



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 404 OF 2020

M/s Ansal Properties and Infrastructure Ltd.

....COMPLAINANT

VERSUS

RAJ MAHENDRA SINGH

....RESPONDENT

CORAM: Rajan Gupta
Dilbag Singh Sihag

**Chairman
Member**

Date of Hearing: 06.05.2022

Hearing: 9th

Present through video call: - Sh. Ajay Ghangas, learned counsel for complainant

Sh Harshit Batra, learned counsel for respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that complainant-developer case is that respondent-allottee had booked a flat in complainant's project, named "Green Escape" situated in Sector-35, Sonipat. Respondent-allottee was allotted flat bearing no. 2 in Tower 30, admeasuring 2107sq.ft. Total cost of the flat was ₹ 46,02,375/- out of which respondent-allottee had paid an amount of ₹ 45,34,828/- to the complainant/promoter in the year 2011-2015. In support of

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above contention, complainant refer to statement of account issued by them which is placed on record as annexure P-3 at page no 23 to 28 of complaint book. He also stated that the project is complete in all respects and Occupation Certificate had been obtained on 06.10.2016 from competent Authority. Offer of possession was also made to the respondent-allottee vide letter dated 06.10.2016 along with fresh statement of account, which is annexed as annexure P-2 at page no 20-22 of complaint book but respondent/allottee did not respond to the said possession letter nor made the remaining payments till date.

Further, Complainant-developer stated that a demand letter dated 07.10.2019 was also sent to the respondent for making outstanding dues of ₹ 1,91,268.24/- against principal amount and ₹ 3,72,939/- on account of holding charges, but respondent-allottee did not even bothered to reply. Therefore, complainant is praying for issuing directions to the respondent-allottee for making payment of outstanding dues along with interest or else to allow them to cancel allotment of unit and forfeit deposited money as per Builder buyer agreement executed with respondent-allottee.

2. On the other hand, learned counsel for respondent-allottee Sh. Harshit Batra argued that allottee had booked flat admeasuring area 2105 sq.ft. in the complainant project and vide agreement dated 31.08.2011, respondent was allotted flat bearing no. 0103-0-300902. Complainant-developer had to deliver the possession within forty two months along with grace period of six months that comes to 01.09.2015. Sale consideration of the flat was ₹ 35,78,500/- and ₹

10,19,625 towards car parking, club fee and composite charges. Respondent/allottee has paid an amount of ₹ 48,19,755/- to the complainant/promoter in year 2011-2015. In support of the contention that respondent has paid an amount of Rs. 48,19,755/-, respondent refer to receipts of the paid amount issued by the complainant which are placed on record as annexure C-5 at page no 59 – 61 of reply. Further, he stated that possession was offered to him on 07.10.2016 along with fresh statement of account, wherein due amount of ₹ 1,93,014.88/- against the principal amount, and ₹ 50,000/- on account of IFSD was mentioned to be paid by the respondent-allottee. Further he stated that another demand notice was sent to respondent on 07.10.2019 to make pending payments of ₹ 1,91,268.24/- against the principal amount and ₹ 3,72,939/- on account of holding charges. However, he did not take the possession because project was incomplete at the time when offer of possession was made to the respondent.

3. Both parties have argued their case at length. Learned counsel for the complainant-promoter reiterates that project in question is complete in all respects. Possession to more than 150 families has been given after obtaining occupations certificate on 06.10.2016 from concerned department, and they all are residing in the project. On the other hand, learned counsel for respondent/allottee argued that as per builder buyer agreement dated 31.08.2011, complainant /promoter was under an obligation to hand over the possession of booked flat by 01.09.2015, whereas complainant-developer had

offered the possession on 07.10.2016, meaning there by, a delay of one year one month and six days have been caused. Further said offer of possession was accompanied with statement of account wherein amount of ₹ 1,93,014.88/- against the principal amount, and ₹ 50,000/- on account of IFSD were asked to be paid by the respondent-allottee. He stated that complainant-promoter has also sent another demand notice on 07.10.2019, demanding ₹ 1,91,268.24/- against principal amount and ₹ 3,72,939/- on account of holding charges. Respondent-allottee contended that he had already paid an amount of ₹ 48,19,755/- in the year 2011-2015, which is more than the total cost i.e. 46,02,375/- of the booked flat. Accordingly, demand raised of ₹ 1,91,268.24/- against principal amount was not justified. He further contended that respondent-allottee was not at fault by not taking possession offered to him on 07.10.2016 on the ground that project was not complete and his booked unit was not in habitable condition at that time when said offer was made therefore, complainant/ promoter could not demand ₹ 3,72,939/- on account of holding charges as possession of the booked flat was not taken over due to above said reason. Accordingly, he (allottee) presses for relief of possession along with applicable interest as per rule 15 of HRERA Rules 2017.

