



Complaint no 1410 & 1412 of  
2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 1410 OF 2019

Dev Raj Garg

....COMPLAINANT(S)

VERSUS

RAS Development Pvt. Ltd.

....RESPONDENT(S)

### 2. COMPLAINT NO. 1412 OF 2019

Satish Garg

....COMPLAINANT(S)

VERSUS

RAS Development Pvt. Ltd.

....RESPONDENT(S)

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

Chairman  
Member  
Member

**Date of Hearing:** 11.08.2021

**Hearing:** 13th

**Present:-** Mr. Jagmohan Manchanda, Counsel for the complainant.  
Mr. Harish Kumar Garg, Counsel for the respondent

**ORDER (ANIL KUMAR PANWAR-MEMBER)**

1. The above titled complaints are being disposed of by this single order because the basic factual matrix and the reliefs claimed therein are similar and both these complaints pertain to the same project of the respondent.

2. The complainants had booked flats in respondent's project named "RAS Residency" situated in Karnal and as per Builder Buyers Agreement entered between the parties, the respondent was required to deliver possession of the purchased flats to the complainants latest by 20.07.2015.

3. Complainants' grievance is that the respondent had committed default in delivery of timely possession and offer of possession sent to them on 03.06.2019 was not acceptable to them because their flats were not complete at that time. Their prayer in the complaints is, therefore, for delivery of possession and award of delay interest.


4. Respondent's plea is that the project had received occupation certificate on 10.06.2019 and the units allotted to the complainants were complete and ready for possession when offer to them was sent but they themselves being in default of not occupying the flats, are not entitled to any relief.



5. The Authority had heard the parties at length on 23.01.2020 and vide order passed on the said date had made the following observations on various issues:-

“ i. *Offer of possession*

*It is an admitted fact that buyer's agreement was executed between the parties on 20.07.2012 and possession was supposed to be delivered by 20.07.2015 whereas possession was offered to the complainant on 03.06.2019. In the reply it is stated that promoter has applied for occupation certificate on 11.12.2017 and the same was received on 10.06.2019. Accordingly, vide order dated 22.08.2019, respondent was directed to compensate for the delay caused in terms of rule 15 of HRERA Rules, 2017. It is to mention here that term 'offer of possession' connotes a valid offer of possession duly supported with occupation certificate which in this case comes to 10.06.2019, as the stated offer of possession attained validity as soon as occupation certificate was granted to the said unit. Therefore, the principles laid down in order dated 22.08.2019 is revised to the extent that delay compensation shall be paid by the respondent to the complainant for a period ranging from deemed date of possession to the date of receiving of Occupation certificate i.e. 20.07.2015 to 10.06.2019.*



ii. *Interest/Compensation for the delay  
caused*

*Respondent's counsel has raised an objection that this Authority has awarded interest as delay compensation in terms of rule 15 of HRERE Rules, 2017 whereas the complainant has specifically prayed for delay compensation in terms of buyers agreement i.e 5 per sq ft of the super area. In this regard it is observed that the case of complainant is to be decided in terms of law applicable/having force at the time of adjudging/adjudicating the issues between the parties. Moreover, for the fault of advocate the allottee/litigant should not suffer. Therefore, the order regarding awarding of delay compensation in terms of rule 15 of HRERA Rules, 2017 still holds good considering the principles of equity and natural justice.*

iii. *Charges on account of VAT, Service tax,  
Electric meter security and GST.*

*After detailed discussion on the above stated charges which are mentioned at serial no 8 to 16 in the statement of account filed today by the respondent, charges are allowed to be recoverable from complainant are electric meter security, value added tax, service tax and service tax on others. It is pertinent to mention here that amount levied as service tax and service tax on others has already been paid by complainant. Regarding issue of GST charges, it is held that respondent is liable to charge for those taxes which were applicable at the time of*

*deemed date of possession. As GST charges came into force in year 2017, complainant is not liable to pay them.*

*iv. Further it is observed that an amount of Rs 44,845/- being charged by respondent as interest due to delay in paying instalments is not clarified/justified at the time of hearing by Ld. counsel of the respondent. He sought some time to clarify these charges. His request is allowed. He shall clarify the same on the next date of hearing. ”*

6. Today, the question debated before the Authority is regarding delay interest payable to the complainants on account of respondent's failure to offer possession on the agreed date. The deemed date of possession as earlier observed was 20.07.2015. The Authority has ruled in its earlier order dated 23.01.2020 that the offer of possession sent to the complainants on 03.06.2019 will be considered a valid offer with effect from 10.06.2019 on which date the project had received occupation certificate. So, the complainants are entitled to delay interest from 20.07.2015 to 10.06.2019.

