



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**COMPLAINT NO. 779 OF 2019**

Neeraj Kumar

....COMPLAINANT

VERSUS

Pivotal Infrastructure Pvt. Ltd.

....RESPONDENT

**CORAM:**

**Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag**

**Chairman  
Member  
Member**

**Date of Hearing:**

**09.03.2021**

**Hearing:**

**12<sup>th</sup>**

**Present through video conference: - Mr. Neeraj Kumar, Complainant**

Mr. Rohan Gupta, Advocate  
Counsel for respondent

**ORDER (RAJAN GUPTA-CHAIRMAN)**

The case of the complainant is that he had booked a flat in the year 2012 in the project named "Royal Heritage", Sector-70, Faridabad being developed by respondent company. Flat bearing no.1504 in Tower 4/Maurya was allotted to the complainant on 18.07.2012. Total sale consideration of the flat was ₹39,56,276/- against which the complainant has already paid ₹38,21,695/-. Flat buyer agreement (FBA) was executed between both the parties on 14.08.2012. As per terms and conditions of FBA, the respondent was under obligation to hand over possession of the flat within 42 months from the date of execution of FBA i.e. up to 14.02.2016. The respondent had offered possession of the flat on 07.12.2017 along with an additional demand of ₹4,43,601/-. After receiving aforementioned offer, the complainant had visited the site of the project in January 2018 and found that there were certain deficiencies in flat and the same was informed to the respondent vide email dated 08.02.2018. Copy of said email is attached along with complaint file as Annexure C5. Complainant thereafter reminded the respondent about the deficiencies vide various emails dated 13.02.2018, 09.08.2018, 25.09.2018, 22.10.2018 and 10.12.2018 but no response has been received from the respondent to the emails and reminders. Aggrieved by above facts, the complainant has filed present complaint seeking relief of possession of the flat along with delay interest for the period of delay in handing over possession.



2. Respondent has filed written statement taking preliminary objections that the present complaint is not maintainable under the provisions of the RERA Act, 2016 as the flat buyer agreement was executed between both the parties on 14.08.2012 i.e. before coming into force of RERA Act. Respondent has not disputed booking of the flat in the name of the complainant. Respondent had obtained occupation certificate on 30.11.2017 for ten Towers and had also applied with the competent authority for getting occupation certificate for remaining Towers. It has further stated that respondent has already delivered physical possession of flats to 710 allottees. It has been argued by learned counsel for respondent that as per terms and conditions of builder buyer agreement, the complainant had delayed in making payment of several instalments which caused delay in completion of the project.

3. This matter has been heard eleven times earlier. There is no dispute between the parties that the complainant was allotted flat by the respondent in his project named "Royal Heritage, Sector-70, Faridabad and he has already paid almost 95% of the sale consideration. The possession of his flat was to be delivered in February, 2016 but the respondent offered them possession in December, 2017 after obtaining occupation certificate. The complainants' grievance was that there were certain deficiencies in the flat offered to him due to which he was unable to take the possession of the flat. The complainant further disputed additional demand of ₹4,43,601/-. Vide



orders dated 17.12.2019, the respondent was directed to revise the statement of accounts issued to the complainant. In compliance of the orders of the Authority, the respondent had filed statement of accounts dated 31.10.2019 and 21.09.2020. The above said statements submitted by the respondent were discussed in detail vide order dated 22.09.2020. some of the charges were acceptable to the complainant and some were disputed. Order dated 22.09.2020 is reproduced here for ready reference:

1. \*\*\*

2. In further compliance of the orders of the Authority, the respondent has filed a fresh statement of accounts via email. A copy has also been sent to the complainant. The revised statement submitted by the respondent was discussed in detail. The complainant has disputed certain charges levied by the respondent. Some of the charges shown in the statement are acceptable to the complainant. The disputed amounts are discussed below:

(i) An amount of ₹15000/- has been charged as legal and administrative charges. The complainant wishes to complete all legal and other administrative activities at his own level. For this reason, the said demand of ₹15000/- is hereby quashed.

(ii) The respondent has charged ₹63296/- as taxes; VAT (₹50,081/-) and other taxes (₹13,215/-). No justification or calculations in this regard have been provided. The respondent shall satisfy the complainant about levy of the said charges by furnishing detailed calculations.

(iii) ₹2,23,509/- has been demanded as enhanced EDC. The Authority has ordered in several cases that levy of enhanced EDC has been stayed by the Hon'ble Punjab & Haryana High Court. If the Hon'ble court decides this amount to be payable by the complainants, the demands in this regard can be raised by the respondent at that stage. Till a decision in this regard is arrived at by the Hon'ble court no amount shall be charged towards the enhanced



EDC. It is however, ordered that in case the Hon'ble court find this amount payable, the respondent shall be entitled to recover the same from the complainants.

(iv) ₹17500/- have been demanded on account of electricity meter. The respondent shall provide detailed justification for arriving at this amount.

(v) ₹1,10,621/- interest has been demanded on account of delayed payment of instalments. The case of the complainant is that he had made all the payments in time. Only the last instalment of Rs.1,74,580/- was payable at the time of offer of possession. The offer of possession was made in December 2017 but was accompanied by certain unjustified demands because of which the complainant did not take possession. Further there was certain deficiencies in the apartment which the complainant had pointed out to the respondent, had not rectified. Accepting the request of the complainant, the said demand of ₹1,10,621/- towards interest on account of delayed payments is not justified and the same is quashed.

(vi) The respondent is demanding ₹3,67,537/- towards holding charges since December 2017 when the possession was offered to the complainants. As already observed the complainant had not taken the possession on account of certain deficiencies and unjustified demands. For this reason, the demand of the holding charges is also not justified.

3. The respondent shall revise their statement of account in accordance with the above principles and issue a fresh offer of possession to the complainants.

4. Adjourned to 19.11.2020.

4. The respondent has now filed revised statement of accounts dated 31.12.2020 and the same is taken on record as final statement. It has been discussed in detail and the Authority orders as below:

(i) Respondent has charged an amount of ₹15000/- as legal and administrative charges. The same were quashed vide order dated

22.09.2020 as the complainant wishes to complete all legal and other administrative activities at his own level.

(ii) An amount of ₹63296/- as taxes; VAT (₹50,081/-) and other taxes (₹13,215/-). As per government notification, the complainant is liable to pay VAT and other tax charges. Therefore, the same is required to be payable to the respondent.

The total outstanding amount payable by the complainant to the respondent is shown as ₹3,50,626/-. After deduction of ₹15,000/- i.e. legal and administrative charges, the payable amount by the complainant to the respondent comes to ₹3,35,626/-

5. Respondent has shown an amount of ₹7,21,254/- payable to the complainant on account of delay interest and timely payment discount. After deduction of ₹3,35,626/- i.e. the amount payable by the complainant, the net recoverable amount comes to ₹3,85,628/- which is payable to the complainant by the respondent at the time of offer of possession.

6. Accordingly, the case is disposed of with a direction to the respondent to hand over possession of the flat to the complainant within 45 days from the date of uploading of this order. The respondent shall also pay an amount of ₹3,85,628/- along with offer of possession.



7. In view of above terms, case is disposed of and file be consigned to record room.



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]



DILBAG SINGH SIHAG  
[MEMBER]

