



Complaint no. 1319 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1319 OF 2018

Rahul Juneja

....COMPLAINANT(S)

VERSUS

M/s Omaxe Pvt Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 20.07.2021

Hearing: 19th

Present:- Mr. Syed Firdaus, Counsel for counsel for the complainant
Mr. Sanjeev Sharma, Counsel for the respondent through video conferencing.

ORDER (RAJAN GUPTA-CHAIRMAN)

Complainant today has filed an application essentially re-stating his arguments earlier put forward and with the prayer that he should be given possession of his apartment along with delay compensation amounting to Rs.1,66,59,358.52 and also passing order for waiving off maintenance charges levied by the respondent, because possession of the apartment is yet to be handed over to him.

Today is 19th hearing of the matter, the Authority has given its findings on various contentious issues in its orders dated 19.1.2021, as reproduced below:

“1. Complainant herein is seeking possession of booked unit. It was submitted by complainant that the area of the unit has been unilaterally increased from 5025 sq. ft to 5520 sq. ft. With regards to the increase in area respondent was directed by the Authority to provide component wise detail of alleged increase in area to complainant. Learned counsel for the complainant had then stated that complainant was ready to take possession upon payment of enhanced amount towards increase in area, provided the unit was complete.

2. Vide order dated 31.10.2019 respondent was directed to offer possession of the unit after removing deficiencies and carrying out finishing work. A statement of accounts was submitted by the respondent in respect of all payable amounts inclusive of the interest on account of delayed payments chargeable from complainant at the time of taking over of possession amounting to Rs. 57,40,657/-.

3. Today, the complainant's counsel stated that the remaining dues payable by complainant to the respondent works out to be far less than the final amount which is payable to complainant as delay compensation. The amount of delay compensation payable to complainant is quoted by respondent as approx. Rs. 1.28 crores whereas complainant claims it to be approx. Rs.1.50 crores.

4. After hearing both parties, the Authority makes following observations and directs further:

i) The issue regarding super area will settle once report of local commissioner is received. On the basis of that final cost

to be paid by complainant will be worked. Law associate shall send a copy of the report to both parties when received.

ii) Admittedly, complainant has agreed to pay approx. Rs. 57 Lakh to the respondent and he is to be paid Rs. 1.28 Cr. as delay compensation as per statement of accounts filed by respondent. Though, complainant is asking for approx. Rs. 22 lakh more.

5. Therefore, keeping in mind above observations, respondent is directed to remove deficiencies and carry out any remaining work within 30 days. Thereafter, respondent shall issue a fresh offer of possession to complainant after duly deducting Rs. 57 lakh from Rs. 1.28 Cr and pay him the remaining amount as delay compensation. The claim related to Rs. 22 lakh remains subjudice, which is further subject to variation depending upon change in super area as per the findings of the report of the local commissioner. Decision with regards to the same shall be taken on next date of hearing.

'Planner Plus' had been appointed as Local Commissioner to resolve the issue of super area. Site visit took place on 15.01.2021; however, in order to prepare the report certain additional documents were sought by the local commissioner from the respondent. Therefore, Mr. Sanjay Verma (Local Commissioner) through email sought additional time to submit his report. Same had been granted to him.

6. With these directions, the matter is adjourned to 11.02.2021."



2. With regard to dispute of super area, a Local Commissioner was appointed who had submitted its report, a copy of which had been supplied to both the parties. The Authority in its orders dated 18.2.2021 had ordered as follows:

“In both the captioned complaints, Authority vide order dated 20.02.2020 had decided to appoint a local commissioner to resolve the issue with regards to super area. The site visit took place on 15.01.2021 and the report of the local commissioner has today been placed before the Authority.

2. On perusal of the said report, it is observed that the area of Penthouse no. 1702 in complaint no. 1 works out to be 5520 Sq. Ft. and area of Penthouse no. 1703 in complaint no. 2 works out to be 5450 Sq. Ft. Parties are directed to collect report of local commissioner from the office and exchange objections, if any, with each other well before the next date of hearing.

