

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

Comp No. :

RERA-PKL 1079/2018

Gaurav Pahwa

...Complainant

Versus

M/s Ultratech Township Developers Pvt. Ltd.

...Respondents

& New World Residency Pvt. Ltd.

Date of Hearing: 26.02.2019

No. of Hearing : 3rd

CORAM :

Sh. Rajan Gupta
Sh. Anil Kumar Panwar
Sh. Dilbag Singh Sihag

**Chairman
Member
Member**

APPEARANCE :

Kamal Dhaiya
Divya Kathuria

Counsel for Complainant
Counsel for Respondent

Order:

1. This matter was first taken up on 15.01.2019 when learned counsel for the respondent no.1 appeared and sought more time to file reply on the ground that he had not received the notice as well as the complaint. The respondent has already incurred the liability of paying cost of Rs. 27,000/- on account of not filing their reply within time stipulated in the



notice. The Authority after perusal of the record found that the notice as well as the complaint were sent on the fresh address provided by the respondents vide application dated 26.11.2018. Even as per the courier report the same was duly served on the fresh address. Thus the matter was adjourned to 12.02.2019 with a direction to the respondents to file the reply within three weeks and supply an advance copy to the complainant one week before the next date of hearing. On 12.02.2019 none of the parties appeared on account of nation-wide strike by advocates, hence the matter was adjourned to 26.02.2019. The reply on behalf of the respondent no.1 was received in the office of the Authority on 14.02.2019. Today the matter was heard and decided after going through oral as well as written pleadings of both the parties.

2. The case of the complainant is that he booked an apartment bearing No. 401 in Tower Prayag, measuring area 1791 sq. ft., in the project named "New World Residency" of the respondents in district Karnal. He paid Rs. 4,50,000/- as booking amount on 28.09.2011. He was issued an allotment letter dated 29.12.2012. Apartment Buyer Agreement (hereinafter referred to as ABA) was executed between parties on 29.12.2012. Payments were to be made under Construction linked payment plan. As per clause 10.1 of the ABA delivery of the



apartment was to be made within 30 months from the date of execution of ABA. Thus the deemed date of delivery was 29.06.2015.

In order to discharge his financial obligations the complainant availed a loan from ICICI for which a Tripartite Agreement was executed between the parties on 09.01.2013. The bank has disbursed an amount of Rs. 39 lakhs directly to the respondents. The complainant had paid about Rs. 50,05,426/- against the Basic Sale Price of Rs. 44,79,291/- till June, 2014.

The main grievance of the complainant is that despite payment of 100% of the basic sale consideration, the respondents have failed to deliver the possession of the Apartment by the due date of delivery as per ABA. Now the complainant has filed this complaint seeking refund of Rs. 44,79,291/- along with the prescribed rate of interest.

3. The respondent has denied all the allegations and raised several preliminary objections as follows:

- i) At the outset the respondent no.1 states that no company in the name of New World Residency Pvt. Ltd. exists and he has filed the reply on behalf of Ultratech Township Developers Pvt. Ltd.
- ii) The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present



matter because the application for grant of OC was made prior to the commencement of the Haryana Real Estate (Regulation & Development) Rules, 2017 which have come into force only on 28.07.2017. So this project cannot be categorized as On-going Project as per provisions of Rule 2(o) of the HRERA Rules, 2017. Hence this Authority does not have jurisdiction to entertain this complaint.

- iii) The Respondent no.1 has denied the jurisdiction of this Authority on the ground that the nature of the allegations of the complainant is such that the same could be filed only before the Adjudicating Officer u/s 71 of the Act.
- iv) The respondent no. 1 further states that the complainant is also guilty of repeated defaults in making payment of installments despite repeated reminders dated 02.08.2018, 26.11.2018, 27.12.2018. Since timely payment was the essence of the contract, the complaint is liable to be dismissed.
- v) The respondent no.1 states that the delivery of the apartment could not be made due to pendency of the application for Occupation certificate with the Director, Town & Country Planning department since 24.07.2017. He



denies any wilful default in delivery of the apartment. Thus, the delay in offering possession to the complainant is due to inaction of the Government or its agencies and covered under force majeure clause 11 of the ABA. He further states that the Occupation Certificate dated 17.07.2018 has been issued by the Director General, Town and Country Planning, Haryana (DTCP), which includes the tower in which the apartment of the complainant is situated.

vi) He states that the apartment is ready and an offer of possession has already been made on 18.06.2018 and the unit will be delivered to the complainant after he deposits the balance amount of Rs.6,65,503/-.

