



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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### COMPLAINT NO. 727 OF 2019

Mapsko Builders Pvt. Ltd.

.....COMPLAINANT(S)

VERSUS

Kamlesh Kumari Verma

.....RESPONDENT(S)

### COMPLAINT NO. 728 OF 2019

Mapsko Builders Pvt. Ltd.

.....COMPLAINANT(S)

VERSUS

Deependra Verma

.....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 07.12.2021**

**Hearing: 14<sup>th</sup>**

**Present: -Sh. Akshat Mittal, Ld. Counsel for the complainant through VC**

None for the respondents.

**ORDER** (RAJAN GUPTA-CHAIRMAN)

1. This is 14<sup>th</sup> hearing of the case. Some of the relevant orders passed by the Authority during the course of hearing of this case are reproduced below:

(A). **2<sup>nd</sup> hearing dated 20.08.2019**: Facts as narrated by both the parties as well as the arguments advanced by them were recorded in order dated 20.08.2019. Relevant part of order dated 20.08.2019 is reproduced as below:

"1. The above-captioned complaints involve similar issues and are against the same project of the respondent. The orders are passed by taking complaint no. 727/2019- Mapsko Builders Pvt Ltd vs Kamlesh Kumari Verma as lead case:

2. In brief the complainant's case is that he allotted a unit No. 352 in block MA of an area measuring 277 sq. yards at the basic sale price of Rs 39,91,680/ after receiving booking amount from the respondent in June, 2014 in the project named as "Mapsko city Homes", situated at Sonipat. Following which an agreement dated 30.09.2014 was executed between the parties. As per the payment plan opted by the respondent the whole sale consideration was to be paid in the ratio of 30:70 i.e. 30 % of amount to be paid at the time of booking which was duly paid up to 07.06.2014 and the remaining 70 % of amount, which is Rs 33,00,8431-, at the time of offer of possession. The complainant's grievance is that after completing the construction work of unit, he offered the possession to the respondent on 04.02.2016 but the respondent neither came forward to take the possession of the unit nor paid the remaining /balance amount. Moreover, several reminders were also sent to respondent in this regard but in vain. For this reason, the present complaint is filed seeking direction against the respondent to take possession by paying the due amount.

3. The complainant's counsel stated that the unit in question lies within the township of 134 acres, which consists of plots, apartments and shops. As of today, approximately 250 families are residing over there and more than 300 conveyance deeds have already been executed which implies that the project is complete and the units are ready to occupy. Besides this, the part completion certificate for the said



project was obtained on 03.04.2013. Further he stated that the occupation certificate for the said unit was applied on 07.12.2016 and the same was granted by DTCP on 19.07.2017.

4. Respondent's counsel argued by saying that the letter of offer of possession dated 04.02.2016 was never received by respondent. The said letter was fabricated by complainant in order to avoid the penalty for delay caused in offering the possession. In order to support his averment, he relied on the e-mails dated 28.04.2015, 15.12.2016, 02.08.2018, 21.09.2018, 04.10.2018 and 14.11.2018 sent by him to point out the low-grade quality of construction work carried out by complainant, to show that he was in touch with the respondent since 2015. But it was respondent's fault that he never communicated about receiving of occupation certificate and possession letter dated 04.12.2016.

5. Further he pointed out that respondent offered possession at the time when occupation certificate was not obtained for the unit in question. So, the said offer is not a valid offer under eyes of law. It is also submitted by respondent's counsel that the possession of the unit is not acceptable to respondent because of low grade construction work done by complainant. He relied upon the photos annexed with his reply to support his contention.

6. After hearing both the parties, the Authority finds that the complainant has completed the construction work after receiving only 30% of amount from respondent. They have received occupation certificate for the unit in question on 19.07.2017 for which application was filed in December,2016. In other words, it can be said that the complainant invested 70 % of the amount from his own pocket to fulfil his commitments but due to down trend in real estate sector the respondent is avoiding/escaping from his liabilities to pay the due amount and to take possession.