4. Authority has gone through respective written submissions as well as verbal arguments put forth by both the sides while passing following orders:-

- I. There is no denial to the fact that Rs. 48,19,755 /- having been paid by the respondents-allottee in the year 2011-2015 against the agreed

sale consideration of Rs. 46,02,375/- to the complainants-developer. Payment of this amount is adequately proved from the receipts issued by the complainant to the respondents. Said receipts have been placed on record as annexure C-5 at page no 59 – 61 of reply. It is evident from the facts stated above that respondent-allottee has already paid more than total sale consideration. So, demand raised of ₹ 1,91,268.24/- alongwith offer of possession dated 07.10.2016 without any justification was not legally binding and respondent-allottee was not liable to honor it. Complainant-developer did not specify relevant provisions/clauses of the BBA under which said amounts was demanded. Therefore, respondent-allottee action of not paying said demand was justified.

- II. Admittedly, complainants-developer had applied for grant of occupation certificate after completing the construction work of the project in question which was ultimately received on 06.10.2016 from the competent Authority. Thereafter possession of booked unit was offered to the respondent-allottee on 07.10.2016 along with fresh statement of account, whereby a demand of ₹1,91,268.24/- on account of remaining consideration money and ₹ 3,72,939/- on account of holding charges were issued. It has been established that respondent-allottee has already paid more than total sale consideration and as such complainant-developer has not

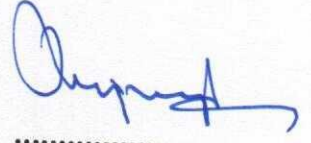
provided any justification for charging of ₹1,91,268.24/- over and above the total sale consideration. Therefore, the respondent-allottee was not bound to pay said charges and accordingly demand of ₹ 3,72,939/- raised on account of holding charges in lieu of pending dues of ₹1,91,268.24/- is also not maintainable for the reason that when nothing remains to be paid on behalf of respondent-allottee, then no question arises for demand of ₹1,91,268.24/- and holding charges. Therefore, demand raised alongwith offer of possession was not valid and respondent-allottee was not bound to pay the same. Another plea raised by respondent-allottee for not accepting offer of possession is that project was incomplete and unit was not in habitable condition at the time of offer of possession. But he has submitted neither any document nor any photographs of the unit substantiating his plea which can be relied upon to prove that project was incomplete in the year 2016, His plea is also not admissible for the reason that project has already received occupation certificate on 06.10.2016 from competent authority which itself is a proof of completion of project. For these reasons, it is concluded that offer of possession dated 07.10.2016 duly supported with occupation certificate dated 06.10.2016 is a valid offer of possession however the demands



raised alongwith it by complainant-developer is not admissible and allottee is not bound to pay said demand.

- III. Now, coming to question of delay interest being prayed by respondent-allottee in his reply. Plea of the respondent-allottee is that as per BBA possession was to be offered by 01.09.2015, however, it was offered with delay of around 1.5 years on 07.10.2016. Admittedly complainant-developer has failed in his duty to deliver the possession within stipulated time as mentioned in BBA but possession of booked unit was offered on 07.10.2016 with delay of 1 year 1 month and 6 days. The plea of respondent-allottee to grant him delay interest is acceptable to the extent that delay interest from deemed date of possession i.e. 01.09.2015 till the date of valid offer of possession i.e. 07.10.2016 after getting Occupation Certificate. Said delay interest after calculation in terms of Rule 15 of HRERA, Rules 2017 (SBI highest marginal cost of landing rate plus 2 %) i.e @ 9.40., has worked out to the amount of ₹ 5,00,225/-.
- IV. In view of above, Authority decides to dispose of the matter issuing directions to complainant- developer to pay delay interest of Rs 5,00,225/- to respondent-allottee within 90 days of uploading of this order and respondent-allottee is also directed to take possession of unit within 45 days of uploading of this order.

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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

