



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1328 OF 2020

MANOJ KUMAR SINGH

....COMPLAINANT

VERSUS

DWARKADHIS PROJECTS PRIVATE LIMITED

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 19.07.2022

Hearing: 10th

Present: Ms. Reena Rao, ld.counsel for the complainant through VC.

Mr. Gaurav Chauhan, Resolution professional.

ORDER (RAJAN GUPTA - CHAIRMAN)

This matter had come up on hearing dated 01.04.2022 whereby after hearing both parties, Authority had passed a detailed orders which is reproduced below;

1. While initiating his pleadings, learned counsel for the complainant submitted that complainant booked a residential apartment bearing no. 21, in block — A-2, in respondent project, namely "Aravali Heights" situated in sector-24, Dharuhera. Builders buyer agreement was executed between the parties on 01.08.2008. Respondent was under an obligation to hand over possession of the booked flat by 01.11.2011 to the complainant. Complainant had paid an amount of 32,75,132/- out of total sale consideration of 34,94,988/- to the respondent in the year of 2013 itself. He further stated that respondent has sent a letter of possession to him on 01.03.2013 along with illegal demand of 7,62,935/- on account of increase in area. He submitted that respondent has also raised many other charges as follows:

I. Respondent has increased the area from 1800 sq.ft to 1916 sq.ft., which lead to increase in total sale consideration of apartment from 34,93,988/- to 40,38,067/-.

II. Respondent has increased EDC from 105 to t 180 per sq. ft. and IDC from 35 to 85 per sq.ft.

III. Respondent has increased PLC charges from 50 to t 90 per sq.ft.

IV. Respondent has increased IFMS charges from t 1,08,000/- to t 2,22,960/-.

V. Lastly not least, respondent has charged an amount of 3,07,653/- on account of delay payment.

In view of above stated demands, complainant had not accepted said offer of possession rather had sent various emails in the year of 2013 to the respondent to inquire about detail of increase in area of the booked unit but none of them were replied by the respondent/ promoter. He also stated that there has been already

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inordinate delay of eleven years in handing over of the possession. Therefore, complainant had prayed for possession of the booked apartment along with permissible interest after getting all legal compliance from HUDA.

On the other hand, respondent promoter had submitted that occupation for the project in question was granted in the year of 2013 vide letter dated 28.02.2013 by the concerned department. In para 8 of reply respondent stated that possession letter was sent on 01.03.2013 to the complainant but complainant chose not to take possession even after receiving reminder letter dated 01.08.2013. Therefore, he kept booked flat vacant for the complainant and maintained the same for more than 8 years. Hence, complainant cannot be escape from paying pending demanded dues. Respondent has stated that all the demand which were raised along with offer of possession are in accordance with agreement to sell.

3. During hearing, learned counsel for the complainant reiterated the same facts as mentioned in para 1 of this order. Further, respondent Sh. Sulekh Jain sought time to produce relevant documents and photographs to prove his case before Authority on the next date of hearing.

4. In nutshell, after hearing both parties and going through records, Authority observes that complainant had booked a residential apartment and executed Builder buyer agreement on 01.08.2008. Respondent was under an obligation to handover the possession of booked apartment by 2011 but he has failed to do so. There is inordinate delay of eleven years in handing over of the possession. Nevertheless respondent had offered possession on 01.03.2013 along with illegal demand of 7,62,935/-

on account of various heads as submitted in para 1 of the orders. On the contrary respondent had denied each and every averment made by complainant and submitted that respondent had offered possession to complainant on 01.03.2013 after receiving Occupation Certificate from competent Authorities on 28.02.2013 but complainant had defaulted in taking possession of booked unit even after receiving reminders for offer of possession. In these circumstances, respondent prays for dismissal of the present complaint.

5. After taking into consideration documents placed on record and oral arguments put forth by both parties, Authority is of the view that none of the parties had proved their case beyond doubt as necessary documents such as any report of architect showing exact area of the allotted unit to the complainant; documents showing increase in EDC; PLC charges; IFMS Charges etc have not been placed on record to substantiating their claims. Therefore, Authority directs both parties to file relevant documents to prove their claims before next date of hearing and copies shall be exchanged in advance. Further, complainant is directed to visit respondent site along with architect to measure the exact area of booked unit with an advance notice of one week to respondent.

