

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. RERA-PKL 774 of 2018

Vijay Grover.

...Complainant.

Versus

M/s. Besttech India Pvt. Ltd.

...Respondent.

Date of hearing:- 16.01.2019 (1st Hearing)

Coram:- Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance:- Shri Jitender Malik, Advocate for complainant.
Shri Kamal Dahiya, Advocate for respondent.

ORDER:-

The complainant booked a plot measuring 183.11 Sq. fts. on 19.04.2014 in respondent's project named "Besttech Colony". There is no dispute between the parties that buyer's agreement was executed, wherein the total sale consideration was fixed at Rs. 46,64,700/- and the respondent was thereby required to complete the project and offer possession to the complainant within 24 months.

2. There is a dispute between the parties regarding the date of execution of buyer's agreement. The complainant's plea is that the said agreement was



executed on 11.07.2014 and the respondent changed its date into 07.11.2014 while the respondent's plea is that alleged change was never made and the actual date of execution of the buyer's agreement is 07.11.2014.

3. Another point emerging for adjudication is regarding the amount of interest which respondent had demanded on account of delayed payment of instalments by the complainant. It was averred that the respondent has calculated exorbitant interest amounting to Rs. 3,35,249/- out of which complainant had already paid Rs. 2,50,000/-. The complainant's grievance is that the respondent had charged unreasonable interest and same is liable to be waived of.
4. Another point requiring determination is about the compensation payable to the complainant for the delay in offering possession.
5. Besides aforesaid, no other question for adjudication arises from the pleadings nor the complainant has urged for adjudication of any other question at the time of arguments.
6. After hearing both the parties and going through the record, the Authority finds that the complainant as well as the respondent have produced the copy of agreement. The original date mentioned on the copy produced by complainant is 11.07.2014 which has been subsequently changed to 12.11.2014. Said cutting is however not existing on the copy of agreement attached with the respondent's reply. Said copy rather unequivocally reveals the date as 12.11.2014. Significantly, the copy produced by respondent on which date of execution is



mentioned as 12.11.2014 is also bearing the signatures of complainant. These signatures are similar to his signatures appearing on the agreement which he himself has produced. The Authority will in these circumstances prefer to rely upon the agreement which does not bear cutting on the date of execution and accordingly, will hold that the buyer agreement was executed on 12.11.2014.

7. The Authority on the basis of law laid down by the various courts including the Hon'ble Supreme Court has ruled in earlier decided complaint cases that charging of interest for delayed payment of instalments at the rate beyond 9% is unconscionable and unreasonable. Perusal of the buyer's agreement would reveal that the interest @ 18% was liable to be charged from the complainant in terms of Clause-F of the agreement for delayed payment of instalments. So, the Authority will direct the respondent to recalculate the amount of interest @ 9% per annum on the amount of delayed instalments rather than charging the interest @ 18% per annum.

8. Now, coming to the question concerning interest payable to the complainant on account of delay on the part of respondent to offer timely possession. The respondent in terms of buyer's agreement was required to offer possession within 24 months. Since the Authority has accepted the respondent's plea on the point that the buyer's agreement was executed on 12.11.2014, the due date of possession would be 12.11.2016. No doubt that the respondent had sent an offer on 17.08.2017 to the complainant for taking possession of the plot but learned counsel for the respondent has conceded during arguments that



completion certificate in respect of project has not been yet obtained. So, the Authority finds merit in the complainant's contention that such offer of possession without obtaining completion certificate cannot be deemed a valid offer and delay compensation is payable to him from 12.11.2016 till the date on which respondent will offer possession after obtaining completion certificate.

9. There is no mention in the buyer's agreement about the compensation payable to the complainant for the delay in offering possession. So, Section 2(za) of the Real Estate (Regulation and Development) Act, 2016 assumes significance in the present case. The mandate of said section is that interest payable by the promoter to the allottee for his default and the interest payable by the allottee to the promoter for his default shall be at par. The Authority, as earlier observed, has allowed the promoter herein to charge interest on the delayed payment of instalments @ 9% per annum and therefore the promoter is held liable to pay to the complainant interest @ 9% per annum for the period of delay in offering possession. Accordingly, the complainant is held entitled to be paid interest @ 9% per annum on the amount already paid to the respondent from the deemed date of possession i.e. 12.11.2016 till the date possession is delivered to him after obtaining completion certificate.


10. In view of above discussion, complaint is **disposed of** directing the respondent to recalculate the interest @ 9% per annum on the amount of late instalments paid by the complainant and shall also compensate the complainant for the delay period by paying him interest on the same rate i.e. 9% per annum




on the amount already paid to him, starting from the deemed date of possession i.e. 12.11.2016 till the actual date of offer of possession after obtaining completion certificate.

11. Nothing stated in this order shall preclude the complainant to approach the Adjudicating Officer for claiming any compensations to which he is entitled as per law. File be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman