



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 900 of 2019

Sanjay Kumar SainiCOMPLAINANT(S)

VERSUS

M/s Express Project Pvt. Ltd.RESPONDENTS(S)

2. COMPLAINT NO. 911 of 2019

M/s Express Project Pvt. Ltd.COMPLAINANT(S)

VERSUS

Sanjay Kumar SainiRESPONDENTS(S)

CORAM: Anil Kumar Panwar Member
Dilbag Singh Sihag Member

Date of Hearing: 03.10.2019

Hearing: 4th

Present: Shri Sanjay Saini, complainant
Shri Kamal Dahiya, Counsel for the respondent

ORDER (Dilbag Singh Sihag- Member)

1. The above titled two complaints are directed against the respondents in same project and the issues involved therein are identical in nature. So, the complaints are disposed of with the same order.

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2. The above captioned complaints pertain to the execution of orders dated 28.08.2018 passed by the Authority in complaint no 3 of 2018. The operative part of the orders as under:-

“The Authority directed the respondent to issue a fresh offer possession of the said unit to the complainant within 30 days. The apartment should be complete in all aspects and all facilities should be running at the time of delivery of possession. The complete possession is directed to be handed over by September 30, 2019. Further, the complainant is directed to handover stamp papers to the respondent within 15 days of obtaining possession, with further direction to the complainant to complete the registry of the said unit in the office of Tehsildar within 7 days i.e. by October 25, 2018. The Authority further directed the respondent to issue a fresh statement of Accounts, with separate columns of debit and credit, containing details of the amount to be recovered by the respondent from the complainant and the amount payable by the respondent to the complainant respectively, within a time frame of 30 days. It is expected that the respondent will settle the matter in the same spirit as shown today at the time of proceeding. The Authority further reserves the right of the complainant to approach this Authority in case the complainant still feels aggrieved.”

2. These matter were earlier listed for hearing on several occasions i.e. 06.08.2019, 22.08.2019 & 12.09.2019, when the decree holder raised various issues regarding deficiency in services/ facilities which were to be provided by the judgment debtor and alleged further that the respondent is charging from him

for maintenance without providing adequate services; not resolving the issue relating to ownership and usage right of the entire top floor terrace for which the respondent has charged additional Rs. 2 lakhs; space for car parking and reduced area of the apartment.

Further, he had sought copies of possession letter, allotment letter, building plan and occupation certificate etc, which were allowed by the Authority with a direction to the promoter that all these documents be supplied to the allottee before next date of hearing.

3. Learned counsel for the judgement debtor (Express Homes Projects Pvt. Ltd.) submitted before the Authority that the decree holder intentionally had not complied with the orders of the Authority despite repeated efforts by judgement debtor to execute the conveyance deeds and to transfer the title to the decree holder. He had also submitted his reply mentioning his efforts of compliance of the order of the Authority. In this reply, he had stated that judgement debtor had informed the decree holder vide e-mail dated 11.02.2019 that the conveyance deeds shall be executed on 18.02.2019 in the office of the sub- registrar, Sonipat. However, the decree-holder in response to the e-mail of judgement debtor, sent an e-mail dated 16.02.2019 suggesting unreasonable changes to be made to the draft of the conveyance deeds. Further, the judgement debtor made the changes according to the decree holder but the conveyance deeds could not be executed because decree holder did not present on the agreed date.

4. The Authority had considered the written and oral pleadings of both the parties; observed and ordered as follows :

- i. the judgement debtor to handover documents mentioned in para no 2 and bring in the court drafts of the conveyance deeds;
- ii. The policy instructions contained in memo no. LC-2238-JE(S)-2013/30774-775 dated 13.02.2013, issued by Town and Country Planning Department, Haryana, copy of which was placed on record by the complainant, mandates that the promoter will be able to charge an allottee for top floor terrace only if two conditions are satisfied, namely (a) such terrace is not being used for common services and (b) exclusive ownership and usage rights in respect of said terrace are assigned to the concerned allottee. The present case is one in which the promoter had laid water tanks, solar panels and installations of other amenities on top floor terrace, which are being used for providing common services to many allottees and not merely to the present complainant. So, the respondent was not entitled to sell the terrace in question and must, therefore, return Rs. 2 lakhs with 9 percent interest to the complainant.

- iii. the promoter shall submit a layout plan where on the front parking of the said plot shall be marked properly mentioning the space for car parking of the complainant;
- iv. the area of the plot i.e 220.56 sq. mtr and whereas flat area shall be 1350 sq-ft; in case there is any variation then the amount from the complainant be charged accordingly;
- v. conveyance deed shall be executed as per agreement made between the parties on a date to be decided by the Authority.

In compliance of the above-said directions, judgement debtor submitted all the documents relating to possession of the apartment and placed drafts of the conveyance deed in the court. Moreover, judgement debtor had conceded of charging of Rs. 2 lakhs.

5. Today, decree holder argued the matter and affirmed the above said compliance. Further the DH, has raised issues regarding the time from which maintenance charges shall be imposed by the judgement debtor and payment of title transfer fee. On the point of maintenance charges, the Authority has already settled this issue in previous hearing judgments and in consonance with the same, it is observed that the JD may charge for maintenance only from the date when the DH has taken the possession of the unit after having occupation certificate by the respondent from the competent authority.



The Authority with regard to the payment of transfer fee is of the considered opinion that the same shall be payable by the DH as per the rules and regulations of Town and Country Planning Department.

6. In view of the above, the Authority directed judgement debtor to complete the registry of the said plot in the office of Tehsildar by 11th October, 2019. Further, as per the agreement, the dimensions; size of plot; and size of flat shall also be accurately quoted in the possession letter as well as conveyance deeds.

The matter is **disposed of**, with the above directions to the parties and file be consigned to the record room.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]