



Complaint no. 604 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 604 OF 2019

Priti Singhal & anr

....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd.

....RESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 30.11.2021

Hearing: 17th

**Present: - Mr. Abhineet Taneja, Learned counsel for the complainant.
Ms. Kamal Dahiya, Learned counsel for the respondent.**

ORDER (RAJAN GUPTA-CHAIRMAN)

Complainants in present case had booked a flat in the project of the respondent namely "Parikrama" situated in Sector-20, Panchkula in the year 2010. Total sale consideration of the flat including EDC/IDC component was ₹ 81,25,580/- against which complainants had made a payment of ₹52,29,686/- to the respondent by 08.05.2012. Flat buyer agreement was executed on 11.01.2011. As per clause 25 of the agreement, possession of flat should have been handed over by 10.01.2014, however actual offer of possession was made

to the complainants on 01.09.2017 alongwith additional demand of ₹ 58,92,448/- out of which ₹31,99,575/- was charged on account of delayed payments interest @ 24% per annum. Feeling aggrieved complainants have filed present present complaint seeking possession of their booked flat alongwith delay interest for delay caused in handing over possession and quashing certain unjustified demands.

2. This matter was last heard on 31.08.2021 when vide order passed on said date Authority had made following observations;

‘5. *In regard to the offer of possession sent to the complainant on 01.09.2017, even though said offer was sent after duly obtaining occupation certificate, but alongwith the offer respondent also demanded an additional amount of ₹ 58,92,448/- out of which about ₹ 32 lakh was charged on account of delayed payment interest. This interest had been calculated @ 24%. Such an exorbitant demand could not be expected to be paid by complainant after having already paid nearly 70 % of the total sale consideration of the unit in 2012. Applying the principles laid down in Complaint no. 903 of 2019 titled Sandeep Goyal Vs Omaxe India Pvt Ltd, the said offer of possession accompanied with huge unreasonable demands cannot be considered a good offer and allottee could not be forced to accept such an offer.*

6. *Next issue is in regard to delay interest to be paid to the complainant for delay caused in handing of possession. Possession of the plot booked by the complainant should have been handed over by 10.01.2014 however actual offer of possession was sent to the complainant on 01.09.2017 . Therefore, for the delay in*

handing over of possession , complainant is entitled to delay interest for the period from deemed date of possession i.e 10.01.2014 till actual offer of possession i.e 01.09.2017 as per Rule 15 of the HRERA Rules 2017.

Both parties however may put forward their arguments in regard to payment of delay interest to the complainant for the period 02.09.2017 till now.

7. Regarding charging of holding and maintenance charges, the Authority is of tentative view that same cannot be charged because the original offer of possession was not a good offer and the possession is yet to be handed over. Both parties may however put forth their final arguments in this regard.

8. Authority considers that respondent is entitled to charge delay interest from the complainant if the complainant has defaulted in making timely payments as per agreed schedule. The onus however will be upon the respondent to prove with documentary evidence that payments made by the complainant were delayed and not in accordance with agreed payment plan. Respondent shall file details of the notices sent to the complainant for payment of each instalment as also the proof of service of said notices upon the complainants alongwith the receipt of payments made by the complainant and whether the said payments were made on due date or not. If it is proved that complainant had defaulted in making payments then the respondent shall be entitled to charge delay interest from the complainant as per Rule 15 of HRERA Rules 2017 for the said period. Arguments in this regard should be put forth on the next date.

9. Adjourned to 30.11.2021 ,

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3. Case was adjourned for today for arguments on remaining issues, essentially payment of delay interest to the complainant for the period 02.09.2017 till now ; charging of holding charges and maintenance charges and 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 complainants submitted that as already observed complainants could not have accepted the offer of possession dated 01.09.2017 because said offer was accompanied with unjustified demand to the tune of ₹ 58,92,448/- out of which ₹31,99,575/- alone was charged on account of delayed payment interest . Even in the year 2017 complainants were ready and willing to take the possession of flat upon payment of outstanding amount. It was only the interest component of ₹ 31,99,000 out of the impugned demand to which the complainants had raised objections. In 2017 prior to RERA, complainants had filed a complaint before Hon'ble State Commission Haryana, which had to be withdrawn on account of lack of pecuniary jurisdiction. Then in the year 2019 complainants filed present complaint before this Authority seeking relief of possession after quashing alleged unjustified demands. It was argued that there has been no delay on part of complainants, who are still willing to take possession upon payment of balance sale price after quashing of illegal demand made on account of alleged delay in making payments.



