



Complaint No. 764 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 764 OF 2019

Mapsko Builders Private Limited

....COMPLAINANT(S)

VERSUS

Harish Rohra

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 26.09.2019

Hearing: 3rd

**Present: - Mr. Akshat Mittal, Counsel for the complainant.
None for the respondent.**

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. Authority had provided last opportunity to the respondent to present his case vide its order dated 20.08.2019. However, Neither reply has been filed nor anyone appeared on behalf of respondent. The case is being proceeded ex-parte as the respondent allottee has failed to appear even after service of notice to him.

2. In brief, complainant's case is that he has allotted unit no. 034 MG measuring 269 sq yards at basic sale price of 35,50,800/- after receiving of Rs. 10,65,211/- from the respondent in October, 2012, in a project named as "Mapkso city Homes", situated at Sonipat. Total sale price of unit was Rs. 36,44,276/-. Floor Buyer's Agreement was executed between the parties on 18.11.2013.

As per payment plan opted by the respondent, sale consideration was to be paid in ratio of 30:70 i.e. 30 % of amount to be paid at the time of booking and remaining 70 % of amount which is Rs. 30,12,010/-, at the time of offer of possession. Main grievance of complainant is that the respondent has paid only Rs. 10,65,211/- despite of completion of construction work of unit and offer of possession on 13.10.2017. Complainant had obtained Occupation Certificate for the unit in question on 13.10.2017. Respondent neither came forward for taking possession nor paid the remaining sale consideration of the unit. Several reminders were also sent to respondent in this regard but in all went in vain. For

this reason, the present complaint is filed seeking direction against the respondent to takeover possession of the allotted unit and pay the balance consideration of Rs. 30,12,010/-.

3. Mr. Akshat Mittal, learned counsel for the complainant further prayed for directing the respondent allottee to take possession of the unit and make the payment of outstanding amount due as per payment plan. However, in verbal statement learned counsel for the complainant also pleaded that Authority may allow complainant developer to exercise his contractual right as per Clause 12. A. of the agreement entered with the respondent allottee. The said clause states as follows:

“12. a. That in case the buyer fails to pay the due instalments with interest within 60 days from the due date of outstanding amount, or if there is breach of any terms/conditions of this agreement or opted payment plan, the promoter shall in its sole discretion, forfeit the earnest money (i.e. 20% of the basic sale price) out of the amount paid by the buyer and this agreement shall stand cancelled, consequent whereof the buyer shall be left with no right, claim or lien whatsoever on the said floor. However, the amount, if any paid over and above the earnest money will be refunded to the buyer whose name mentioned first in the application form, without interest after re-allotment of the said floor to the said floor to a new buyer and the after compliance of certain formalities by the buyer.”

4. Considering written and verbal submissions, Authority is of the view that there was a delay on the part of complainant promoter in completing the unit as per terms of agreement. As per terms of the agreement dated 18.11.2013, possession of the unit was to be delivered within a period of



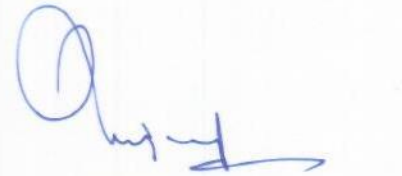
twenty-four months from the signing of the agreement i.e. 18.11.2015, whereas the complainant offered the possession on 13.10.2017. Occupation Certificate was obtained by the promoter on 13.10.2017, the Authority is of the view that the said offer shall be deemed to be valid offer of possession. In case, the respondent allottee is not ready to pay outstanding dues promoter may cancel his allotment as per the agreement, but before doing so, he must issue fresh statement of accounts mentioning receivables and payables from the respondent allottee and give a last chance to the allottee for payment of outstanding dues. The respondent allottee shall be entitled of interest as per Rule 15 of HRERA Rules for period of delay beginning from the deemed date of possession (as per the agreement) till the date in which valid offer of possession has been made by the promoter i.e. the date of occupation certificate. The promoter shall also be entitled to same rate of interest for the period of delay in payment of the outstanding dues from the respondent allottee. This principle is based on equity, natural justice and fairness.

5. So, complainant is directed to issue a statement of accounts to the respondent allottee mentioning receivable and payable amount from the deemed date of handing over of the possession till the actual date of offer of possession with occupation certificate. It is further made clear that if the allottee fails to make payment to the complainant within a period of 90 days



from the date of uploading of this order, the developer will be at liberty to exercise his right to cancel the allotment as per the terms of the agreement.

6. The matter stands disposed of. File be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]