7. The Authority in its order dated 23.01.2020 has observed that delay interest is payable as per Rule-15 of HRERA Rules, 2017. Learned counsel for the respondent has urged the Authority to revise the observations so made in the order dated 23.01.2020 because the complainant's own prayer in the complaint is for awarding delay interest of Rs. 5/- per sq. ft. of super area as mentioned in the Builder Buyer Agreement (BBA). The Authority regrets its inability to



accept respondent's contention on this point, for the reasons mentioned

hereunder:-

- i) It has been provided in BBA that the rate of interest payable to the respondent by the complainant for non payment of instalments on time shall be 21% per annum and the rate of interest payable to the complainant by the respondent for non delivery of possession on agreed date will be Rs. 5/- per sq. ft. of super area. The rate of interest calculated at Rs. 5/- per sq. ft. of super area works out much lower than the rate of 21% per annum. "Section 2(za) of the Real Estate (Regulation and Development) Act, 2016" mandates that the rate of interest payable by the promoter and the allottee on account of their respective defaults to discharge timely obligations towards each other, shall be same and there should be no disparity in these rates. The Authority thus owes a statutory duty to ensure parity in respect of rate of interest payable by the promoter and the allottee on account of delay occurring in discharge of their respective duties towards each other. The spirit of law enshrined in Section 2(za) for maintaining equality in the rate of interest cannot



be allowed to be vitiated merely because different rates of interests were prescribed in BBA.

(ii) Significantly, BBA in this case was not executed on the day when the respondent had received booking amount of Rs. 1,10,000/- in the year 2010. Rather, BBA was executed in the year 2012 when the allottee had already parted with a hefty amount of Rs.5,25,056/- in favour of the respondent. So, no choice was left with the allottee but to sign a BBA containing dis-proportionate rate of interest for the allottee and the promoter for their respective default in discharge of timely obligations. Neither any justification for charging unequal rate of interest was spelt out in the BBA nor the respondent's counsel at the time of arguments could furnish such justification. The spirit of law enshrined in Section 2(za) of the RERA Act for maintaining parity in the rate of interest payable to the promoter and the allottee, <sup>thus</sup> deserves to be strictly adhered.

iii) The matter can be further scrutinized even from a different angle. An allottee irrespective of the rate of interest stipulated in BBA, after coming into force of the RERA Act, draws a statutory right under Section 2(za) for payment of

interest at the rate on which the promoter has been charging interest from him on the amounts of instalments not paid on time. Such statutory right of allottee can not be defeated merely because said allottee due to ignorance <sup>on</sup> his own part or on the part of his counsel had demanded interest as per BBA rather than demanding the same at the rate statutorily permissible to him. Section 2(za) casts a duty upon the Authority to ensure parity between the rate of interest payable by the promoter and the allottee and therefore, the Authority irrespective of the prayer made in pleadings, must grant interest to the allottee at the statutory rate of interest.

8. For the above mentioned reasons, the Authority has no hesitation to conclude that the complainants are entitled to delay interest on the already paid amounts viz. Rs. 17,35,668/- paid by complainant Dev Raj Garg and Rs. 17,35,668/- paid by complaint Satish Garg at the rate prescribed under Rule 15 of the HRERA Rules from the deemed date of possession i.e. 20.07.2015 to the date of giving valid offer of possession i.e. 10.06.2019.

9. Parties have submitted their respective calculations about the amount of delay interest. The Authority finds that the complainants have made calculations at compounded rate of interest while the respondent has made the calculations at simple rate of interest. Rule-15 of HRERA Rules does not permit charging of



compounded rate of interest, and therefore, the calculations made by the complainants are not acceptable. The exact amount of delay interest was got calculated from Accounts Branch of the Authority and the same in respect of Complainant Nos. 1 and 2 work out to an amount of Rs.6,28,421/- and Rs.6,28,421/- respectively.

