



Complaint No. 2474 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2474 OF 2019

Anita Khandelwal

....COMPLAINANT

VERSUS

Trishul Dream Homes Ltd.

....RESPONDENT

CORAM: **Rajan Gupta**
 Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 21.12.2021

Hearing: 12th

Present: - None for the complainant
 None for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 12th hearing of the case. Facts of the case were recorded in order dated 08.01.2020 as reproduced below:

1. The case of the complainant is that in 2012, he had booked a flat bearing no-803, Tower-C3 in respondent's project namely 'Palm Residency', Sector-75, Faridabad. Complainant paid an amount of Rs.35,69,000/- against the total sale consideration of Rs.36,36,040/-. Flat buyer agreement (FBA) was executed between both the parties on 17.08.2012. As per terms of the FBA, the possession of the flat was to be delivered within 36 months from the date of FBA i.e. up to 17.08.2015.

Further it is contented that the respondent had demanded an amount of Rs.13,00,621/- vide letter dated 05.06.2018. The said demand letter is attached with the complaint book as Annexure P-5 at page no-44. The main objections are regarding previous outstanding and interest accrued on account of delay in payment of instalments by the complainant amounting to Rs.12,42,103/-(Rs.7,01,753/- + Rs.5,40,350/-). Complainant requested the respondent to resolve the said issue and revise the offer of possession, but till date the respondent has not resolved the issue. Thus, the complainant is seeking relief of possession of the flat and quashing of the demand of Rs.12,42,103/-.

2. Learned counsel for respondent in his written statement stated that completion of the project was delayed due to non-payment of outstanding instalments by various allottees. It is further stated that the project was completed in the year 2015. Thereafter they have applied for occupation certificate on 27.04.2017 and the same was granted on 02.04.2019 by the competent authority. After that a letter dated 08.04.2019 was sent to the complainant thereby intimating the complainant about the completion of the project and to execute conveyance deed.

3. Both parties have been heard as well as record has been perused. The Authority observes that the complainant had booked the flat in 2012, since then he is waiting for possession. The Authority also finds that the complainant has basically disputed the amount of Rs.12,42,103/- being charged by the

respondent on account of maintenance and interest on outstanding payments. Apparently, the respondent has charged interest on delayed payments @21% which cannot be accepted. The respondent should re-calculate the amount @ MCLR + 2%. So, the Authority the respondent is directed to submit recalculations of said amounts and supply its copy to the complainant at least a week before next date.

4. The case is adjourned to **12.02.2020**.

2. After that, matter was listed for hearing on different dates but could not be heard on merits. In the previous hearing dated 08.09.2021, all issues and controversies between parties were discussed and Authority had ordered as follows:

Complainant has sought relief of possession along with delay interest and have challenged certain demands raised by the respondent-promoter in the above captioned case. Impugned demands were in respect of delay interest, interest being charged on delayed payments, holding charges and maintenance charges.

2. As far as the issue of delay interest is concerned, argument of learned counsel for the complainant is that the respondent has charged interest on delayed payments of instalments @21% p.a. and has calculated delay interest payable to the complainant for delayed possession @ SBI MCLR + 2% and such conduct of the respondent company besides being discriminatory is even against the provisions of Section 2(za) of RERA Act, 2017. Learned counsel for respondent on the other hand has argued that complainant by signing the BBA has himself agreed for charging of different rates of interest and his grievance is therefore not justified.

3. 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 must therefore ensure parity in respect



of rate of interest payable or chargeable by the promoter as well as the allottee of the project. The mandate for observing parity in rate of interest as enshrined in Section 2(z) cannot be allowed to be vitiated merely because different rate of interests were prescribed in BBA.

4. Moreover, BBA in this case was not executed on the day when the respondent had received booking amount of ₹2.5 lacs on 12.04.2012. Rather, it was executed on 17.08.2012 when the allottee had already parted with a hefty amount of ₹2.5 lacs in favour of the respondent. So, no choice was left with the complainant but to sign the BBA which contains disproportionate rate of interest for the complainant/allottee and the respondent/promoter on account of their respective default in discharge of timely obligations. Neither any reason for left unequal rate of interest in the BBA was mentioned nor the respondent's counsel at the time of arguments could furnish the justification as to why the different rates were prescribed in respect of interest payable by the allottee and the promoter for their respective defaults. If so, the split of law enshrined in Section 2(z) of the RERA Act for maintaining parity within the rate of interest chargeable and payable by the respondent and the complainant deserves to be maintained. Therefore, the respondent is directed to recalculate interest on delayed payments at the rate prescribed as per provisions of Rule 15 of HRERA Rules.

5. On consideration of the documents available on record and submissions made by the parties and based on the findings of the Authority regarding contravention of provisions of the Act, Authority is satisfied that the respondent is in contravention of the provisions of Section 11(4)(a) of the Act. By virtue of clause 3.5 of the buyer's agreement executed between the parties on 17.08.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement. Therefore, due date of handing over possession comes out to be 17.02.2016. Fitout possession of the subject unit had been offered to the complainant on 28.09.2017. Occupation certificate had been obtained on 02.04.2019, meaning thereby that offer made on 28.09.2017 was not a good offer from law point of view in the absence of occupation certificate from competent authority. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement



dated 17.08.2012 to hand over the possession within the stipulated period. Accordingly, non-compliance of the provisions contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. Therefore, complainant is entitled to delay possession interest at prescribed rate of interest under provisions of HRERA Rules i.e. @SBI MCLR + 2% w.e.f. due date of handing over possession i.e. 17.02.2016 till handing over of possession as and when occupation certificate obtained by the promoter i.e. 02.04.2019 in this case.

6. As far as grievance of the complainant for holding charges and maintenance charges are concerned, Hon'ble NCDRC in its order dated. 03.01.2020 in case titled as Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015 held as under:

“36. It has transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.”



Therefore, the Authority will also observe that the respondent-promoter cannot levy holding charges and maintenance charges as it does not suffer any loss on account of the allottee. So, the respondent is directed to recalculate receivable and payable amounts and supply its copy to the complainant before the next date of hearing.

7. Case is adjourned to 21.12.2021.

3. Today is 12th hearing of the matter. Nobody appeared on behalf of respondents as well as complainant. Authority has perused its previous orders. It observes that all contentious issues in this complaint have already been decided. Accordingly, the Authority decides to dispose of this matter in following terms: -

- i) The respondent-company shall be liable to pay the delay interest @ SBI MCLR + 2% to the complainant from 17.02.2016 i.e. deemed date of possession till 02.04.2019 i.e. date of occupation certificate.
- ii) For the period for which complainant delayed in making payments to respondents, delay payment interest shall be charged at the same rate i.e. SBI MCLR + 2%.
- iii) The Authority has already quashed holding charges and maintenance charges claimed by respondent vide its orders dated 08.09.2021.



- iv) Respondents shall revise their statement of accounts in accordance with aforesaid directions and invite complainant to take possession within 30 days of supplying such statement of accounts.

4. Accordingly, case is **disposed of** in above terms. File be consigned to record room after uploading of order on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]