

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint. No. RERA-PKL- 362/2018
Date of Hearing: 17.10.2018.

Rajat Chawla.

...Complainant.

Versus

M/s Ultratech Township Developers Pvt. Ltd.

...Respondent.

Coram:-

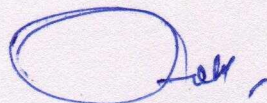
Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance:-

Shri Kamal Dahiya, Advocate for complainant.
Shri Shobit Phutela, Advocate for respondent.

ORDER:-

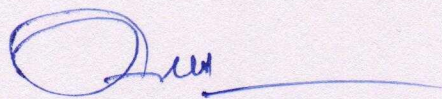
1. The complainant in this case had booked a flat in the respondent's project known as "New World Residency" situated in Sector-32, Karnal. The respondent allotted him a flat measuring 2191 Sq. fts. The total sale consideration was fixed at Rs. 63,12,271/- out of which the complainant had deposited a sum of Rs. 51,00,000/- till March, 2017. The complainant's grievance is that the possession was assured to be delivered latest by 21.02.2018 but the respondent has failed to deliver the same on time and therefore, his prayer is for refund the deposited amount alongwith interest.



I have perused the orders passed by my learned friends and I agree with the principle conclusion that the prayer of the complainant for refund of the money cannot be accepted because the respondents have completed the project and had applied for occupation certificate well within time i.e. on 24.07.2017. The concerned department of the Government, however, took longer time in granting the occupation certificate which finally was issued on 17.07.2018. The only question that remains to be answered is with regard to the compensation to be paid for delay in handing over the possession of the apartment.

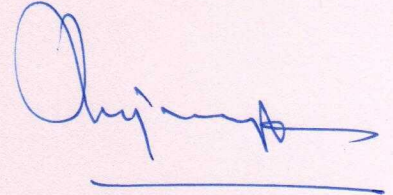
2. It is an admitted fact that builder-buyers agreement was made between the parties on 21.08.2015 and the agreed schedule for delivery of the possession of the apartment was 30 months from the date of agreement. The period of 30 months ends in February, 2018. It is also a fact that the respondents had applied for the occupation certificate on 24.07.2017, therefore, there was no delay in completing the project. Completing real estate projects within time is a tough task, which is to be seen rarely. The respondents have discharged the obligation cast upon them. The delay in offering the possession has occurred for the reason of delay caused by Government agencies concerned in granting the occupation certificate. For the delay caused by the Government agencies respondents cannot be held answerable.

2. Respondent has resisted the prayer for refund averring that he is not liable to refund the amount because he had completed the project on time and had applied for occupation certificate on 24.07.2017. The concerned department had, however, delayed the delivery of possession by consuming long time for grant of occupation certificate which was issued on 17.07.2018. So, his abstract plea is that refund is not permissible after offer of possession which he had already made to the complainant.
3. The Authority after hearing the counsels of the parties finds that the respondent had already made an offer of possession to the complainant. So, it is not a fit case to allow refund of the deposited amount.
4. However, it is an indisputable fact that the respondent in terms of the agreement entered with the buyer was required to deliver possession within 30 months. If so, the respondent was under a duty not only to complete the project but also to ensure that the possession is actually delivered within the said stipulated period after obtaining all necessary legal approvals from the competent authorities. The respondent thus cannot be allowed to shirk his liability for paying delay compensation to the complainant on the ground that the delay had occurred on the part of the concerned department. Viewed this perspective, the Authority will hold the respondent liable to pay delay compensation to the complainant at the rate prescribed under Rule 15 of the HRERA, Rules, 2015 i.e. State Bank of India highest marginal cost landing rate



3. Accordingly, the orders passed by my learned friends that for the delay caused, the respondents shall compensate the complainants with interest payable at the rate prescribed in Rule 15 of the RERA Rule is not correct and justified. There is no provision in the agreement to this effect and the provisions of Rule 15 cannot be read into the agreements made much prior to coming into force of the RERA Act. In this case the respondents have not delayed the construction of apartments, even if they had, in that case and Clause 11.3 of the agreement would have come into operation which provides for specified remedy to the allottees in the event of delay.

I order accordingly.

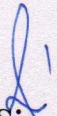



(Rajan Gupta)
Chairman

plus 2% from the deemed date of possession i.e. 21.02.2018 till the actual date on which possession was offered to the complainant.

5. Respondent is further directed to supply a detailed statement of all such amounts in respect of which he is raising demands for its payment by the complainant at the time of delivery of possession. Complainant will be at a liberty to file a fresh complaint for assailing any such demand which accordingly to him is not payable and has been illegally raised.

6. Complaint is disposed of in terms of above directions and file be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member

Rajan Gupta
Chairman