



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 755 OF 2019

Mapsko Builders Private Limited

....COMPLAINANT(S)

VERSUS

Tilak Kumar & Anr.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 26.09.2019**

**Hearing: 3<sup>rd</sup>**

**Present: - Mr. Akshat Mittal, Counsel for the complainant.**

**None for the respondent.**

**ORDER (DILBAG SINGH SIHAG- MEMBER)**

1. Dasti summon was duly served to the respondent on 09.05.2019. However, neither reply has been filed nor anyone appeared on behalf of the respondent. The case is being proceeded ex-parte as 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. 362 MA measuring 275 sq yards at basic sale price of 36,00,000 after receiving of Rs. 11,74,572/- from the respondents in December, 2012, in a project named as "Mapkso city Homes", situated at Sonipat. Floor Buyer's Agreement was executed between the parties on 18.02.2013.

As per payment plan opted by the respondents, 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 30,55,785/-, at the time of offer of possession. Main grievance of complainant is that the respondents have paid only Rs. 11,74,572/- despite of completion of construction work of unit and offer of possession to them on 04.02.2016. Complainant had obtained Occupation Certificate for the unit in question on 18.07.2017. Respondents neither came forward for taking possession nor paid the remaining sale consideration of the unit. Several reminders were also sent to respondents in this regard but in all went in vain. For this reason, the present complaint is filed

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seeking direction against the respondents to takeover possession of the allotted unit and pay the balance consideration of Rs 30,55,785/-.

3. Mr. Akshat Mittal, learned counsel for the complainant pleaded for directing the respondents allottee to take possession of the unit and make payment of outstanding dues as per payment plan. However in verbal statement learned counsel for the complainant also pleaded that the Authority maybe allow complainant to exercise his contractual right as per clause 12.a. of the agreement executed with the respondents allottee. The said clause state 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 basic sale price) out of the amount paid by 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-allotted of the said floor to the said floor to a new buyer and 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 the agreement. As per terms of the agreement dated 18.02.2013, possession of the unit was to be delivered within a period of twenty-four months from signing of the agreement i.e. 18.02.2015, whereas complainant offered the possession on 04.02.2016 without obtaining occupation certificate. As occupation certificate was obtaining by promoter on

18.07.2017, the Authority is of the view that 18.07.2017 shall be deemed date on which valid offer of possession was made.

In case, the respondent allottees are 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 allottees and give a last chance to the allottees for payment of outstanding dues. However, respondent allottees shall be entitled to receive interest as per Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR +2%, for delay period starting from the deemed date of possession as per the agreement till the date of offer of possession after receiving occupation certificate by the promoter. Authority is also of the view that in cases where possession was offered by promoter before obtaining Occupation Certificate, the date of grant of Occupation Certificate by the Town & Country Planning department shall be the actual date offer of possession for the purposes of calculation of delay compensation. The promoter is also entitled to claim interest for delay in payment of instalments at the same rate as applicable in case of allottees. This principle is based on equity, natural justice and fairness.

5. So, the complainant is directed to issue a statement of accounts to the respondent allottees 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]