3. Authority issues direction to a senior representative, of the respondent company, who is in a position to provide information with regards to hand over of possession to be present through video conferencing on next date of hearing as well.

4. Case is adjourned to 09.03.2021”

3. Further this matter was heard on 9.3.021 when the Authority had ordered as follows:

“3. Factual position reveals that the project has received occupation certificate for the tower in question on 28.10.2016 and the learned counsel for the respondent has orally submitted that possession was offered to the complainant on 13.02.2020.



However, Mr. Rahul Juneja, complainant in present case submits that the flat is still not in a habitable condition and therefore, not suitable for possession. In this regard complainant is directed to submit latest photographs of the apartment to support his claim that apartment is not ready for possession. Further, Authority directs the respondent to place on record the said offer of possession.

On the next date, the Authority will decide whether the offer of possession given by the respondent was a legally valid offer of possession keeping in view the principles laid down in Complaint no. 903 of 2019- Sandeep Goyal Vs Omaxe India Pvt. Ltd

4. Further, both parties are directed to submit fresh statements of accounts with regards to the payable and receivable amounts till date of this order keeping in view the increased area taken to be as correct.”

4. A perusal of aforesaid orders passed on different dates reveals that all the issues in the matter have already been decided. The only question remains is whether now the apartment is ready for taking over of possession. Along with the application dated 15.07.2021 complainant had filed certain photographs of the apartment from which it can be made out that certain finishing touches are yet to be given to the apartment for making it fully habitable.

5. Since all the contentious issues have already been decided by the Authority in the afore-mentioned orders. Now this matter is disposed of with following directions:

(i) The respondent shall give a fresh offer of possession to the complainant within 30 days of uploading of this order on the website of the Authority.

(ii) The offer of possession shall be accompanied with delay interest payable to the complainant by the respondent from deemed date of possession i.e 07.12.2014 upto the date of passing the orders dated 20.07.2021 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 9.30% . The exact amount of delay interest has been got calculated which works out to Rs 1,44,39,405/-. The complainant shall take over the possession of the apartment on the due date. The respondent shall ensure that apartment is ready in all respects and there remains no defect. However, if any, defects still remain complainant shall collect a proper proof thereof with the help of a Chartered Engineer and may file a fresh complaint before this Authority for rectification of those defects.

Upon perusal of the complaint file it is observed that total payment made by complainant to the respondent has been mentioned as Rs 2,50,09,675/-. However, in the latest application submitted by the complainant the said amount is quoted to be Rs

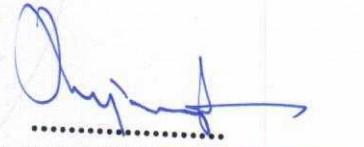
2,45,42,649/- . In view of the dispute arising in regard to exact amount paid by the complainant, Authority is relying upon the account statement dated 21.08.2019 filed by respondent wherein admitted amount paid by the complainant has been shown as Rs 2,44,12,177/-. Respondent is however entitled to recover Rs 57 Lakh from the delay interest as decided in order dated 19.01.2021.

(iii) No maintenance charge shall be payable by the complainant to the respondent upto the date of handing over of the possession. These charges however shall be payable after a fresh offer of possession has been made in accordance with this order.

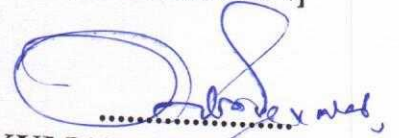
6. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 2,34,56,450/-. Said total amount has been worked out after deducting taxes paid by complainant on account of service tax amounting to Rs 3,52,727/- and Rs 6,03,000/- paid on account of EDC. These charges have been recorded as per the receipts annexed by the complainant in application dated 11.09.2019 . The amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount

to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession

7. As per order dated 20.02.2020, cost of the appointment of local commissioner fixed at Rs 35,000/- plus GST i.e Rs 41,300/-, is decided to be equally borne by both parties i.e Rs 20,650/- each for the reason that the increase in area of the apartment is within the permissible limit. Cost of appointment of local commissioner should be deposited in the office of the Authority within seven days of uploading of this order.
8. Disposed of in above terms. File 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]