7. Further main grievance of the respondent is that quality of construction work done by complainant is not up to the mark. While the complainant has to provide proper quality of work, at the same time fact is to be considered that apartment is lying vacant for the last 2 years which might have caused some deterioration. Now, the complainant is directed to remove those minor defects/shortcomings so that the respondent can accept the possession of the unit.

8. It is also observed that the respondent was not able to clearly state/point out that he had conveyed the deficiencies ought to be removed in the unit to the complainant within a reasonable time of offer of possession. In these circumstances, the matter is



adjourned to 26.09.2019 with a direction to the respondent that he shall present the details of the deficiencies conveyed to the complainant along with date and the proof of conveying the same in a tabulated form. It is the responsibility of the respondent to accept possession within reasonable period of time.

9. Considering the facts and submissions made, the Authority also advises both the parties that the matter may be settled out of court as there are chances for amicable settlement, failing which the matter will be heard on merits."

(B) **3<sup>th</sup> hearing dated 26.09.2019**: Learned counsel for the respondent moved an application under section 10 of the Code of Civil Procedure. Relevant part of order dated 26.09.2019 is reproduced as below:

"1. Mr. Sumit Tokas, learned counsel for the respondents has moved an application under section 10 of the Code of Civil Procedure, 1908. Learned counsel for the complainant seeks time to reply to the application moved by the respondent. His request is acceded with the direction to file his reply at least one week prior to the next date of hearing with an advance copy to the respondent."

C) **5<sup>th</sup> hearing dated 16.01.2020**: Application filed by respondent-allottee seeking dismissal of present complaint in view of section 10 of Civil Procedure Code, 1908 was dismissed. Authority held that respondent is duly covered under definition of allottee as provided under Section 2(d) of the RERA Act 2016 (for short 'Act') and the complainant also falls under the definition of Promoter as provided under section 2 (zk) of the Act, meaning thereby that the relation of allottee-promoter exists between the parties, therefore, the disputes arising between them due to their relation and cause of action arising thereof falls under the jurisdiction of this Authority. It further held that in view of section 79 of the Act jurisdiction lies with this Authority to deal with the present matter.



Respondent-allottee raised an additional ground of decrease in super area for not accepting the possession of the unit, so, parties were directed to visit the site of the unit on 09.02.2020 and convey the deficiencies if any in the unit. Respondent was directed to file deficiencies in writing and complainant was directed to produce photographs of the unit and to get the area of the unit measured in presence of the complainant-developer and to file detail thereof. Relevant part of order dated 16.01.2020 is reproduced as below:

“1. For complaint no. 727/2019, Ld. counsel of the respondent has moved an application for taking on record the legal representative of deceased Kamlesh Kumari Verma. He has filed an affidavit of Mr. Kuldeep Kumar Verma, who is husband of said allottee-respondent along with copy of death certificate of deceased dated 12.12.2019. Taking on record said affidavit, application of legal representative of deceased is hereby allowed and legal representative of deceased is ordered to be brought on record.

2. As per office record, complainant has already filed his reply to the application filed by respondent-allottee seeking dismissal of present complaint in view of section 10 of Civil Procedure Code, 1908. Initiating the arguments on the issue of maintainability of complaint, Mr. Akshat Mittal stated that the proceedings before Permanent Lok Adalat, Sonapat were initiated subsequent to the present complaint as notice was issued in that case on 12.03.2019 and the present complaint was filed before this Authority on 11.03.2019. Ld. Counsel for respondent contended by saying that the date of institution may be taken as relevant date because in the present complaint also the notice was issued on 12.03.2019.

3. Considering the submissions made by parties, Authority is of the considered opinion that respondent is duly covered under definition of allottee as provided under Section 2(d) of the RERA Act, 2016 (for short 'Act') and the complainant also falls under the definition of Promoter as provided under section 2 (zk) of the Act, meaning thereby that the relation of allottee-promoter exists between the parties, therefore, the disputes arising between them due to their relation and cause of action arising thereof falls under the jurisdiction of this Authority. Further, in view of section 79 of the Act jurisdiction lies with this Authority to deal with the present matter. Section 79 is reproduced below for ready reference:-

Section 79- Bar of Jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered by or under



this Act to determine and no injunction shall be granted by any court or other Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Therefore, the application for dismissal of complaint filed by respondent-allottee is hereby dismissed/rejected.