He further submitted that the payment plan opted by complainants was construction linked plan. However, at the time of raising demands respondent failed to inform complainants of status of construction achieved. By the year 2012 complainants had already paid approx 70 % of the total sale consideration to the respondent whereas the project received occupation certificate only in the year 2017. More than 8 years have passed and respondent is still utilising this amount whereas complainants are being precluded from taking possession of the flat on account of frivolous demands being made by the respondent. Since 2017 complainants are going ahead with litigation to claim relief against respondent. Therefore, complainants are entitled to relief of delay interest from 02.09.2017 onwards till date alongwith possession of flat.

5. Learned counsel for complainants also submitted that the demands on account of holding charges and maintenance charges being raised by the respondent are liable to be quashed. Said demands are leviable only when a allottee fails to take possession however, in present case complainants were precluded from taking over possession by way of raising unjustified demands. Since there has been no default on part of complainants therefore, respondent should not be allowed to charge holding charges and maintenance charges from the complainant.

6. Learned counsel for respondent, Shri Kamal Dahiya, refuting the contentions put forth by complainants' counsel submitted that the respondent offered possession to the complainants on 01.09.2017 after duly obtaining

occupation certificate. The impugned demands raised at that point of time were in accordance with builder buyers agreement entered between both the parties. However, upon considering the requests made by complainants, respondent on 09.10.2017 had reduced the impugned demand to ₹ 15,50,000/- as a goodwill gesture. Complainants should have accepted said offer and taken possession of their flat. Respondent is therefore entitled to charge holding and maintenance charges from the complainants as possession has already been offered to them and alleged unjustified demands were substantially reduced.

7. 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 as Annexure R7 in the reply wherein alongwith each of the demand letters stage of construction work was duly communicated. It is true that the project received occupation certificate only in the year 2017 however, the tower in which flat of complainants is situated was completed much earlier and accordingly said demands were raised as per the stage of construction achieved which the complainants have defaulted in paying, therefore, respondent is entitled to charge interest on account of delay in making timely payments.

8. 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 of the

exorbitant demands being raised by respondent alongwith said offer. However, considering request of complainants, respondent had reduced demand on account of delayed payment interest from ₹ 31,99,000/- to ₹15,50,000/- upon the request of the complainants. In the light of the fact that said offer was made after duly obtaining occupation certificate and respondent had voluntarily reduced the interest component accompanying the impugned demand to ₹ 15,50,000- offer of possession dated 01.09.2017 appears to be a reasonable offer.

9. Keeping in view the fact that this matter remained pending for the same cause of action before different Courts/Authorities since 2017 where both parties were litigating on their rights. Accordingly, this period from 2017 onwards will be considered zero period in the interest of equity and justice. Authority will pass this order as if it was adjudicating upon respective rights sitting in the year 2017.

10. As per the builder buyers agreement entered between the parties possession of the flat should have been handed over by 10.01.2014. However, actual offer of possession was sent to the complainants on 01.09.2017. Therefore, for the delay caused in handing over of possession, Authority confirms its views already expressed in its order dated 31.08.2021 that complainants are entitled to delay interest for the period from deemed date of possession i.e 10.01.2014 till actual 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% . This amount works out to ₹ 17,31,660/-

11. Demand letters placed on record at Annexure R7 from page 46 to 53 of reply have been taken into account which shows that they were raised consistent with progress of construction work at the site. The argument of complainants that they did not receive those demands does not appear correct. Authority will presume correctness of those documents and accordingly observes that respondent had been communicating stage of construction to the complainants and demanding remaining amounts as per agreed plan. It appears that complainants failed to service those demands raised between the year 2012 to 2017. Therefore, for the said failure in making payments by 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%)

12. 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.

13. Delay interest mentioned in aforesaid paragraph has been calculated on total payed amount of Rs 51,10,000/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of Service tax amounting to Rs 1,19,686/- from total paid amount of Rs 52,29,686/- These charges have been deducted as per statement of account dated 01.09.2017 issued by the respondent . 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.

14. 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.



15. 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]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

