



Complaint No-849/2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 849 OF 2020

Sandhya Gupta

....COMPLAINANT

VERSUS

Adore Realtech Pvt Ltd.

....RESPONDENT

CORAM: Anil Kumar Panwar
Dilbag Singh Sihag

Member
Member

Date of Hearing: 09.02.2021

Hearing: 3rd

Present: - Mr. Sandhya Gupta, Complainant-in-Person.
Adv. Rohan Gupta, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Complainant's case is that he had booked a flat bearing no. H-303, Type H with a carpet area 473.594 sq. feet under affordable group housing scheme in respondent's project namely "Adore Happy Homes", Sector-86, Faridabad, Haryana on 11.10.2015. Builder buyer agreement was executed between the parties on 02.11.2015. Sale price of the flat was Rs. 19,44,376/- against which an amount of Rs. 20,18,504/- had already been paid by the complainant. As per agreement, respondent had committed to deliver

possession of the unit within 48 months from the commencement date i.e. 18.04.2015 as per clause 1.12 of BBA. Thus, due date of delivery of possession comes to 18.04.2019. Respondent has obtained occupation certificate on 07.09.2018 and thereafter, a letter dated 25.09.2018 was sent to complainant-allottee whereby he was called for a meeting by the respondent in order to take possession. Complainant stated that in the meeting dated 29.09.2018, promoter demanded an additional amount of Rs. 1,67,073 in cash for issuance of 'No Dues Certificate' to enable the complainant to execute the conveyance deeds of the flat to which complainant protested. Thereafter, complainant on many occasions enquired about the date of physical possession of the flat and protested the demand of such amount without any formal receipt via emails which are placed on record at annexure 9. Finally, respondent sent an email dated 28.08.2020 containing reminder offer letter along with additional demand of Rs. 1,93,915/- in the attachment which bear 03.07.2020 as the date of such offer. It is pertinent to note that email was sent to complainant on 28.08.2020 but reminder offer letter is ante-dated. Hence, complainant prays for possession along with delay interest without paying any amount against additional demands.

2. Learned counsel for the complainant submits that he is willing to take possession of the said unit but he did not take possession due to illegal demands raised by the respondent i.e. Rs. 56,770 as holding charges, Rs.

8,937 as VAT charges, Rs. 7578/- as labour cess, Rs. 5515/- as electricity meter charges, Rs. 11,800/- as common area power backup charges, Rs. 11,800/- as electrical connection 2KW, Rs. 24662 as operation and maintenance cost and Rs 68,652/- as reimbursement of electrical infrastructure. Such additional demands amount to a total of 1,93,915/-.

3. On the other hand, Ld. Counsel for respondent stated that there has been no delay on part of the respondent in offering possession to the complainant. According to respondent, period of 4 years for purposes of delivering possession to complainant should be counted from 20.05.2016 when respondent had obtained Environmental Clearance and not from 18.04.2015. Thus, due date of delivery should be 20.05.2020 and not 18.04.2019. Even then, he had offered possession to the complainant on 25.09.2018 much prior to deemed date of delivery. It is complainant who deliberately avoided taking possession. Thus, he is not liable to pay any delay interest to the complainant. Respondent also refuted the allegation of demanding additional money from complainant in cash only.

4. With regard to additional demand made by respondent vide email dated 28.08.2020, Ld. Counsel for respondent stated that these demands have been made by him within the ambit of Builder Buyer Agreement only. He referred to clauses 2.5 and 2.6 of BBA in order to justify demand of VAT, labour cess, electricity meter charges, common area power backup

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charges, electrical connection 2KW, reimbursement of electrical infrastructure and operation and maintenance cost.

5. Authority after hearing oral as well as written arguments of both the parties is of the view that according to clause 5.1.1 read with clause 1.12 of BBA, respondent was bound to deliver possession of flat to complainant within 4 years from date of approval of building plans or grant of Environmental Clearance, whichever is later. Respondent in his reply has stated that he obtained the Environmental Clearance on 20.05.2016. Thus, Authority observes that respondent had to deliver possession to complainant by 20.05.2020. However, he failed to do so despite obtaining occupation certificate on 07.09.2018 because as proved from various e-mails of the complainant attached as Annexure 9, respondent demanded additional amount at the time of offer of possession of booked property.

6. Authority further observes that valid offer of possession along with additional demand of Rs. 1,93,915/- has been made by the respondent on 28.08.2020 and not on 25.09.2018 when he merely called the complainant in his office for meeting. Thus, Authority directs the respondent to deliver possession of booked plot to complainant along with payment of delay interest from deemed date of possession i.e. 20.05.2020 till date of offer of possession i.e. 28.08.2020 which comes to Rs. 51,803/-.

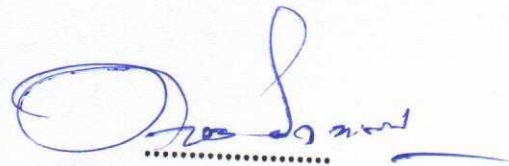
7. As far as issue of additional demand of Rs. 1,93,915/- made by respondent along with offer of possession dated 28.08.2020 is concerned,

Authority observes that License no. 108 of 2014 issued to the respondent promoter by DGTCP, Chandigarh dated 19.08.2014 clearly stipulates under clause (o) that the licensee shall abide by the terms and conditions of the policy dated 19.08.2013. As per terms and conditions of the policy prescribed/ approved by the Town and Country Planning Department relating to Affordable Housing Projects dated 19.08.2013, promoter can charge Rs. 3,500/- per sq. ft. within the MC limits of Faridabad and Rs. 4,000/- per sq. ft. outside the MC limits. Only the cost of balconies shall be in addition to the above charge which should not exceed Rs. 500 per sq. ft. up to a maximum of 100 sq. ft. Above rates shall be an all-inclusive cost of apartment. Thus, builder buyer agreement in the present case has been executed in violation of terms and conditions of the said policy and licence granted by Department of Town and Country Planning. Therefore, the respondent can not claim charges other than labour cess and electricity meter charges. Complainant is, thus, liable to pay an amount of Rs. 13,093/- out of total amount of Rs. 1,93,915/- claimed by respondent.

8. The complaint is **disposed of** in the above terms, with direction to both the parties to comply with the order of Authority within 45 days of uploading of the order on the website of the Authority. The respondent is directed to deliver possession of booked plot to the complainant on payment of Rs. 13,093/- by the complainant to the respondent towards additional charges. The respondent is further directed to pay delay interest of Rs.



51,803/- to the complainant. File be consigned to the record room after uploading of the orders on the website.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

