

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA**

Complaint No. : 543/2018- Krishan Kumar Gahlawat
Vs
Omaxe Buildwell Pvt. Ltd.

Date of hearing: 28.03.2019

CORAM:

1. Shri Anil Kumar Panwar	Member
2. Shri Dilbag Singh Sihag	Member

APPEARANCE:

1. Shri Sudeep Singh Gahlawat	Advocate for the complainant
2. Shri Nihal Singh	Advocate for the respondent

Order:

1. In brief the complainant's case is that he had booked a commercial shop no. OCSR/42 in the project named 'Omaxe city' situated at Rohtak on 19.05.2010 by paying an amount of Rs 2,75,000/-. On the assurance that the possession of the shop would be delivered within 18 months from the date of booking and accordingly booking application was signed by the complainant as annexed R-1. Though, the builder buyer's agreement had not been executed between the parties. However, the complainant has paid an amount of Rs 25,50,000/- by 12.12.2012 against total sale consideration of 28,31,305/-. He further stated that the respondent had offered possession by sending various letters/reminders dated 03.05.2018, 06.06.2018 and 14.09.2018 but the same were not accepted as the promoter respondent did not have Occupation certificate.



In this background the present complaint has been filed seeking possession at the earliest along with delay compensation.

2. On the other hand, respondent has made following averments: -
 - a. The present compliant is not maintainable as the complainant himself defaulted in making payments on time and further concealed the fact that possession has already been offered to him by various letters and reminders dated 18.06.2016, 21.07.2016, 03.05.2018, 06.06.2018 and 14.09.2018, which are attached with their respective postal receipts as Annexure R-4, R-6 to R-9 and R-10 to R-17.
 - b. The Authority does not have jurisdiction to deal with this complaint as clause 31 of application form mentioned for referral of disputes arising out of parties in connection with the allotment to Courts at Rohtak and Delhi. Moreover, there is an arbitration clause also in the said application form.
 - c. It is also submitted that before issuing of notice in the present case, the complainant had paid Rs 2,81,305/- as final payment towards the unit.

3. Today Id. Counsel for complainant submitted that he is ready to accept the offer of possession of the shop even without occupation certificate since he has already made full payment against the booked unit and shop is almost ready for possession, provided he may be compensated from the deemed date of possession



i.e. 19.11.2011 to the actual date of offer of possession. He further submitted that the conveyance deeds be executed without any further delay.

4. Respondent's counsel conceded his request and assured that the complainant to get his conveyance deed executed as and when he desires. As far as Occupation Certificate is concerned, he apprised that they are pursuing this matter with concerned Authority as they had applied for the same on 16.01.2016.

5. After hearing both the parties and perusing written submissions, Authority observed that since the complainant is ready to accept the possession, the issue remains for adjudication is quantum of delay compensation and the amount charged as interest on delay payment in addition to the amount which stood waived off by the respondent.

6. It is an admitted fact that the possession of shop was to deliver within 18 months from the date of booking/execution of agreement but the respondent had failed miserably to deliver as per his commitment. The offer made by the respondent without obtaining Occupation certificate is not a valid offer in the eyes of the law and the occupation certificate from concerned authority is a certificate for property certifying it safe for human habitation/business and having all amenities/ services which were got approved from the authority.

7. So, the complainant deserves to be compensated for the delay period in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+ 2% from the deemed date of possession i.e. 19.11.2011 to actual handing over of possession with occupation certificate. The respondent shall supply a statement of all receivable

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and payable amounts to the complainant. For the purpose of preparing such statement, the respondent shall calculate the interest on the amount of delayed instalments at the rate not exceeding nine percent. The respondent is also directed to hand over de-jure possession by executing conveyance deed in favour of complainant within three months of the grant of occupation certificate. In case, the amount payable to the complainant on the basis of aforesaid calculations is found more than the amount payable by him, then the respondent shall also refund the excess amount to the complainant at the time of execution of conveyance deed, failing which he will be liable to pay penal interest at the rate of 14 percent on the such payable amount till its actual payment.

Disposed of. File be consigned to record room.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member