent has not given possession to the complainant. He further stated that various notices/ reminders were sent to the respondent from 2017 to 2020 to know exact status of the project and timeline to handover possession of the booked flat. However, none of them were replied by the respondent. To support this contention, he referred to Annexure C-4 annexed at page no. 50-61 of complaint book.

He further stated that respondent has verbally raised an illegal demand of ₹ 1,04,650/- on account of electrification charges even after receiving full and final payment of 41,16,376/- on 07.09.2019 from the complainant. Learned counsel for complainant referees to letter dated 07.11.2019 sent by the complainant to the respondent whereby complainant has specifically refused to pay electrification charges for the reason that same did not find mention in builder buyer agreement. It was also stated in the letter under reference that complainant has requested the respondent to demand above said charges in writing but respondent has refused to do so. It is pertinent to mention that electrification charges raised by the respondent are without



installing the electricity meter, which could be clearly seen in the photographs annexed by complainant at page no. 62 of complaint book. Lastly complainant stated that respondent even after receiving full payment has failed to deliver possession on agreed time. Aggrieved, complainant has prayed for possession of the booked flat along with delay interest.

2. On the other hand, learned counsel for the respondent submitted that infrastructure at site was completed on 31.12.2014 and Occupation Certificate was received by respondent on 10.05.2019 from competent Department. Delay in completion of project was due to reason beyond the control of respondent. Respondent has stated that possession was offered on 03.10.2019 to the complainant along with keys of booked flat for inspection of the same. Complainant is defaulting in taking over the possession and paying the pending dues. Further, respondent has clarified that an additional amount of Rs. 1,04,650/- is being charged on account of electrification charges because the infrastructure provided by the government was not sufficient for providing electricity to booked units and therefore, additional set up was made by the respondent. Respondent alleged that an amount of 1,04,650/- plus GST/VAT is still payable by the complainant.

3. After hearing both parties and going through record, Authority observes that complainant has booked an apartment/flat in the year 2013 and accordingly, deemed date of possession comes to 19.02.2017. Complainant has paid total amount of ₹ 41,16,376/- to the respondent, the receipt of each

payment is annexed as Annexure C- 3 at page no. 39-49 of the complaint book. Considering facts given in para 1, it is quite clear that complainant has paid more than total sale consideration to the respondent. Whereas respondent has failed to deliver possession of the booked unit to the complainant till date. So, complainant sought possession of the booked unit along with permissible interest on account of respondent's failure to deliver possession on the agreed date.

On the other hand, learned counsel for respondent argued that Occupation Certificate for the project in question was received on 10.05.2019 from the competent Authority and thereafter possession along with the keys of the booked flat was given to the complainant on 03.10.2019 for inspection of the flat. Further an additional amount of Rs. 1,04,650/- plus GST/VAT was demanded by respondent on account of electrification charges. But it is the complainant who is not coming forward to take possession of unit after making payment of additional amount of Rs. 1,04,650/- plus GST/VAT.

4. After perusal of the file, Authority is of the view that there is no denial to the fact of payment of Rs. 41,16,376/- by the complainants to the respondents. Further it is also observed that all relevant documents such as offer of possession, copy of occupation Certificate, demands raised by the respondent etc have not been attached by the respondent with his written statement. Moreover, no argument has been put forth by the respondent rebutting the plea of complainant that demand of additional amount of Rs.

1,04,650/- plus GST/VAT has been raised verbally by the respondent and even after request made by him, respondent refuse to demand said charges in writing. So, it is quite clear that respondent has made only verbal submission without giving any documentary proof for additional demand and substantiating the validity of offer of possession. Besides, respondent has been unable to mention the relevant clause of Builder buyer agreement under which said amount is payable by complainant. Therefore, in the absence of relevant documents specially Occupation Certificate and justification for charging of additional demand, there is no legal strength that offer of possession was made by the respondent is valid. Therefore, demand so raised along with it of Rs. 1,04,650/- deserve to be quashed as no document substantiating said demand is attached with the file.

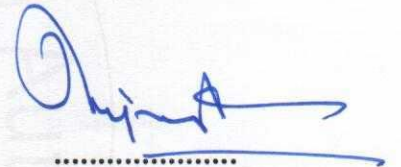
So, Authority directs the respondent to make fresh offer of possession dully supported with Occupation Certificate and to pay upfront interest on the already paid amount of ₹ 41,16,376/- from the deemed date of possession i.e. 19.02.2017 till today i.e. 11.05.2022 in terms of Rule 15 of HRERA 2017.

5. Now, the interest payable to the complainant on account of delay in delivery of possession from deemed date of possession i.e. 19.02.2017 till 11.05.2022 works out to ₹ 20,55,549/-. Besides the said amount of interest, complainant is also entitled to receive each month's interest on the paid amount of ₹41,16,376/- from 12.05.2022 onwards till the delivery of actual

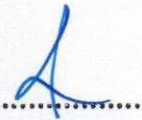
possession after obtaining Occupation Certificate. Such interest works out to ₹ 32,863/-.

6. In view of above discussion, complaint is disposed of with a direction that respondent shall pay to the complainant interest of ₹ 20,55,549/- within 90 days from the date of uploading of this order and will further pay to the complainant every month's interest till handing over of possession of the flat, which on calculation as per Rule 15 of HRERA Rules, 2017 i.e SBI highest marginal cost of lending rate plus 2%. Said amount works out to ₹ 32,863/- per month.

7. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]