



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2496 OF 2022

(Rectification Before Authority)

TDI InfraCorp

....COMPLAINANT

VERSUS

Rajesh Kumar

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 01.03.2023

Hearing: 1st

Present: -

Mr. Ajay Ghanghas, Counsel for the complainant through VC.

Mr. Rajesh, Respondent through Vc.

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Complaint no. 728 of 2021 was disposed of by the Authority vide order dated 12.07.2022, granting relief of payment of delay interest amounting to ₹ 11,24,668/- and further monthly interest @ ₹. 16,167/- to be paid to allottee complainant by the promoter respondents w.e.f. 12.07.2022 till the date receipt of Completion Certificate. Relevant part of order dated 12.07.2022 is reproduced below for reference:

Dr. Rathee

“4. After hearing both parties and perusal of records, Authority observes that although, complainant has taken possession of plot and sale deed qua the said plot was executed on 21.08.2019, but in the absence of basic infrastructure like electricity connection, project will be deemed to be incomplete and handover of possession cannot be held to be legal and lawful possession.

Authority had laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

“7. At this stage, the Authority would express its views regarding the concept of ‘valid offer of possession’. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm

water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such. minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional

demands. In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. The Authority is of the view that if additional demands are of minor nature, the allottees should accept possession under protest. The disputes in respect of minor amounts, however, can be resolved by this Authority. The offer of possession accompanied with minor additional demands accordingly will be termed legal and justified. However, if the offer of possession is accompanied with a huge additional demands beyond the scope of provisions of the agreement, the allottees cannot be forced to accept such an offer. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Huge unreasonable demands itself would make an offer unsustainable in the eyes of law."

In this case it is clearly established from reply filed by respondent no.7 that respondent no.1 is not in a position to provide electricity connection to complainant as he has neither constructed electrical substation nor developed other electrical infrastructure at the site. Electricity connection is a basic infrastructural facility and basic necessity of all human beings. Without electricity connection, possession of the plot/flat cannot be enjoyed, there is no use of handing over possession without electricity connection. Therefore, since respondent no. 1 admittedly is not in a situation to provide electric connection, therefore, it is held that plot is uninhabitable and said handover of possession

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cannot be deemed to be proper and legal. Status of Completion Certificate of project is also unknown as no document qua same has been placed on record by the respondent. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, Authority will consider that proper possession is yet to be offered, therefore, respondent no.1 is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Completion Certificate from the department concerned. Builder Buyer Agreement has not been attached by either party. Since, complainant has bought this plot from the Oriental Bank of Commerce in public auction under THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002, therefore, he does not has a copy of Builder Buyer agreement executed by respondent with the original allottee. He confirmed the same vide his email dated 15.08.2022. Therefore, deemed date of delivery of plot is being taken as three years from the date of making substantial payments which was 26.09.2013, meaning thereby that complainant's plot should have been delivered to complainant by 26.09.2016. Thus, the deemed date for purpose of calculation of interest for delay in delivery of possession of plot is being taken as 26.09.2016.

Authority further adds that as per provisions of section 18 of The RERA Act, 2016, accrued interest up to the date of passing this order shall be paid upfront within 90 days and

monthly interest thereafter up to the date of receipt of Occupation Certificate shall also be paid. Both amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

5. Admittedly, complainant has paid total amount of Rs 27,91,500/- which includes the amount of Rs. 7,91,500/- towards EDC. The amounts of EDC is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. The delay interest accordingly deserves to be calculated only on amount of Rs. 20,00,000/- (Rs 27,91,500/-— Rs. 7,91,500/-).

6. As per calculations verified by Accounts Branch, the amount payable by respondent to complainant on account of interest for delay in handover of possession of the plot up to the date of passing of this order has been worked out to Rs. 11,24,668/- .Authority orders that upfront payment of Rs. 11,24,668/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 16,167/- will be paid to complainant by the respondents w.e.f. 12.07.2022 till the date receipt of Completion Certificate. Meanwhile respondent no.1 is directed to make endeavors to provide electricity connection to complainant. Respondent shall also pay outstanding cost of Rs. 5,000/- to complainant and Rs. 10,000/- to Authority. **Disposed off.** File

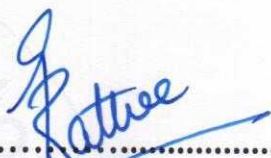
be consigned to record room and order be uploaded on the website of the Authority.”

2. Now the complainant has filed present complaint no. 2496 of 2022 for review/ rectification of order dated 12.07.2022 passed in Complaint no. 728 of 2021 on grounds that the relief claimed by allottee complainant in Complaint no. 728 of 2021 is seeking direction to the promoter respondent to provide electricity connection on his plot and not with regard to delay interest as awarded by the Authority. Moreover, the complainant has neither amended the complaint nor even made any oral request for amending the relief clause but despite that the Authority had granted the relief which had not been even claimed by him in the complaint.
3. Upon perusal of complaint no. 728 of 2021 filed by the complainant it is observed that the complainant in Complaint no. 2496 of 2022 is seeking amendment of substantive part of orders dated 12.07.2022 which amounts to review of the impugned order. It is pertinent to mention that under section 39 of the RERA Act of 2016, the Authority may, with a view to rectify any mistake apparent from the record, amend any order passed by it. However, proviso to section 39 further provides that the Authority shall not, while rectifying any mistake apparent from record, amend/ alter any substantive part of its order passed under the provisions of the RERA

Act, 2016. Thus, Authority cannot review its order. Therefore, the complaint filed by the complainant for review of the orders dated 12.07.2022 is rejected.

4. Captioned complaint is disposed of. Order be uploaded on the website and files be consigned to record room


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NADIM AKHTAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]