



Complaint no. 2685 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2685 OF 2019

Chanchal Tuteja Juneja And Vishesh Juneja ....COMPLAINANT(S)

VERSUS

Omaxe Forest Spa And Hill Developers Ltd. ....RESPONDENT(S)

**CORAM:** **Rajan Gupta** **Chairman**  
**Anil Kumar Panwar** **Member**  
**Dilbag Singh Sihag** **Member**

**Date of Hearing:** 20.07.2021

**Hearing:** 13th

**Present through:-** Mr. Shobhit Phutela, Counsel for the complainant

**Video conferencing** Mr. Munish Gupta, Counsel for the respondent

#### **ORDER (RAJAN GUPTA-CHAIRMAN)**

Complainant herein is seeking possession of unit bearing no. 1703, Oak tower measuring 5025 sq. ft. sq. ft. booked in respondent's project named 'Forest Spa Faridabad', in 2011. Flat buyer Agreement was executed on 06.08.2011. Basic sale price of the flat was ₹2,73,96,300/- against which the

complainant had paid ₹3,12,99,336/- by the year 2013. As per clause 30(a) of the agreement possession of the constructed flat should have been handed over by August 2014. However, after a delay of more than four years complainants received offer of possession on 29.09.2018 accompanied with a demand of additional ₹ 49,16,809/-. It is alleged that at the time of offer of possession construction work in the flat was not complete. Further, area of the unit had arbitrarily been increased from 5025 sq. ft. to 5450 sq. ft.

Learned counsel for the complainant has also objected to the GST charges levied by the respondent for the reason that these charges had not come into force on the deemed date of possession i.e in 2014, therefore, the complainant is not liable to pay them. Further, he submitted that the respondent company vide letter dated 27.12.2018 had demanded a sum of ₹ 3,24,270 against VAT@ 1% of value of unit from the complainants which was deposited by the respondent company on behalf of the complainant to the concerned Government Authority. Complainant submitted that he is also not liable to pay this amount as respondent has failed to deliver possession of the unit.

It is also alleged by the complainant that in one of the instalments , respondent company had demanded money on account of EEDC to the tune of Rs 5,32,650/- , which was paid by the complainants vide receipt dated 03.04.2012 annexed at page 59 of the complaint book. .

2. Vide order dated 07.01.2020, Authority had observed that the possession was supposed to be delivered by 06.08.2014 however, respondent



offered possession after a delay of four years in 2018. Accordingly , respondent is liable to pay for those charges which were applicable at the time of deemed date of possession. Since GST charges came into picture in year 2017, complainant is not liable to pay them.

3. With regards to increase in area both parties were directed to visit the site to verify measurements of the unit. When the issue of super area could not get resolved despite joint site visit made by both parties, Authority had decided to appoint a local commissioner to carry out the measurement of area of apartment in question.

Site visit by the local commissioner took place on 15.01.2021. On perusal of the said report it is observed that the area of penthouse no 1703 works out to be 5450 sq. ft. Counsel for the complainant had objected that in the report of the local commissioner component wise details were not provided. In this regard, authority had observed that the site inspection took place in the presence of both the parties. No objection was raised by the complainant with regards to the increase in area in presence of local commissioner. Further, details of each component of the penthouse have been provided in the maps annexed with the report therefore, Authority had accepted the said report as correct.

4. On the last date of hearing, ld. counsel for the complainant had filed written submissions on the matters pertaining to (1) calculation of interest payable on account of delay in offering possession, (2) challenge to the report of





local commissioner dated 15.01.2021, (3) deficiencies occurring in the unit purchased, and (4) withdrawal of demand raised by respondent towards maintenance and electricity charges. Learned counsel for the respondent had not been provided copy of the written submissions, therefore, complainant was directed to send a copy of the written submissions and respondent was directed to file his reply to the same.

5. Learned counsel for the respondent has submitted his reply today. The written submissions filed by the respondent were discussed at length today.

