



Complaint No. 946 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 946 OF 2019

Mapsko Builders Private Limited

....COMPLAINANT(S)

VERSUS

Poonam Devi

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 26.09.2019

Hearing: 2nd

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

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. As per the office record, first notice was sent to the respondent on 26.04.2019 and the same was successfully delivered on 03.05.2019. another notice providing last opportunity to the respondent to pursue his case was issued, but the same has not been delivered with the report that the area is not serviceable. Neither reply has been filed nor anyone has appeared on behalf of the respondent, the case is being proceeded ex-parte as the respondent allottee has failed to appear even after service of notice to her.

2. In brief, complainant's case is that he has allotted unit no. 361 MA measuring 275 sq yards at basic sale price of 39,57,120/- after receiving of Rs. 12,48,304/- from the respondent in by February, 2013, in a project named as "Mapkso city Homes", situated at Sonipat. Floor Buyer's Agreement was executed between the parties on 12.05.2013.

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. 32,37,943/-, at the time of offer of possession. Main grievance of complainant is that the respondent has paid only Rs. 12,48,304/- despite of completion of construction work of unit and offer of possession to her on 04.02.2016. Complainant had obtained Occupation Certificate for the unit in question on 18.07.2017. 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. 32,37,943/-.

3. Mr. Akshat Mittal, learned counsel for the complainant has prayed for directing the respondent allottee to take possession of the unit and make payment of outstanding amount due as per payment plan. However, in verbal statement learned counsel for the complainant also pleaded that the Authority may allow complainant developer to exercise his contractual right as per Clause 12.a. of the agreement executed 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 the above the earnest money will be refunded to the buyer whose name mentioned first in the application form, without interest after reallocation 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 submission, 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 said agreement. As per terms of the agreement dated 12.05.2013, possession of the unit was to be delivered within a period

of twenty-four months from signing of the agreement i.e. 12.05.2015, whereas complainant offered the possession on 04.02.2016 without obtaining occupation certificate. As occupation certificate was obtained by the promoter on 18.07.2017, the Authority is of the view the 18.07.2017 shall be deemed date on which valid offer of possession was made. In case, allottee is not ready to pay outstanding dues promoter may cancel her allotment as per the agreement, but before doing so, promoter must issue fresh statement of accounts mentioning receivables and payables from the allottee and give a last chance to the allottee for payment of outstanding dues.

However, allottee 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 developer 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.

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



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]