



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1154 OF 2020

Babita Mittal

....COMPLAINANT(S)

VERSUS

M/s Suncity Projects Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 25.11.2021

Hearing: th

Present : Mr. Anshul Mangla, Learned counsel for the complainant through video conferencing.

Mr. Kamal Dahiya, Learned counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

Initiating his pleadings, learned counsel of the complainant, submitted that complainant booked a flat bearing no. 1502, Tower 10 A measuring 2150 sq. ft. in respondent's project named 'Suncity Parikarma' in 2010. Apartment buyer Agreement was executed on 27.09.2011. Basic sale price of the flat was ₹96,75,000/- against which complainant had paid ₹86,72,559/- by the year 2016. As per clause 25 of the agreement, possession of the constructed flat should have been handed over by September 2014. However, after a delay of more than three years, complainants received an offer of possession on 01.09.2017 accompanied with a huge additional demand of ₹92,04,375/-. Feeling aggrieved, complainant has filed present complaint seeking possession

of booked flat alongwith delay interest for delay caused in handing over of possession.

2. This matter was heard at length on hearing dated 20.07.2021, whereby Authority had made following observations;

“3. After hearing both the parties and perusal of relevant documents, the Authority observes that complainant had purchased apartment under construction linked plan. As per the builder-buyer agreement the completed apartment should have been delivered by the year 2014. Admittedly, however, the occupation certificate was received in August,2017. The respondents, however, kept raising the demands for payment from the complainant from the year 2012 onwards. The complainant serviced most of the demands and accordingly paid an amount of about Rs.87.18 lakhs by the year 2016 against the basic sale price of Rs.96.75 lakhs. The complainant alleges that stage of construction had never been informed to the complainant.

4. Authority observes that in the face of the facts that when over Rs.87.00 lakhs stood paid by 2016, well before the completion of the project in middle of 2017, how could demand of interest amounting to over Rs.66.00 lakhs be raised by the respondent against the complainant in September,2017 as is evident from the demand letter dated 1.9.2017(Annexure C-19). This amount further swelled to Rs.91.84 lakhs by year 2020. Apparently the demand raised by the respondent towards interest is exorbitant unjustified. The respondents have given no basis or detail as to how they have arrived at this figure, and what rate of interest has been applied? Further, whether

demands raised from time to time were in accordance with the actual construction work executed on ground has also not been stated clearly by the respondents.

This Authority has already laid down a principle in complaint No 903 of 2019 Sandeep Goyal Vs Omaxe India Pvt. Ltd. that if an offer of possession is accompanied by exorbitant and unjustified demands, such offer of possession shall not be treated as valid offer.

5. *An opportunity is hereby granted to the respondent to submit on excel sheet the amount by which the complainant defaulted in making timely payments and the delay interest applied by the respondent on the said default. The Authority has no hesitation in expressing its tentative opinion that the demand raised by the respondents appear unconscionable and unjustified. The Authority would expect the respondent to revise the same in just and fair manner and in accordance with the principles laid down by the Hon'ble Apex Court of the country as well as by this Authority from time to time. Further , the delay interest payable by the respondent to complainant for delay in offering possession should also be calculated at the same rate and placed before this Authority on the next date.*

The Authority further adds that in the face of facts and circumstances of this case, the cancellation done by the respondent cannot be sustained. Final orders in this regard however will be passed on the next date after finally hearing both the parties.

5. *Adjourned to 31.8.2021 for further arguments."*



3. Case was adjourned for arguments on the issue of payment of delay interest to the complainant and other issue whether respondent is entitled to charge delay interest from the complainants in case complainants have defaulted in making timely payments.

4. Initiating his arguments on behalf of complainants, Shri Abhineet Taneja, learned counsel for the complainant submitted that as already observed by the Authority complainant could not have accepted offer of possession dated 01.09.2017 because said offer was accompanied with unjustified and illegal demand to the tune of ₹92,04,375/ out of which ₹66,04,592/- alone was charged on account of delayed payment interest. Complainant is willing to take possession of the flat upon payment of balance sale consideration. It is only the interest component of ₹66,04,592/- out of the impugned demand against which complainant has raised objections.

He further submitted that payment plan opted by complainant was a construction linked plan. But respondent failed to inform complainants of status of construction achieved at the time of raising demands. By the year 2016, complainant had already paid approx ₹ 87 lakh to the respondent whereas project received occupation certificate only in the year 2017. Further possession of the flat should have been delivered by 2014. More than six years have passed and respondent is still utilising the money paid in lieu of the flat in question whereas complainant has been precluded from taking possession of the flat on account of frivolous demands being made by the respondent. Therefore, for the

delay caused in handing over of possession , complainant is entitled to relief of delay interest from deemed date of possession till date alongwith possession of flat.

