



Complaint No. 1182 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1182 OF 2020

Manoj Bajaj

...COMPLAINANT(S)

VERSUS

SRS Real Estate Ltd

...RESPONDENT(S)

CORAM:

**Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 15.04.2021

Hearing:

2nd

Present: -

Mr. Manoj Bajaj, Complainant through video conference

None for the respondent

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ORDER (DILBAG SINGH SIHAG-MEMBER)

Brief facts of the case are:

2. Complainant had booked a flat bearing no. C1/P/PH/87/C501 on 22.08.2012 in a project namely 'SRS Pearl Heights', Sector-87, Faridabad which was to be developed by the respondent company. Flat buyer agreement was executed between both the parties on 08.09.2012. Initially, total sale consideration of the flat was ₹43,67,260/-. Respondent had increased total sale consideration to ₹45,89,161/- on the pretext of increased area. Till date, complainant had paid ₹44,01,545/- which amounts to 97.5 percent of total sale consideration. As per agreement, possession of flat was to be delivered within 48 months from the date of agreement i.e. by 08.09.2016. But offer of possession was made on 18th August 2017 accompanied by certain unjustified demands of ₹4,35,896/- due to the same, complainant did not take possession. Moreover, there were certain deficiencies found in the flat and the same were pointed out to the respondent vide letters dated 02.09.2017, 21.11.2017, 27.11.2017, 05.12.2017, 16.02.2018 and 24.03.2018 by the complainant but no response had been received from the respondent in this regard.

So, basic grievances of the complainant are that respondent had offered possession of the flat with delay of almost one year but along with unjustified demand of ₹4,35,896/-. He is, therefore, praying for possession of the flat along with delay interest and to quash illegal demands raised by the



respondent on account of holding charges, increased area, club charges, maintenance charges, VAT and service tax and interest charged for delayed payments.

3. Since the respondents are stated to be confined in Neemka Jail, Faridabad, notice was served through Jail Superintendent, Neemka Jail Faridabad. Despite service of notice, respondent did not appear and it was ordered to be proceeded against ex-parte.

4. After perusing relevant record and submissions of complainant during hearing, it has been observed by the Authority that complainant is disputing following charges:

- (i) basic sale price ₹36,72,570/-
- (ii) interest free maintenance security (IFMS) ₹67,650/-
- (iii) club membership charges ₹1,00,000/-
- (iv) electric meter and fitting charges ₹18,000/-
- (v) development charges ₹5,56,083/-
- (vi) holding charges ₹14,901/-
- (vii) VAT ₹31,769/-
- (viii) Service tax ₹1,13,739/-
- (ix) GST (CGST and SGST) ₹39,422/-

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(x) Interest ₹45,159/-

During court proceedings, complainant has raised his objections to the above-mentioned charges. The disputed amounts against all components are discussed below:

A. Basic sale price

Argument of complainant is that basic sale price of the flat was ₹36,72,570/- at the time of execution of agreement but respondent has increased this to ₹38,65,428/- while offering possession of the flat on 18.08.2017. On perusal of Annexure 'C' of builder buyer agreement dated 08.09.2012, it is revealed that basic sale price of the unit is ₹36,72,570/- and clause 1.4 of said agreement provided that said BSP is not inclusive of other charges like electrification, firefighting, IFMS, Development charges, service tax, car parking etc. Accordingly, argument of the complainant is turned down with an observation that BSP shall remain ₹36,72,570/-. However, during hearing, it has been argued by the complainant that total sale consideration of the flat has been increased by the respondent on pretext of the increase in area from 1290 sq. ft. to 1353 sq. ft. Under clause 2.1 of BBA, which provides that the complainant and respondent agreed at

the time of execution of BBA that any change /revision in building plans may increase or decrease the super built up area of flat and in any such event total sale price and other charges applicable on said flat shall also increased/decreased proportionately. But moot question is that respondent has not elaborated under which component area of the flat has been increased. Whether such increase has been on account of revised approved plans. Rather from perusal of his two-contradictory statements of accounts placed at page nos. 141 and 144 of the complaint, this amount differentiates substantially. Therefore, Authority deems it proper to quash increased basic sale price of the flat. Therefore, amount of basic sale price shall remain ₹36,72,570/-.