2. Authority during the course of hearing dated 25.11.2021 had comprehensively dealt with the preliminary issues raised by respondent in respect of jurisdiction and maintainability of present complaint. Thereafter the complaint was pursued in present form in respect of relief in terms of

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physical possession of booked unit along with delay interest and withdrawal of unjustified demands charged towards EDC/ IDC, PLC and IFMS charges.

3. It has further been alleged by complainant that the area of the unit has been unilaterally increased by respondent without any prior intimation to complainant and without any justification for said increase in area. In order to adjudicate the issue pertaining to change in area of unit, Authority vide order dated 01.04.2022 had directed both parties to conduct a joint inspection of the unit along with architect to measure the exact area of booked unit . In compliance of orders of Authority both parties visited the site on 12.04.2022.

4. Report of inspection of unit in question has been placed before Authority today. Inspection was conducted in presence of both parties and their representatives who have given their consent to the findings of the report. Relevant points of said report of inspection are summarised below:

(i) Unit area 1362.20 sq.ft./126.55 sq. m.

(ii) Balcony area; 266.38 sq.ft./24.75 sq.m.

(iii) Total Built up area 1628.58 sq. ft./151.30 sq. m.

5. Ms Reena Rao, learned counsel for the complainant submitted that complainant in the year 2008 had booked a unit measuring 1800 sq. ft. for a total sale consideration of 34,94,988/-, against which complainant had paid Rs 32,75,132/- to the respondent by the year 2013. As per BBA

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possession was supposed to be delivered by 01.11.2011, however, actual offer of possession was issued on 01.03.2013 after a delay of three years. In the said offer of possession respondent had unilaterally increased the area of booked unit because of which the demand towards basic cost of flat increased from Rs 26,22,600/- to 27,91,612/-. Said increased in area was challenged by complainant vide letters dated 06.03.2013, 08.06.2013 & 06.08.2013 to which respondent has failed to reply. Complainant has further alleged that along with unilateral increase in area respondent has also unjustifiably increased the rate of EDC/IDC, PLC & IFMS charges in said offer of possession. It is submitted that respondent indulged in unfair trade practices and using his dominant position forced the complainant to accept such biased offer of possession. Complainant had approached National consumer dispute redressal commission, New Delhi vide CC/250/2013 against such conduct of respondent. Thereafter with the introduction of RERA, complainant withdrew his petition from other Courts and approached this Authority seeking directions against respondent to deliver physical possession of booked as per the terms of agreement.

Learned counsel further submitted that as per joint inspection report the area of the unit has actually been decreased from 1800 sq. ft to 1628.58 sq.ft. In view of findings of the report, offer of possession dated 01.03.2013 was a fraudulent offer on the part of respondent, and complainant

had rightly refused to accept said offer of possession. Respondent not only failed to provide any justification for increase in area but also had increased the rate of EDC/IDC, PLC & IFMS charges without any justification. Such act on the part of respondent is violative of terms of builder buyer agreement entered between both parties, thereby making the demands illegal and unjustified. Therefore, she prayed to the Authority that the increased demands may be quashed.

6. On the other hand, respondent in his reply has submitted that the project in question has already been completed and had received occupation certificate on 28.02.2013. An offer of possession dated 01.03.2013 was sent to the complainant along with a demand of Rs 7,62,935/- however, complainant failed to honour the demand and accept possession of booked unit despite issuing various reminders. Respondent has kept the flat vacant for the complainant for more than 8 years, but complainant has failed to come forward and is rather indulging in frivolous litigations to avoid payment of remaining cost. Therefore, complainant is not entitled to any interest and this complaint is thus liable to be dismissed. Respondent in his reply has also denied the contention of complainant towards increase in EDC/IDC charges stating that these charges are adjusted and revised by the government from time to time and have accordingly being levied by respondent promoter.

7. Authority vide order dated 01.04.2022 had directed both parties to file relevant documents to prove their claims in regard to change in EDC/IDC, PLC & IFMS charges. No one has appeared on behalf of respondent and neither any document has been filed.