4. Further proceeding on merits, it is observed that the respondent-allottee has not pointed out any deficiencies in the allotted unit in writing rather has raised an additional ground today of decrease in super area for not accepting the possession of the unit.

5. After hearing both the parties, the parties are directed to visit the site of the unit once again on 09.02.2020 and convey the deficiencies if any in the unit. Thereafter, respondent shall file such deficiencies in writing and complainant shall produce photographs of the unit on record. Regarding issue of super area, respondent-allottee is directed to get the area of the unit measured in presence of the complainant-developer and to file detail thereof.

6. The parties shall file the said information at least one week prior to the date of hearing with an advance copy to be supplied to opposite party. With these directions matter is adjourned to 03.03/2020."

D) **6<sup>th</sup> hearing dated 03.03.2020**: L.d. counsel for the respondent filed an application seeking stay of proceedings of above captioned complaints on the ground that respondents had filed an appeal no. 91/2020 & 92/2020 before the Hon'ble Real Estate Appellate Tribunal, Chandigarh against the order dated 16.01.2020 passed by this Authority and complainant has filed Civil Writ Petition no. 1522/2019 titled as 'Mapsko Builders Pvt Ltd vs Permanent Lok Adalat and anr' before the Hon'ble Punjab & Haryana High Court, Chandigarh. Authority dismissed/rejected application filed by respondent on the ground that since no stay was granted by either Court and mere filing of appeal does not operate as bar to proceed with the matter.

Respondent-allottee filed list of numerous deficiencies in the unit along with photographs in support of their plea that unit is not in habitable



condition. He also alleged that area offered of both units is less than area originally booked.

Learned counsel for the complainant stated that in complaint no. 727/2019, Built-up area of 1386 sq ft, plot area 277 sq yards was committed at time of booking of unit no. MA-352 (independent floor) and offer of possession was sent for same area. Similarly in complaint no. 728/2019, Built-up area of 1374 sq ft, plot area 275 sq yards was committed at time of booking of unit no. MA-354 (independent floor) and offer of possession was sent for same area. In order to resolve this dispute, local commissioner was ordered to be appointed to carry out the measurement of actual area at site of both units. Authority held that in case if the respondent-allottee was found at fault then they will bear the cost and will pay holding charges to complainant-developer at the rate prescribed in Rule 15 of HRERA Rules, 2017 and in case the complainant-developer is found at fault he will bear the entire cost of local commissioner. Authority also held prima facie that units are ready for possession as per the photographs placed on record by complainant-developer. Relevant part of order dated 03.03.2020 is reproduced as below:

"1. Ld. counsel for the respondent has moved an application seeking stay of proceedings of above captioned complaints on the ground that he has filed an appeal no. 92/2020 in complaint no. 727/2019 and appeal no. 91/2020 in complaint no. 728/2019 before the Hon'ble Real Estate Appellate Tribunal, Chandigarh against the order dated 16.01.2020 passed by this Authority and complainant-developer has filed a Civil Writ Petition no. 1522/2019 titled as 'Mapsco Builders Pvt Ltd vs Permanent Lok Adalat and anr' before the Hon'ble Punjab & Haryana High Court, Chandigarh



which is fixed for hearing on 14.05.2020. After duly considering the said application it is decided that in absence of any stay order the proceedings cannot be stayed because mere filing of appeal does not operate as bar to proceed with the matter. So, the application filed by respondent is hereby dismissed/rejected.

2. On the last date of hearing parties were directed to visit the site of the unit and convey the deficiencies to the complainant in writing. The complainant was directed to place on record the photographs of the unit. Further regarding issue of super area, respondent-allottee was directed to get the area of the unit measured in presence of the complainant-developer and to file details thereof.

