



Complaint no. 2307 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2307 OF 2019

Kamal Kishor Singh and Sangeeta Singh .....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd. ....RESPONDENT(S)

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

**Chairman  
Member  
Member**

**Date of Hearing: 15.09.2021**

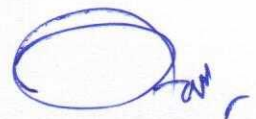
**Hearing: 11th**

**Present: - Mr. K. K Singh, Complainant in person  
Mr. Raj Kishore Singh, Representative of complainant  
Mr. Kamal Dahiya, Learned counsel for respondent**

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

1. Complainants booked a plot measuring 200 sq. yds. in respondent's project named "Suncity Rohtak" situated in Sector-36, Rohtak and allotment letter in his favour was issued on 22.08.2008. Complainant has already paid Rs. 10,68,354/- to the respondent against basic sale price of Rs 9,65,800/-. Builder Buyer Agreement was executed between the parties on 27.01.2009. As per the said agreement deemed date of possession was in January 2010. However, actual possession was offered to the complainant on 01.02.2016 alongwith a demand of Rs 4,67,567/-.

2. Complainants' grievance is that they had contacted the promoter and have also sent letters challenging certain components of the demand so raised but the respondent has not carried out necessary rectifications. Rather, the respondent sent another letter dated 04.02.2019 raising further demand for sum of Rs 9,68,845/-. It has been further alleged that the respondent had subsequently orally informed the complainants that their allotment has been cancelled. So, the complainants have filed the present complaint seeking direction against respondent to deliver possession of the booked flat and waive off unreasonable demand.
3. Respondent in its reply has averred that the delay in handing over possession was due to order dated 05.04.2010 passed by Hon'ble High Court of Punjab & Haryana in CWP No. 13611 of 2009 titled as "Kali Ram & Ors. Vs State of Haryana & Ors" whereby he had directed to maintain status-quo regarding the development activity at the project site and this had resulted in delayed completion of development works at site. Possession was offered to the complainant on 01.02.2016 after completion of development works. Despite issuance of various reminders, the complainants have failed to pay outstanding dues. So, respondent was constrained to issue final notice on 04.02.2019 for cancellation of the allotment of plot.
4. The Authority had heard both the parties on 12.01.2021 and vide order passed on the said date had made the following observations :



*“The Authority after considering the rival contentions observes that the complainant has paid an amount of Rs.10,68,354/- against the basic sale price of Rs. 9,65,800/- upto the year 2016. Till 2016 the complainant has been making all due payments in time in accordance with the demands raised by the respondent. In February, 2016, however, the respondent raised a demand of about Rs.9,68,845/- lakhs inclusive of EDC charges. The complainant was not satisfied with Such demands but the respondent never justified those demands to the complainants. The respondent in February, 2019 simply issued a reminder letter and also converted this notice into a notice for cancellation of the plot. No further correspondence was made by the respondent with the complainant. The respondent also did not return huge amount already paid by the complainant to the respondent amounting to over Rs.10 lakhs. The Authority observes that the complainant had paid the booking amount of Rs.2,91,000/- to the respondent in the year 2005. Most of the money has been paid to the respondent by the year 2010 and same is being used by the respondent for a long period of time. As per the allotment agreement the deemed date of possession was in January,2010. However, actual offer of possession was made in 2016 alongwith unjustified demands. Further, cancellation of said property was not formally conveyed to the*



*complainant. Besides this the total amount paid by complainant amounting to Rs. 10,68,354/- is still being retained by respondent.*

*Keeping in view the aforesaid factual position, the Authority prima facie is of view that the cancellation of allotment by respondent does not hold good in the eyes of law as amount paid by complainant is still retained by respondent without any justification. Pertaining to the issue of delay interest both parties are directed to file their respective statement of accounts of payable and receivable amounts at the rate prescribed in rule 15 of HRERA rules 2017. Both parties shall exchange claims before the next date of hearing. Respondent is further directed to offer possession to the complainant.”*

5. Prima-facie view expressed by this Authority in the above reproduced order on the point that the cancellation of the allotment by the respondent does not hold good in the eyes of law deserves to be confirmed unless the respondent is able to prove the contrary. Learned counsel for the respondent has not been able to convince the Authority even today as to how the cancellation was justified when the respondent had already collected an amount of Rs. 10,68,354/- against the basic sale price of Rs. 9,65,800/- upto the year 2016 and he has not been able to complete the project even today which otherwise per terms of the Builder Buyer Agreement (BBA), was required to be delivered in January, 2010. So, the Authority confirms its earlier expressed view and



declares that the cancellation of the allotment is unjustified in the eyes of law and not binding on the complainants.

6. The complainants do not wish to withdraw from the project and are interested only to obtain possession as and when the project is ready. The offer of possession sent to the complainants on 01.02.2016 cannot be considered a valid possession because the same was not accompanied by part/completion certificate. Such certificate is not even produced on the record by the respondent till date and the offer, therefore, is held to be invalid.

7. In the aforesaid scenario, the only relief permissible to the complainants is to award them delay interest from the deemed date of possession to the date when a valid offer of possession will be sent after obtaining part/completion certificate. Such relief to the complainants is warranted in view of the provisions of Section 18 of the HRERA Act which renders a promoter liable to pay interest to the allottee for every month of delay till handing over the possession if he fails to complete the project and deliver possession on the date agreed between the parties. Such interest per provisions of Section-18 has to be awarded at the rate prescribed in Rule-15 of the HRERA Rules, 2017.

8. It has been argued that the respondent is attempting to fasten a liability upon the complainants for paying holding charges because they had not accepted the offer of possession dated 01.02.2016. Since the offer so made has been held to be invalid, the Authority has no hesitation to conclude that the

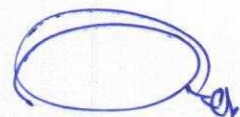
respondent is not entitled to claim holding charges till a valid offer is made after obtaining part/completion certificate. So, holding charges, if any demanded by the respondent, are held as not payable by the complainants,

9. The Authority has got the delay interest calculated from its accounts branch on the already paid amount from the deemed date of possession to the date of this order. Said amount of interest has been worked out to Rs. 9,40,594/- till the date of the order and to Rs.6,736/- for each month of delay.

10. So, the respondent is directed to pay upfront interest of Rs. 9,40,594/- to the complainants within 90 days from the date of uploading of this order.

11. Respondent's liability for paying the interest of Rs.6,736/- for each month of delay will commence with effect from 15.12.2021 and it shall be paid till a valid offer of possession is made to the complainants after obtaining part/completion certificate.

12. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 8,69,220/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of part EDC/IDC amounting to Rs 1,99,134/- from total paid amount of Rs 10,68,354/-/- These charges have been recorded as per the receipts annexed by the complainant in the complaint file . 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.

13. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

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.



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**RAJAN GUPTA**  
[CHAIRMAN]



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



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**DILBAG SINGH SIHAG**  
[MEMBER]