



Complaint no. 836 & 944 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 836 OF 2019

M/s Mapsko Pvt Ltd

....COMPLAINANT

VERSUS

Om Parkash Rathee

.....RESPONDENT

2. COMPLAINT NO. 944 OF 2019

M/s Mapsko Pvt Ltd

....COMPLAINANT

VERSUS

Asha Yadav

.....RESPONDENT

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 28.08.2020

Hearing: 7th

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

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Both the captioned complaints are taken together for hearing as they involve similar issues and are related to same project of complainant-developer. The order is passed by taking complaint no. 836/2019 titled as Mapsko Builders Pvt Ltd vs Om Parkash Rathee as a lead case.

2. As per office record, respondents had been served vide publication in newspaper on 08.01.2020, but no one appeared today on behalf of respondents. After effecting service by way of publication two more opportunities were given vide order dated 16.01.2020 and 03.03.2020 to the respondents to present their case, but neither reply has been filed nor anyone appeared. Therefore, the cases are being proceeded ex-parte as the respondent allottees have failed to appear even after sufficient opportunities being granted.

3. In brief the complainant's case is that he allotted unit no. MG-10 measuring 353 sq yards in his project-Mapkso City Homes, Sonipat to the respondent-allottee for a total sale consideration of Rs 49,20,046/-, following which builder buyer agreement was executed between the parties on 19.05.2014. As per the payment plan opted by the respondent-allottee the sale consideration was to be paid in the ratio of 30:70 i.e. 30% of amount to be paid at time of booking which was duly paid by respondent -allottee on 12.03.2013, and the remaining 70% of amount which is Rs 38,13,564/- to be paid at time of offer of possession. The complainant's grievance is that after completing construction of



the unit and receiving occupation certificate on 12.10.2017, he offered possession to respondent-allottee on 31.10.2017. But respondent has neither come forward to take possession of the booked unit nor paid the remaining/balance amount. Moreover, several reminders were sent to respondent but in vain. For this reason, the present complaint is filed seeking direction to the respondent to take possession of the unit by paying remaining amount.

4. Learned counsel for complainant prayed for disposing of these matters in terms of order dated 26.09.2019 passed in complaint no. 764/2019-Mapsko Builders Pvt Ltd vs Harsh Rohra whereby this Authority has allowed the verbal submission/plea of complainant-developer that in case the respondent-allottee fails/not ready to pay the outstanding amount, complainant-developer may cancel the allotment as per clause 12A of agreement after providing him a last chance to pay the due amount as per fresh statement of account showing receivables and payables. The said clause-12A is reproduced below:-

12A- That in case the buyer fails to pay due installments 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 a new buyer and after compliance of certain formalities by the buyer.

5. Considering the written and verbal submissions, it has been observed that a valid offer of possession duly supported with occupation certificate dated 12.10.2017 was sent to respondent-allottee on 31.10.2017. But the possession was supposed to be delivered upto 19.05.2016 in terms of builder buyer agreement. Accordingly, the respondent-allottee shall be entitled to delay interest for the delay caused by complainant in offering possession at the rate prescribed in Rule 15 of HRERA Rules, 2017 for the period from the deemed date of possession (as per builder buyer agreement) upto the date of offer of possession i.e. 19.05.2016 to 31.10.2017. The complainant-promoter is also entitled to same rate of interest for the period of delay caused by the respondents in payment of the outstanding amounts.

6. Further it is observed that in case, the respondent-allottee is not ready to pay outstanding dues, the complainant-promoter may cancel his allotment as per the agreement. However, before doing so, he shall issue a fresh statement of accounts in accordance with principles laid down in above paragraph showing therein all receivables and payables amount and shall provide one more chance to the allottee for making payment of the outstanding amount. Accordingly, the complainant is directed to issue a fresh statement of accounts to the respondent-allottee within 30 days of uploading of this order. It is further made clear that if



the allottee fails to make payments to the complainant within a period of 90 days from the date of issuing fresh statement of accounts, the developer will be at liberty to exercise his rights to cancel the allotment as per terms of the agreement.

7. **Disposed of** in above terms. 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]