3. Today complainant-developer has placed on record the photographs of the unit which depicts that the unit is complete and ready for possession. On the other hand, respondent-allottee has filed list of numerous deficiencies pointed out in the unit along with photographs in support of their plea that unit is not in habitable condition. Further counsel for respondent-allottee specifically alleges that the area offered is less in comparison to what was originally booked. So, he urged to get the area verified/measured again.

4. Initiating the arguments, Ld. counsel for complainant states that the photographs placed by respondent-allottee are not the latest one. They are of the year 2013. Regarding issue of area he states that in complaint no. 727/2019 unit no. MA-352 (independent floor) was booked for Built-up area of 1386 sq ft, plot area 277 sq yards and offer of possession was sent for same area and in complaint no. 728/2019 unit no. MA-354 (independent floor) was booked for Built-up area of 1374 sq ft, plot area 275 sq yards and offer of possession was sent for same area. Ld. counsel for respondent still presses to get the area verified as contention of the allottees are that the area offered does not actually exist at the ground.

5. After hearing both the parties, Authority prima facie is of view that units are ready for possession as per the photographs placed on record by complainant-developer. In order to resolve this dispute, it is decided that local commissioner will be appointed to carry out the measurement of area of units in question as parties are not able to reach any conclusion with respect to the area of the apartment. Further, detailed report with regard to the deficiencies pointed out by respondent-allottee shall also be submitted by the Local Commissioner.





6. The complainant-developer is directed to keep available all approved plans and drawings at the time of site visit. Said site visit shall take place on 04.04.2020 at 11 am. Both parties are directed to remain present at the time of site visit. Regarding cost of local commissioner, it is decided that initially both parties shall deposit Rs 5000/- each as tentative cost within 5 days of uploading of this order. Further, in case if the respondent-allottee is found at fault then they will bear the cost and will pay holding charges to complainant-developer at the rate prescribed in Rule 15 of HRERA Rules, 2017 and in case the complainant-developer is found at fault he will bear the entire cost of local commissioner."

E) **8<sup>th</sup> hearing dated 29.10.2020**: Pro-tech Consortium was appointed as local commissioner to visit the site. Said firm submitted its report. Relevant part of order dated 29.10.2020 is reproduced as below:

"1. In the above-mentioned bunch of complaints, 'Pro-tech Consortium' was appointed as local commissioner to visit the site and to submit its report thereafter. Said firm had visited the site on 03.10.2020 and submitted its report in the registry of the office.

2. Report of the local commissioner has been taken on record. The office is directed to supply copy of report to both the parties. The cases are adjourned to 29.12.2020 with a direction that if any party wishes to file its objections against the report of local commissioner, he may do so by filing them at least one week prior to the date of hearing with an advance copy being supplied to opposite party."

F) **10<sup>th</sup> hearing dated 09.03.2021**: Learned counsel for the complainant informed that respondent allottees had filed Appeal before the Hon'ble Appellate Tribunal in complaint nos. 727/2019 & 728/2019, therefore, both matters were adjourned. Relevant part of order dated 09.03.2021 is reproduced as below:

"1. Sh. Akshat Mittal, Counsel for the complainant stated that the respondent allottees in complaint nos. 727/2019 & 728/2019 have filed an Appeal before the Hon'ble Appellate Tribunal which is listed for hearing on 22.03.2021.

2. In these circumstances, the Authority deems it appropriate to list the matter on a later date. Also, in complaint no. 947/2019, counsel for both the parties sought adjournment for listing the matter on a later date. Request is allowed."

G) **11<sup>th</sup> 12<sup>th</sup> 13<sup>th</sup> hearing dated 28.04.2021, 29.07.2021 and 13.10.2021:**

In view of appeal filed by respondent allottees before the Hon'ble Appellate Tribunal, both matters were repeatedly adjourned. Relevant part of order dated 13.10.2021 is reproduced as below:

" Learned counsel for the complainant Sh. Akshat Mittal, informed the Authority that respondents had filed an appeal no. 92 of 2020 before the Hon'ble Appellate Tribunal which is listed for hearing on 23.12.2021."