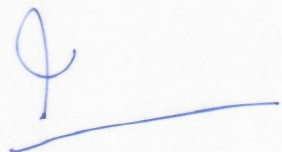
4. The Authority has considered the written and oral pleadings of both the parties in detail. It observes and orders as follows:-

i. First of all the respondent no.1 has challenged the jurisdiction of this Authority for the reason that since the application for grant of OC was made prior to the commencement of the Haryana Real Estate (Regulation & Development) Rules, 2017 which have come into force only on 28.07.2017, the project cannot be categorized as On-going Project as per provisions of Rule 2(o) of the HRERA



Rules, 2017. This objection is not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

- ii. Admittedly, the FBA between the parties was executed on 29.12.2012. As per clause 10.1 of the Agreement the delivery was to be made within 30 months from the date of execution of ABA. So there is no controversy in that regard that as per ABA, the deemed date of possession of the unit was in June,2015. Moreover, since the complainant has paid more than 95 % of the consideration before the deemed date of delivery of possession, therefore the respondent is liable to pay the delay compensation from the deemed date of delivery of possession till the offer of possession, complete in all respects along with occupation certificate is given to him. The payments made by the complainant to the respondent no.1 are also admitted. The respondent no.1 states he has received the Occupation Certificate on 17.07.2018. He states that the apartment is ready and even the letter of possession has been issued on




18.06.2018 and thus the complainant can take the delivery of the apartment after payment of the balance amount.

- iii. In these circumstances when the project is complete and the possession has already been offered, even though with delay of over three years, it does not justify refund of the money paid by the complainant. Complainant has chosen to be a part of this under construction project and some delay in such projects is not unexpected, for which the complainant can be compensated. This Authority has disposed of a bunch of petitions with the lead case **Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd.** There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.



5. The respondent is liable to pay the delay compensation from the deemed date of delivery of possession i.e 29.06.2015 till the offer of possession, complete in all respects along with occupation certificate is given to him. Accordingly the respondent no.1 is directed to issue a fresh statement of accounts to the complainant, after recalculating the amounts payable by the complainant. Further, the compensation payable to the complainant on account of delayed delivery of possession shall also be shown in the statement of accounts and the net payable /receivable shall be clearly written after accounting for the same.. The statement shall be issued by the respondent within a period of 45 days.

6. Learned counsel for the respondent no. 1 is disputing the levy of cot of Rs.27000/- on the ground that he has not received the copy of the complaint along with the notice. The Authority after perusal of the record found that the respondent No. 1 has filed an application dated 26.11.2018 to change their registered address from previous address M/s Ultratech Township Developers Pvt. Ltd. Hotel New World, 120 Milestone, NH-1, G.T Road, Karnal, Haryana to their present registered address M/s Ultratech Township Developers Pvt. Ltd. Adjoining Hotel Noor Mahal, Sector-32, Karnal-132001, Haryana. The notice as well as the complaint in the present complaint were sent to the fresh address



provided by the respondent no.1. The last date for filing of reply was 28.12.2018. The respondent failed to file the reply by the due date of reply i.e. 28.12.2018, despite of the delivery of the notice as well as the complaint therefore, cost of Rs.27,000/- was imposed on respondent.

As per the courier report the complaint was sent along with notice and was duly delivered to the respondent on 07.12.2018. The weight of the courier parcel was 600 grams as confirmed from the courier report. Thus, it stands established that the complaint was sent in the courier parcel along with the notice. In view of the above, the plea of the respondent no.1 seems frivolous and unjustified, hence the same stands rejected. Therefore, the respondent no. 1 is directed to deposit cost of Rs. 27,000/- with the office of the Authority.

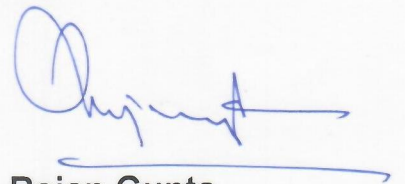
Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman