



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 158 OF 2021

Rajan Nayyar

....COMPLAINANT

VERSUS

Pivotal Infrastructure Pvt Ltd.

...RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Date of Hearing: 20.12.2022

Hearing: 10th

Present: - Mr. Rajan Nayyar, complainant through VC
 Mr. Vaibhav Grover, proxy counsel for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

Case of the complainant is that he had booked a flat bearing no.106, Tower 19 'Armaan' admeasuring 1045 Sq. ft. on 21st February 2012 in the project namely, Royal Heritage, Sector-70, Faridabad to be developed by respondent company i.e. Pivotal Infrastructure Pvt Ltd. Total sale consideration of the flat was fixed as ₹36,00,000/-. The complainant had

Geeta Rathee

paid all the instalments as per demand on regular basis through bank loan including registry charges through demand draft no.832055 and 832050, copy of which has been attached with complaint book. Complainant in his complaint submitted that as per terms and conditions of allotment, the respondent builder was duty bound to hand over possession of the flat within 36 months i.e. by 21.02.2015 on receipt of all payments on time as per payment plan from the date of booking. Respondent did not offered possession on time, therefore aggrieved from the above facts, complainant has filed present complainant seeking possession of the flat along with delay interest.

2. Respondent in his written statement submitted that complainant had not complied with the terms and conditions of flat buyer agreement dated 12.07.2012 by failing to make timely payments of all outstanding instalments, therefore, he cannot seek interest for delay in handing over of possession of the flat. It is further submitted that tower in question has already been completed by the respondent builder and had received occupation certificate on 17.08.2020. Thereafter, respondent builder had offered possession of flat on 18.08.2020. Regarding delay on offering possession, it is submitted that respondent had applied for occupation certificate vide application dated 06.09.2018 but due to unfortunate delay on the part of the authorities to grant occupation certificate, the respondent was

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unable to offer possession of the booked flat on time. Learned counsel for respondent prayed that respondent builder can not be held liable to pay delay interest from the period of September 2018 to July 2020.

3. Further, learned counsel for respondent submitted that after offer of possession, flat was lying vacant at the risk and cost of the complainant. So, the complainant become liable to pay holding and maintenance charges in terms of flat buyer agreement.

4. This matter has been argued in the previous hearing dated 12.08.2021, order passed therein has been reproduced below for ready reference:

While initiating pleadings, complainant submitted that he was allotted a flat by the respondent in his project named "Royal Heritage, Sector-70, Faridabad in the year 2012. He has already paid almost ninety five percent of the total sale consideration. Possession of his flat was to be delivered in February, 2015. Complainant has also deposited stamp duty charges and registration charges with the competent authority. Complainant is now praying for handing over possession of the flat along with delay interest.

2. *On the other hand, respondent submitted that he has already offered possession to the complainant in August 2020 after receiving occupation certificate. Complainant did not come forward to take possession. He further stated that respondent was ready and willing to adjust the amount of delay interest from outstanding amount to be paid by the complainant. On his allegations, complainant pleaded that when he visited his flat, there were some deficiencies which need to be rectified before taking over possession. Leaned counsel for the respondent informed that flat was in dirty condition due to utilization of the same for storage purpose during construction otherwise it was complete in all aspects and ready for*

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possession. He seeks time to settle the matter amicably as the flat has been already completed.

3. *Since learned counsel for the respondent undertakes to settle the matter amicably, complainant is directed to visit his flat to find out whether deficiencies have been removed by the respondent. Respondent is directed to fix a date of visit complainant within 15 days from the date of uploading of this order. Respondent is further directed to hand over possession of the flat to the complainant after rectifying deficiencies before next date of hearing. He is also directed to issue revised statement of accounts depicting therein receivable and payable amounts to the complainant before next date of hearing.*

4. *Adjourned to 09.09.2021.*

5. The complainant has pointed out some deficiencies due to which he has not taken possession. In support of his claim, he has placed on record photographs dated 26.09.2020 of the subject unit which shows that the unit was not in habitable condition as on the date mentioned above. Thereafter, during hearing dated 14.10.2021, it was informed that deficiencies had been removed by the respondent. Learned counsel for the respondent also confirmed that flat is ready for possession and complainant may take possession at any time. Therefore, both parties were directed to complete the formalities of taking and handing over possession.

6. Further during hearing dated 07.04.2022, complainant informed that possession had already been taken on 26th October 2021.

7. Now, the issue remain pending for adjudication is payment of delay interest for delay in handing over possession. Complainant disputed

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the duration for which delay interest has been calculated by the respondent i.e. from 12.07.2012 to 17.08.2020 (from deemed date of possession till offer of possession). Complainant alleged that on the date of offer of possession, unit was not habitable. Therefore, he did not take possession due to deficiencies in his flat at that time and also conveyed deficiencies to the respondent. In support of his claim, he has placed on record photographs dated 26.09.2020 of the subject unit which shows that the unit was not habitable till said date.

8. In the previous hearing, respondent was directed to place on record any supportive document regarding the steps taken by it to remove deficiencies pointed out by the complainant through communications after offer of possession. Learned counsel for the respondent has placed on record affidavit stating that complainant had already been informed about the completion of flat in all aspects vide emails dated 21.01.2021 and 01.02.2021, copy of which has been attached with. It is also stated that flat was complete in all aspects and in habitable condition by 15.10.2020 but no photographs/video has been placed on record in support of his contention. Learned counsel for the respondent vehemently argued that complainant was entitled for delay interest only till the date of offer of possession not beyond that as complainant himself has not come forward to take possession.




9. There is no dispute between the parties that the complainant was allotted flat by the respondent in his project named "Royal Heritage, Sector-70, Faridabad. As per statement of account dated 16.10.2021 issued by respondent to the complainant, ₹35,46,314.96/- has been shown as paid amount by the complainant against total sale consideration of ₹36,36,939/-. Flat buyer agreement was executed between both the parties on 12.07.2012, copy of which has been placed on record in reply file at page no.19-45. As per clause 18 of the agreement, possession of flat in question was to be delivered on 12th January 2016 i.e. within 42 months from date of signing of the agreement. But the respondent offered the possession on 18th August, 2020 after obtaining occupation certificate. Perusal of facts, pleadings and record placed on record by both parties reveals that respondent has offered possession to the complainant on 18.08.2020, which was though not complete as per the terms and conditions of the buyer's agreement and was not in a habitual condition. Therefore, complainant had not taken possession of his flat at that time and objected to the offer of possession. Respondent has only negated the arguments raised by the complainant by way of an affidavit but has not placed on record any supportive document regarding the steps taken by him to remove deficiencies pointed out by the complainant. Authority, on consideration of previous orders passed in the present complaint, is of the considered view that at the time of offer of possession, the complainant has pointed out deficiencies and the same were rectified by

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the respondent before handing over physical to the complainant. So, it is ordered that complainant is entitled to delay interest for the period of delay in handing over possession i.e. from 12.01.2016 (deemed date of possession) up to 26.10.2021 (actual date of handing over possession after removal of deficiencies by the respondent promoter). Authority has calculated amount of delay interest under provisions of Rule 15 of the HRERA Rules, 2017 (SBI MCLR + 2% i.e. @10.60%) from its account branch which amounts to ₹18,03,946/-. Respondent is directed to adjust this amount from the outstanding dues to be payable by the complainant, if any. Remaining amount shall be paid to the complainant within 45 days from uploading of this order on the website.

10. Case is **disposed of** with above directions. File be consigned to record room.


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DR. GEETA RATHEE SINGH
(MEMBER)


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NADIM AKHTAR
(MEMBER)