2. Present cases were disposed/reserved on 07.12.2021. Both parties were granted time to file their written arguments within two weeks. Email was also sent by the office to both parties to file their written arguments but till date office has not receipt written arguments from either party. Therefore, Authority after perusal of record available and arguments advanced by counsels of both parties, decides as follows:

a. **Decrease in area of units:**

Contention of respondents regarding super area is that complainant has reduced plot area of both units to about 250 sq. yds. and

utilised about 20-25 sq. yds of their plot area for making a common parking, which is violation of clause 2 of Agreement.

After perusal of the record and hearing of arguments of both parties, Authority finds that clause 2 and clause 10 are relevant to decide issue of regarding area.

**Clause 2 of the Agreements reads as follows:**

“ that the aforesaid consideration is for the total area of the said floor as mentioned hereinabove including “ Built up Area” which comprises the covered area, areas under walls, areas of gallery and other projections whatsoever, together with proportionate undivided share in the common areas and facilities such as area under staircases, arrangements and installations such as power, light, sewerage etc. and including all easement rights attached to the said floor.”

**Clause 10 of the Agreements reads as follows:**

“That the said floor proposed to be constructed in accordance with the plans sanctioned by the concerned Authority. However, if for any reasons, any changes are desired by the sanctioning authority, the Architect or by any govt. Authority or by the Promoter, the buyer hereby consents to the said alteration, variations, deletions and modification. However, as result of such changes, if there is any increase/decrease in the total area including Built-up area of the said floor, as described, the buyer shall be liable to pay/be entitled of refund, as the case may be for the initial 5% of increase/decrease in area as mentioned, at the rate of booking of the said floor and for balance increased/decreased area at the then prevailing promoter's rate/market rate.”

As per Report of local commissioner, built up area as well as plot area of both units after inspection is as follows:

**Unit no MA -352**


Built up Area as per Agreement (sq. fts)	Actual Unit Area ( Sq. fts.)	Plot Area as per Agreement (Sq. yds.)	Actual Plot Area (Sq. yards)
1386	1502.64	277	248.46

**Unit no MA -354**

Built up Area as per Agreement (sq. fts)	Actual Unit Area ( Sq. fts.)	Plot Area as per Agreement (Sq. yds.)	Actual Plot Area (Sq. yards)
1374	1381.50	275	251.35

Thus, as per report of Local Commissioner actual built up area of both units i.e. MA-352 & 354 is 1502 sq. fts and 1381 sq. fts which is more than built up area committed to respondents. Actual Plot area of both units is 248.46 and 251.35 sq. yds. respectively which less than committed plot area i.e. 277 and 275 sq. yards.

Authority observes that as per clause 2 & 10 of the agreement, respondents have paid consideration towards their respective floors (here both ground floors) i.e. built up area and does not have any ownership rights on common areas on the plot, therefore, respondents cannot raise the dispute that complainants have used 20-25 s. yds. area of the plot for



common car parking. As per report of Local Commissioner the built up area of both floors is actually more than area committed i.e. 1502 sq. fts and 1381 sq. fts. instead of 1386 and 1374 sq. fts. Thus grievance of the respondents that floor area has been reduced does not survive and stands rejected.

b. **Deficiencies In Units:**

Respondents have raised their grievance regarding several deficiencies existing in their units. On 03.03.2020, respondent-allotees filed list of numerous deficiencies pointed out in the unit along with photographs in support of their plea that units are not in habitable condition. L.d. counsel for complainant disputed the photographs placed by respondent-allotee by stating that they were not the latest ones.

After hearing both the parties, Authority vide order dated 03.03.2020, held prima facie that as per the photographs placed on record by complainant-developer, units seem ready for possession. Authority also appointed local commissioner to carry out the measurement of area of units and to give detailed report with regard to the deficiencies pointed out by respondent-allotees.