8. After hearing both parties and perusing documents placed on record. Authority observes and concludes as follow;

(i) Complainant had booked a unit admeasuring 1800sq.ft. in the project of the respondent in the year 2008. Builder Buyer Agreement was executed between both parties on 01.08.2008 and as per said agreement possession should have been delivered by 1.11.2011. However , actual offer of possession was issued to the complainant on 01.03.2013 after a delay of more than 3 years. At the time of offer of possession, respondent had unilaterally increased the area of unit without providing any justification to the complainant. On account of said increase compliant had not accepted the impugned offer of possession and further had raised objection against other additional demands made by respondent. Since 2013 till year 2020 complainant approached different forums seeking remedy against defective offer of possession. Thereafter, 10.11.2020, complainant by way of this complaint is pursuing remedy measures against respondent before this Authority.

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(ii) To adjudicate the issue pertaining to alleged increase area, Authority vide order dated 01.04.2022 had directed both parties to conduct a joint inspection in the presence of a professional. Said inspection was conducted on 14.04.2022 by an architect in presence of representatives of both parties. Both parties agreed and consented to the findings of the architect and a report of inspection was placed before Authority today in court.

On perusal of report, it is revealed that the area of the unit has been decreased from 1800sq.ft. to 1628.58 sq.ft. On the other hand, respondent in its offer of possession dated 01.03.2013 had charged for increased area of flat, when in fact the area of the unit had actually been decreased. Complainant had repeatedly sought justification from respondent for said increase in demand but respondent failed to respond. Such act of respondent constitutes unfair trade practices on the part of respondent. Therefore, Authority observes that complainant had rightly not accepted the impugned offer of possession. It is therefore concluded that the offer of possession dated 01.03.2013 was not a lawful offer. Accordingly, a lawful possession is yet to be made by respondent to complainant

Therefore, for the delay caused in delivery of possession, complainant is entitled to interest from deemed date of possession till actual offer of possession is issued to him by the respondent. Delay interest for their period from deemed date of possession till date of order is calculated at the

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rate of 9.80% and works out to as Rs. 24,68,012/- . Further monthly interest shall also be payable Rs. 19,547/- till actual possession is offered.

(iv) It is submitted by respondent that occupation certificate in respect of project was obtained on 28.02.2013 and further that the project already stands complete. Now, respondent shall issue a fresh offer of possession to the complainant in respect of the unit in question for area admeasuring 1628.58 sq.ft. and basic sale price be charged at the original rate i.e. Rs. 1457/ sq.ft. which works out to Rs.23,72,841/-. Since complainant had already paid an amount of Rs. 32,75,132/- which is more than the present sale consideration respondent shall deduct the cost towards total sale consideration of the unit and return the remaining amount back to the complainant.

(v) In respect to the contention of complainant pertaining to increase in EDC/IDC charges, it is observed that as per clause 5 respondent is allowed to charge EDC at Rs.105/sq.ft. and IDC at Rs. 35/ sq.ft. It is further also mentioned that any fresh levy or increase or decrease in said amount by any government body shall also be payable by complainant. The respondent has revised the EDC to Rs. 180/ sq.ft. and IDC to Rs. 85/sq.ft. Since respondent has failed to substantiate his claim before Authority therefore at the time of offering fresh offer of possession to complainant, respondent shall duly provide reasonable justification in respect of such increase in rates of

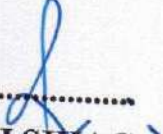
EDC/IDC. If in case the amount has increase on account of revision by government, then actual charges shall be paid by -complainant.

(vi) In respect to preferential location charges it is observed that such charges are to paid by complainant at Rs. 50/sq.ft in terms of BBA. No provision for revision of cost has been mentioned in the agreement and therefore, respondent cannot arbitrarily increase the same. Further as per annexure -I of the agreement, IFMS is to be determined and charged at the time of maintenance agreement and thus it is observed it can be charged at a proportionate price.

9. Now respondent is directed make a fresh offer of possession and issue a statement of account in accordance with this order, duly incorporating therein the delay interest payable to the complainant.

10. Case is **disposed of.** File to consigned to record room after uploading of order on the website of the Authority.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]