5. On the other hand, learned counsel for the respondent, Shri Kamal Dahiya, refuting the contentions put forth by complainants' counsel submitted that respondent offered possession to the complainants on 01.09.2017 after duly obtaining occupation certificate. Offer of possession sent to the complainant was valid as it was sent after obtaining occupation certificate. He further pleaded that impugned demands raised at that point of time were in accordance with builder buyers agreement entered between both the parties. In case complainant had any objections to the amount of interest being charged on account of delayed payments, she could have assailed the interest part and taken possession of the flat. However, complainant did not correspond with the respondent. Complainant herself was at fault here and thus not entitled to any relief. Respondent is therefore entitled to charge holding and maintenance charges from the complainants as possession has already been offered

6. He further submitted that respondent is also entitled to charge delayed payment interest from the complainants since all demands raised by the respondent were in accordance with construction linked plan. It is evident from various demand letters annexed from page 63 to 68 in the complaint file whereby each of the demand letters shows stage of construction work and the was duly communicated.

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7. After considering rival contentions and perusal of documents placed on record, Authority observes that offer of possession sent to the complainant on 01.09.2017 cannot be called a good offer because exorbitant demands being raised by the respondent alongwith said offer. But complainant herself failed to correspond with the respondent and raise objections against interest being charged on account of delayed payments despite issuance of various reminder letters sent to her by the respondent. Onus was on complainant to honour demands raised in accordance with the terms of the buyer's agreement, if she had any reservation regarding payment, she should have taken possession under protest against charging of high rate of delay interest

8. Authority also observes categorically that in present case both parties were at fault and therefore it would be just and fair that rights and liabilities of both parties are settled as in 2017. Accordingly, this period from 2017 onwards will be considered zero period considering the principle of equity and justice. Authority does pass this order as if it was adjudicating upon respective rights sitting in the year of 2017.

9. As per the builder buyers agreement entered between the parties, possession of the flat should have been handed over by 2014. However, actual offer of possession was sent to the complainants on 01.09.2017. Therefore, for the delay caused in handing over of possession, complainant is entitled to delay interest for the period from deemed date of possession i.e 27.09.2014 till offer of possession i.e 01.09.2017 as per Rule 15 of the HRERA Rules 2017, on

the amount paid by them till the deemed date of possession. This amount shall be calculated @ 9.30% i.e SBI MCLR as on today + 2% . The exact amount of delay interest was got calculated from Accounts Branch of the Authority and the same works out to an amount of ₹ 22,94,603/-

10. Further complainant should have accepted said offer and assailed the impugned demand on account of interest on delayed payments. As per demand letters placed on record from page 63 to 68 of complaint it appears that demands were raised consistent with progress of construction work at the site. Authority also observes that respondent had been communicating stage of construction to the complainants and demanding remaining amounts as per agreed plan but complainant failed to service those demands raised from 2016 onwards. Therefore, for said failure in making payments by the complainants, respondent is entitled to charge delay interest from the complainants from the date when particular demand was due till the date of offer of possession i.e 01.09.2017 in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR + 2%(= 9.30%)

11. In the interest of equity and justice, this matter is being dealt with as if it was being adjudicated in the year 2017 , therefore demands raised on account of holding charges and maintenance charges from the year 2017 onwards will not be payable. Thus demands raised in this regard are quashed. Accordingly, after adjusting payable and receivable amounts, respondent will issue a final statement of accounts in accordance with the principles laid in this

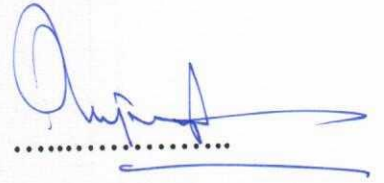
order and handover possession to the complainants within 45 days of uploading of this order. Complainants shall pay the balance due amount and take possession of their booked flat.

12. Delay interest mentioned in aforesaid paragraph has been calculated on total payed amount of Rs 84,16,541/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of Service tax amounting to Rs 2,56,018/- from total paid amount of Rs 86,72,559/-. Total paid amount has been calculated as per the receipts annexed by the complainant and service tax has been deducted as per the demand letter sent alongwith offer of possession. The amount of such taxes is not payable to the builder, 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, interest thereon becomes payable only to the department concerned and 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 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.

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13. If the complainant feels aggrieved from the statement of accounts to be issued by the respondent, she will be at liberty to approach the Authority for assailing the said statement of accounts.

14. Complaint is disposed of in the above terms. File be consigned to the record room after uploading of the order on the website of this Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]