**Status of deficiencies as per report of Local Commissioner for unit**

**no.MA-352:**

S.no.	Deficiency	LC Report (Relevant Extract)
1.	Electrical Fittings, water and electricity lines	Points were in working condition.
2.	Plaster on walls	No defects were visible.
3.	Windows/Doors	Newly painted and working.
4.	Size of exit and entry of doors	Main entry door size 1.0 m wide, Drawing and bed room 0.89 & .80 m, exit doors 0.72m.
5.	Termite and Dampness	No dampness, anti-termite chemicals treatment done.
6.	Floor tiles	Presently in good condition
7.	Level of parking space	No water was standing but drainage problem may occur during rains
8.	Level of main entrance	There was a gap of seven inches between gate frame and entry sill at main gate which can easily be rectified by refixing main gate frames.

**Status of deficiencies as per report of Local Commissioner for unit**

**no.MA-354:**

S.No.	Deficiency	LC Report (Relevant Extract)
1.	Electrical Fittings, water and electricity lines	Points were in working condition.
2.	Plaster on walls	No defects were visible.
3.	Windows/Doors	Newly painted and working.
4.	Size of exit and entry of doors	Main entry door size 1.0 m wide, Drawing and bed room 0.80 & .80 m, exit doors 0.73m.
5.	Termite and Dampness	No dampness, anti-termite chemicals treatment done.
6.	Floor tiles	Presently in good condition
7.	Level of parking space	No water was standing but drainage problem may occur during rains
8.	Level of main entrance	There was a gap of seven inches between gate frame and entry sill at main gate which can easily be rectified by refixing main gate frames.

In the light of report submitted by Local Commissioner and the fact that units were ready and offered for possession on 04.02.2016, some wear and tear of units is understandable. So, Authority observes that no deficiencies of serious nature exist in both units. Therefore, plea of respondent-allottees that units are not ready for possession due to existence of numerous deficiencies in the units stands rejected.

As regards payment of cost of local commissioner, both parties were initially directed to deposit Rs 5000/- each as tentative cost. It was ordered that in case respondent-allottees are found at fault then they will bear the cost and in case the complainant-developer is found at fault he will bear the entire cost of local commissioner. On consideration of report by Local Commissioner both parties are directed to burden the cost equally, therefore, cost of Rs. 5000/- already borne equally by each party stands upheld.

c: **Pendency of Appeals filed by respondent-allottees before Hon'ble Real Estate Appellate Tribunal, Chandigarh and CWP before Punjab and Haryana High Court:**

Ld. counsel for the respondents filed an application seeking stay of proceedings of above captioned complaints on the ground that respondent had filed an appeal no. 91/2020 & 92/2020 before the Hon'ble Real Estate Appellate Tribunal, Chandigarh against the order dated

16.01.2020 passed by this Authority and complainant has filed Civil Writ Petition no. 1522/2019 titled as 'Mapsko Builders Pvt Ltd vs Permanent Lok Adalat and anr' before the Hon'ble Punjab & Haryana High Court, Chandigarh.

Authority vide order dated 03.03.2020 had already dismissed/rejected application filed by respondent on the ground that since no stay was granted by either Court and mere filing of appeal does not operate as bar to proceed with the matter. Relevant part of order dated 03.03.2020 is reproduced as below:

"1. Ld. counsel for the respondent has moved an application seeking stay of proceedings of above captioned complaints on the ground that he has filed an appeal no. 92/2020 in complaint no. 727/2019 and appeal no. 91/2020 in complaint no. 728/2019 before the Hon'ble Real Estate Appellate Tribunal, Chandigarh against the order dated 16.01.2020 passed by this Authority and complainant-developer has filed a Civil Writ Petition no. 1522/2019 titled as 'Mapsko Builders Pvt Ltd vs Permanent Lok Adalat and anr' before the Hon'ble Punjab & Haryana High Court, Chandigarh which is fixed for hearing on 14.05.2020. After duly considering the said application it is decided that in absence of any stay order the proceedings cannot be stayed because mere filing of appeal does not operate as bar to proceed with the matter. So, the application filed by respondent is hereby dismissed/rejected.

d. **Interest on account of delay in taking possession of units and payment of balance amount:**

The complainant's counsel stated that Part Completion Certificate for the said project was obtained on 03.04.2013 and the Occupation



Certificate for the said unit was applied on 07.12.2016 and the same was granted by DTCP on 19.07.2017. Complainant's grievance is that after completing the construction work of unit, he offered the possession to the respondent on 04.02.2016 but the respondent neither came forward to take the possession of the unit nor paid the remaining /balance amount.