B. IFMS:

It has been argued by the complainant that initially amount of IFMS of ₹64,500/- was charged by the respondent which is evident from customer ledger dated 05.09.2016 placed at page no. 141. Said demand was honoured by him. But later on, vide customer ledger dated 18.08.2017 placed at page no. 144 along with offer of possession, amount of IFMS has been increased to ₹67,650/- without giving any justification. Therefore, Authority is of the view that

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amount of ₹64,500/- is only payable by the complainant.

As per statement dated 18.08.2017, amount of ₹64,500/- has already been paid by the complainant.

C. Club membership charges:

An amount of ₹1,00,000/- is being charged on account of club membership. Complainant has argued that club has not been constructed in the said project so these charges are not justified. Therefore, Authority is of view that respondent cannot recover club charges until and unless club becomes operational after its construction. Since club has not been constructed in the said project, so these charges of ₹1,00,000/- are being quashed.

D. Electric meter and fitting charges:

As far as charges of ₹18,000/- is concerned, complainant at the time of hearing stated that he will make his own arrangement. For this reason, said amount stands waived off.

E. Development charges:

It has been argued by the complainant that initially an amount of ₹5,30,190/- was charged by respondent as development charges which is shown in customer ledger dated 05.09.2016 placed at page no.141. Said demand was honoured by him.

But later on, vide customer ledger dated 18.08.2017 placed at page no.144, received along with offer of possession, amount of development charges has been increased to ₹5,56,083/-. But no detailed justification has been given by the respondent why these charges have been increased. Therefore, Authority deems it proper to quash increased development charges. Payable amount of development charges is ₹5,30,190/- which has already paid to the respondent.

F. Holding Charges:

An amount of ₹14,901/- being charged by the respondent on account of holding charges. But factual position reveals that possession was offered by the respondent to the complainant on 18.08.2017 after receiving OC on 19.07.2017 with certain unjustified demand. During hearing, a new fact came into the knowledge of Authority that department of Town and Country Planning has already cancelled occupation certificate (OC) vide its letter dated 30.10.2018 which is annexed as page no.194 of the complaint. Therefore, now Authority held that this building is without occupation certificate. It has also been stated by the complainant that flat is not complete in all respect as certain deficiencies were existing. For this

reason, complainant did not take possession and had filed present complaint. Considering the fact that OC stands cancelled therefore, Authority is of the view that building is not complete in all aspects and therefore not fit for human habitation therefore, holding charges cannot be levied on the complainant. No further justification is needed for quashing these charges. In the same manner, maintenance charges of ₹43,681/- levied by the respondent are also not justified since complainant has not taken possession of the flat so, these charges also stand waived off.

G. VAT and service tax:

₹1,45,500/- (₹31,769/- + ₹1,13,739/-) being charged on account of VAT and Service tax. Both these charges are actually payable in form of government taxes. So, the demand of VAT and service tax is justified and is payable.

H. GST:

Respondent has charged an amount of ₹39,422/- as GST. As per builder buyer agreement, deemed date of possession comes out to 08.09.2016 and the GST Act came into force on 01.07.2017. So, GST cannot be charged by

the respondent. For this reason, GST charges of ₹39,422/- are hereby quashed.

I. Interest:


Regarding interest of ₹1,02,824/- for delayed payments, no detailed calculation has been provided by the respondent in order to justify these charges. Moreover, complainant was having objections to unjustified demand at the time of offer of possession. Since complainant has already contesting his case against unreasonable and unjustified demand, it cannot be said that delay caused is intentional.

For this reason, this amount of ₹1,02,824/- stands quashed.

5. Considering above findings, total payable amount to the respondent by the complainant works out to ₹1,45,500/-. Further, it is observed that complainant is entitled for delay possession interest from deemed date of possession till the date of actual delivery of possession of flat. As per provisions of Rule 15 of HRERA Rules 2017, the payable amount on account of delay possession interest works out to ₹18,84,103/- for the period of delay in handing over possession. After deducting the amount of ₹1,45,500/- payable by the complainant to the respondent, the total payable amount to the complainant is ₹17,38,603/-. Respondent is therefore directed to pay the above said amount to the complainant at the time of handing over of possession of the flat.

6. In these terms, present complaint is disposed of with a direction to respondent to hand over possession of the flat to the complainant along with delay interest of ₹17,38,603/- in the presence of representative of DTP and DC, Faridabad. Since the respondents are confined in Neemka Jail Faridabad, copy of this order be served to them through Jail Superintendent.

7. **Disposed of.** File be consigned to record room.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]