(a) Ld. counsel for the complainant has submitted a calculation sheet pertaining to delay interest payable by respondent to complainant on account of delay in offering possession. As per said sheet delay interest of ₹ 2,36,15,984 has been calculated from deemed date of possession as per agreement till 30.06.2021 at the rate of 10.20%. Ld. counsel for the respondent in his reply submitted that rate of interest in the calculation sheet is mentioned as 8.2%, whereas, current highest SBI MCLR is 7.3%. Further, the date upto which delay is to be counted should be upto the date when occupation certificate was obtained which is 28.10.2016.

(b) With regard to objections made in respect of report of local commissioner, ld. counsel for the respondent reiterating the view of the Authority submitted that no objection was raised by





complainants at the time of site visit and the report has already been accepted as correct by the Authority.

(c) Ld. counsel for the complainant had filed an application for withdrawal of demand raised by respondent towards maintenance and electricity charges. Ld. counsel for the respondent submitted that the same has been demanded as possession stands offered by the respondent in 2018. He further submitted that if the said offer of possession is not held valid then these demands shall be withdrawn and fresh demands towards maintenance and electricity charges will be raised from the date of fresh offer of possession.

(d) Ld. counsel for the complainant reiterated that the apartment was not ready at the time when possession was offered in the year 2018. In support of his claim, he placed before Authority photographs taken on 11.12.2019, 10.02.2020, 03.11.2020 & 15.01.202 of the unit in question depicting that the work was incomplete then.

6. After hearing both parties, Authority observes that it has been 8 years since execution of flat buyer's agreement, and more than 90% of the cost of penthouse was paid by the complaints to the respondent company by January, 2013. Possession of the constructed flat should have been delivered to the complainant by 2014. Admittedly, occupation certificate was received in 2016 and an offer of possession was made to the complainant on 29.09.2018.



However, on perusal of the photographs submitted by counsel for the complainant it appears that the apartment was not ready for possession in 2018 or even 2019. However, as per photographs taken in February, 2020 it appears that only a small amount of construction work remained to be completed. Therefore, it can be assumed that apartment was ready for possession by March 2020. Accordingly, the Authority holds that the apartment was complete by 31.03.2020 . accordingly, for the delay caused in delivery of possession, complainant is entitled to delay interest from deemed date of possession i.e 06.08.2014 till 31.03.2020 as per Rule 15 of the HRERA rules 2017. The rate of interest shall be SBI MCLR+2% as on the date of passing this order which comes to 9.3% .

7. With regards to the demand of Rs 3,24,270 made by respondent company from complainant against VAT , Authority observes that it is a statutory tax which is payable by the complainant.

Regarding the enhanced external development charges(EEDC) the matter is still sub-judice before the Hon'ble Punjab & Haryana High Court as to whether the State is justified in levying EEDC. It is ordered that if any amount towards EEDC has already been collected by the respondent, the same shall either be deposited with the State Government or it shall be kept in a separate fixed deposit . If Hon'ble High Court decides against deposition of the EEDC, then the said amount shall be refunded to the complainants, and if the court decides that EEDC is to be paid to the State Government then the respondent

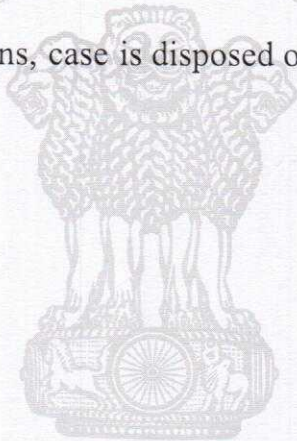




shall deposit the same with the State Government. If the money collected on account of EEDC has already been deposited with the State Government, its details will be conveyed to the complainant.

8. Now the amount recoverable from the complainant and the amount payable to the complainant shall be calculated by the respondent in terms of these orders and the said amounts after adjustment shall be paid/returned and physical possession handed over in 45 days from the date of uploading this order. If any dispute remains in this regard, both parties will be at liberty to again approach this Authority.

With these directions, case is disposed of. Files be consigned to 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]