Respondent's counsel counter argued that the letter of offer of possession dated 04.02.2016 was never received by respondent. The said letter was fabricated by complainant in order to avoid the penalty for delay caused in offering the possession. Counsel for the respondents stated it was complainant's fault that he never communicated about receiving of occupation certificate and possession letter dated 04.12.2016.

Authority vide its order dated 20.08.2019 had already held that the complainant has completed the construction work after receiving only 30% of amount from respondent. They have received occupation certificate for the unit in question on 19.07.2017 for which application was filed in December,2016. In other words, it can be said that the complainant invested 70 % of the amount from his own pocket to fulfil his commitments but due to down trend in real estate sector the respondent is avoiding/escaping from his liabilities to pay the due amount and to take possession.

Accordingly, it is decided that date of receiving of Occupation Certificate shall be taken as valid offer of possession. Accordingly, the

respondent-allotees shall be entitled to delay interest for the delay caused by complainant in offering possession at the rate prescribed in Rule 15 of HRERA Rules, 2017 for the period from the deemed date of possession (as per builder buyer agreement) upto the date of receipt of occupation certificate i.e. 30.09.2016 and 17.05.2016 respectively to 19.07.2017. The complainant-promoter is also entitled to same rate of interest for the period of delay caused by the respondents in payment of the outstanding amounts i.e. Rs. 33,00,843/- and Rs. 32,73,572/-.

It is pertinent to mention here that Authority has disposed of similar complaints vide order dated 26.09.2019 passed in **Complaint no. 764/2019-Mapsco Builders Pvt Ltd vs Harsh Rohra** whereby this Authority has allowed the verbal submission/plea of complainant-developer that in case the respondent-allottee fails/not ready to pay the outstanding amount, complainant-developer may cancel the allotment as per clause 12A of agreement after providing him a last chance to pay the due amount as per fresh statement of account showing receivables and payables. The said clause-12A is reproduced below:-

*"12A- That in case the buyer fails to pay due installments with interest within 60 days from the due date of outstanding amount, or if there is breach of any terms/conditions of this agreement or opted payment plan, the promoter shall in its sole discretion, forfeit the earnest money(i.e. 20% of the basic sale price) out of the amount paid by the buyer and this agreement shall stand cancelled, consequent whereof the buyer shall be left with no right, claim or lien whatsoever on the said floor. However, the amount, if any paid over and above the earnest money will be refunded to the buyer whose name mentioned first in the application form, without interest after re-allotment*



*of the said floor to a new buyer and after compliance of certain formalities by the buyer."*

3. Further it is observed that in case, the respondent-allotees are not ready to pay outstanding dues, the complainant-promoter may cancel their allotment as per the agreement. However, before doing so, he shall issue a fresh statement of accounts in accordance with principles laid down in above paragraph showing therein all receivables and payables amount and shall provide one more chance to the allottees for making payment of the outstanding amount. Accordingly, the complainant is directed to issue a fresh statement of accounts to the respondent-allotees within 30 days of uploading of this order. It is further made clear that if the allottees fail to make payments to the complainant within a period of 90 days from the date of issuing fresh statement of accounts, the developer will be at liberty to exercise his rights to cancel allotment of units as per terms of the agreement.

4. Both cases are **disposed off** in above terms. Files be consigned to record room.

  
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RAJAN GUPTA  
[CHAIRMAN]

  
.....  
DILBAG SINGH SHEG  
[MEMBER]