



Complaint No-606/2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 606 OF 2018

Anurag Gupta

....COMPLAINANT(S)

VERSUS

Eldeco Infrastructure and Properties Ltd.

.....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 19.01.2021

Hearing: 19th

Present through VC: Mr. Anurag Gupta, complainant

Mr. Neeraj Gupta, Ld. Counsel for complainant

Mr. Sunish Bindish, Ld. Counsel for respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

The complainant booked a floor with the respondent in the project 'Eldeco County', sector 19, Sonapat and was allotted floor no. 4201 first floor.

He has already paid Rs. 41,11,453/- against basic sale price Rs. 46,30,795/-. His grievance is that the respondent who was duty bound to offer possession by 02.01.2017 in terms of builder buyer agreement executed on 03.07.2014, has not yet delivered possession and has rather served a demand notice dated 09.05.2018 upon him for paying another sum of Rs. 11,83,252/-. His prayer is, therefore, for possession along with compensation for delay in offering possession and to declare that the excess demand is unjustified.

The complainant submitted detailed statement of accounts on 30.12.2019 specifying various components contained in the demand notice dated 09.05.2018 which are not legally justified according to him. He has disputed the amount demanded on account of total cost of the unit, maintenance charges, water connection charges, sewerage connection charges, cost of lying electricity cable, power backup installation cost, cost of S.S manhole cover, cost of relying of adjoining road surface, PNG connection charges etc. and miscellaneous charges.

Ld. Counsel for the respondent stated that the demands raised by the respondent vide demand notice dated 09.05.2018 are perfectly justified and have been raised in accordance with the provisions of the agreement between the parties. He placed emphasis on page 4 of reply filed by respondent to application/affidavit dated 30.12.2019 specifying various clauses of builder buyer agreement which justify the excess demand raised. He further stated that delay in handing over possession was only for period of 17 months in the



present case and final offer of possession was offered to the complainant vide final demand notice/offer of possession dated 09.05.2018. It was the complainant who did not deposit the necessary amount due from him which is why he could not be granted possession. Consequently, the complainant could not be permitted to claim delay interest at least after date of offer of possession i.e. 09.05.2018. The occupation certificate for the unit in question was received on 14.06.2018. Ld. Counsel for respondent further claimed sums in the nature of holding charges and maintenance charges along with interest from 15.06.2018 for delay in making the payment by the complainant.

Thus, the issue which has arisen before the Authority is whether the demand raised by respondent vide demand notice dated 09.05.2018 is unjustified or not?

The Authority considered the Annexure containing final demand notice/offer of possession dated 09.05.2018 and reaches the following conclusion:

- (i) Admittedly, the basic price of the unit is Rs. 46,30,795/- at which EDC/IDC of Rs. 1,66,100/- and service tax of Rs. 1,24,944/- are applicable. Cost of extra buildup area is not payable since the variation is less than 1% only (clause C3 of BBA). Therefore, cost of the unit payable by the complainant is 49,21,839/-. However, GST @18% of Rs. 99,141/- is not payable. But, VAT at the relevant date shall be payable.

Respondent is, thus, directed to segregate VAT amount out of GST and charge only VAT instead of whole GST.

- (ii) With regard to maintenance charges, IFMS of Rs. 17,940/- and 12 months advance maintenance of Rs. 22,649/- are payable by the complainant. However, GST @18% of Rs. 4077/- is not payable.
- (iii) With regard to miscellaneous charges, interest on basic cost of Rs. 10,215/- and interest on EDC of Rs. 1839/- both are not payable.
- (iv) With regard to reimbursements, water connection charges of Rs. 2001/-, sewer connection charges of Rs. 6700/- and power back up installation cost of Rs. 54,000/- are payable by the complainant. Cost of laying electricity cable, cost of rain water harvesting system, cost of S.S. manhole cover, cost of relaying of adjoining road surface once, PNG connection charges and GST@18% are not payable by the complainant. As far as club membership charges are concerned, Authority is of the view that, in case, club is not in existence, then demand on account of club membership charges would not be justified and would accordingly stand quashed. However, if the club is in existence, then club charges shall be paid by the complainant.



Therefore, the Authority observes that out of demand of Rs. 11,83,252/- made by the respondent vide final demand notice/offer of possession dated 09.05.2018, the amount which is payable by the complainant is 9,13,676/-. Thus, it cannot be said that denial of possession by the complainant on account of excess demand was justified. Since the excess demand made by the respondent was only of Rs. 2,19,576/-, the complainant should have taken possession at time of offer of possession dated 09.05.2018, though under protest.

In order to balance the equities on both the sides, the Authority observes that the complainant should take possession after paying the remaining dues of Rs. 9,13,676/- to the respondent. Club membership charges of Rs. 50,000/- also be payable if the club is in existence.

With regard to delay interest claimed by the complainant for delay in offer of possession by the respondent, the Authority observes that though offer of possession was made on 09.05.2018, the occupation certificate for the unit in question was received on 14.06.2018. Thus, valid offer of possession by the respondent will be treated from date of Occupation Certificate i.e. 14.06.2018. Hence, the complainant is entitled to delay interest from deemed date of possession i.e. 02.01.2017 till date of valid offer of possession i.e. 14.06.2018 which comes to Rs. 5,53,120/-. The complainant is not entitled to delay interest after date of valid offer of possession i.e. 14.06.2018.



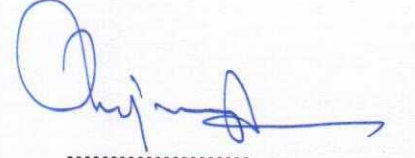
With regard to claim of maintenance charges and holding charges by the respondent for delay in taking over the possession after valid offer of possession, the Authority observes that the complainant is liable to pay maintenance charges to the respondent from June 2018 till date. Since maintenance charges are payable by the complainant, demand of holding charges by the respondent stands quashed. Since the excess demand made by the respondent was only of Rs. 2,19,576/-, the complainant should have taken possession at time of offer of possession dated 09.05.2018, though under protest. Therefore, the respondent is entitled to claim interest on the unpaid amount from date of valid offer of possession i.e. 14.06.2018 till date of order i.e. 19.01.2021 as per Rule 15 of HRERA Rules, 2017.

The Authority concludes that after adjusting the delay interest, the complainant is required to pay Rs. 3,60,556/- to the respondent in order to take possession along with club membership charges (if club is in existence), maintenance charges from June 2018 till date and interest on the unpaid amount of Rs. 3,60,556/- to be calculated as per Rule 15 of HRERA Rules, 2017 from date of valid offer of possession i.e. 14.06.2018 till date of order i.e. 19.01.2021. Respondent is directed to deliver possession of the booked unit to the complainant on payment of the remaining dues by the complainant.

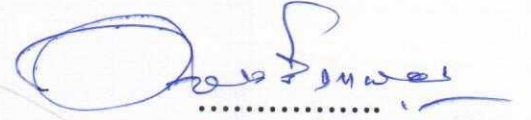
Case is **disposed of** in the above terms, with a direction to both the parties to comply with order of the Authority within 45 days of uploading of



the order on website of the Authority. The orders be uploaded on website of the Authority and files be consigned to the 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]