10. Accordingly, complainant No.1 is held entitled to delay interest of Rs 6,28,421/- and complainant No. 2 is entitled to delay interest of Rs 6,28,421/-. Respondent is directed to pay the same to the complainants within 45 days from the date of uploading of this order on the website of the Authority.

11. The Authority in its order dated 23.01.2020 had observed that the Electric Meter Security is recoverable from the complainants. The respondent has demanded Rs 20,000/- for said security. Learned counsel for the complainants has argued that said amount is not payable because electric connection charges (ECC) are included in the amount of basic sale consideration. The Authority regrets its inability to accept the argument because Clause 1.2(ii) of BBA emphatically provides that the cost incurred for drawing of electricity from main line to the units allotted to the complainants was not included in sale consideration. If so, the complainants are liable to pay the electricity meter security to the respondent in addition to basic sale price of the purchased units.



So, the amount of Rs. 20,000/- is held payable by the complainants to the respondent.

12. The EDC & IDC/Allied charges of Rs 7800/- is being charged by the respondent on account of external development works to be carried out by the State Government. Such charges are levied as per the prescribed norms of the Town and Country Planning Department and since the promoter owes a duty to recover these charges and passover the same to the concerned department, there is no scope to hold that the same are not payable by the complainants. Respondent is accordingly allowed to recover EDC & IDC/Allied charges from the complainants.

13. The dispute concerning complainant's liability to pay Rs. 44,845/-, which is being charged by the respondent as interest on the amount of instalments not paid on time, was kept pending for adjudication because respondent's learned counsel on earlier hearing could not furnish justification for charging the said amount. The statement of account which the respondent has thereafter filed on 17.02.2021 reveals that each of the complainants has defaulted in paying two instalments of Rs.73,125/- and another of Rs.2,16,250/- on time. The amount of interest calculated on the defaulted instalments per Rule-15 of HRERA Rules, works out to Rs. 44,845/- against each complainant. So, the respondent has raised valid demand of Rs. 44,845/- each against the complainants and this



amount is held payable to the respondent on account of complainant's failure to pay timely instalments.

14. The Authority in its order dated 22.08.2019 had observed that the respondent had already removed the deficiencies pointed out by the complainants at the time of site inspection. So, the complainants have now no legitimate objection for not accepting the possession and the respondent is duty bound to deliver them possession on payment of balance outstanding amounts.

15. The respondent per statements filed by him on 17.02.2021 has shown an amount of Rs 3,28,993/- payable by each of the complainant. All the amounts reflected in the said statements have been adjudged as payable for the reasons discussed in preceding paragraphs of this order. The Authority in order dated 23.01.2020 has already held that the amounts levied as 'service tax' and 'service tax on others' have already been paid by the complainants. Said amounts work out to a total sum of Rs 64,553/- . After deduction of said amount, the balance liability of the complainants per statement filed on 17.02.2021 would be Rs 2,64,440/- each (Rs 3,28,993/- - Rs 64,553/-). The Authority has adjudged a sum of Rs 6,28,421/- payable to each complainant as delay interest. After adjustment of said amount, nothing would remain payable by complainants and each complainant would be rather entitled to receive Rs 3,63,981/- from the respondent. So, the respondent is directed to deliver possession to the



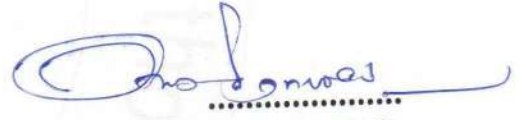
complainants and also to pay Rs 3,63,981/- to each of the complainant within 45 days of the uploading of this order.

16. No other point was urged before this Authority by either of the parties except those already adjudicated.

17. Above cases are **disposed of** according in above terms. Order be uploaded on the website of the Authority and files be consigned to the record room.



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**RAJAN GUPTA**  
[CHAIRMAN]



.....  
**ANIL KUMAR PANWAR**  
[MEMBER]



.....  
**DILBAG SINGH SIHAG**  
[MEMBER]