



COMPLAINT NO. 630 OF 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 630 OF 2019

Kulvir Singh

.....COMPLAINANT(S)

VERSUS

Mapsko Builders Pvt. Ltd.

.....RESPONDENT(S)

CORAM:

Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 07.12.2021

Hearing: 17<sup>th</sup>

Present: -Ms. Navneet, Ld. Proxy counsel for the complainant through VC.

Sh. Akshat Mittal, Ld. Counsel for the respondent through VC.

### ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 17<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). **1<sup>st</sup> hearing dated 28.03.2019:** Facts as narrated by both the parties as well as the arguments advanced by them were recorded and in order dated 28.03.2019. Relevant part of order dated 28.03.2019 is reproduced as below:

“2. The complainant's case is that he had booked a unit no. 174- ME block, ground floor of an area measuring 860 sq. ft. in "Mapsko City Homes", situated in secor-27, Sonipat on 16.12.2009. Following this, a buyer's agreement was executed between the complainant and respondent-developer on 31.07.2010 and said unit was allotted to him for total sale consideration of Rs 16,31,000/- against which the complainant had paid an amount of Rs 15,19,556/-. As per the terms of buyer's agreement, the respondent was duty bound to handover the possession of the unit by 31.07.2012 for which he miserably failed. Therefore, the present complaint has been filed to seek refund of the paid amount along with 18% interest.

3. On the other hand, respondent in his reply, averred that no cause of action has arisen in favour of complainant to file this complaint as he himself was a defaulter for not making payment of instalments within time, which was necessary part to be fulfilled by complainant- allottee. Further it was also submitted that the unit in question was ready since, 2017 as occupation certificate for the said unit has already been received on 06.10.2017. Consequently, offer of possession was also made to the complainant on 23.05.2017. It is further stated that the said unit falls under integrated township of 134 acres in Sonipat, wherein more than 250 families have already residing and moreover approximately 650 conveyance deeds in respect of SCOs, Independent floor buyers and plots have already been executed. So, the relief of refund at this stage may jeopardize the project.

4. Today Ld. counsel for complainant argued that the alleged offer of possession was made at the time when occupation certificate was not received by the respondent, therefore, an offer of possession not duly supported by occupation certificate is not a valid offer in the eyes of law, meaning thereby it does not hold any legal sanctity. So, the complainant is entitled for the delay compensation from the deemed date of possession to the actual handing over of possession.



5. While contending it, Ld. Counsel for respondent stated that it is a matter of fact that offer of possession was made on 23.05.2017 and occupation certificate was obtained in October, 2017, but for obtaining the same the developer had applied in May, 2017. accordingly, only 5 months delay is there in between of occurrence of two events and the factual position still remains that the unit in question was lying complete since 2017.

6. After hearing both the parties, the Authority prima facie is of view that though there is a delay of approximately 7 years in handing over of possession to the complainant, but the unit in question has been got completed for possession as occupation certificate was received in 2017. So, the relief of refund of the paid amount cannot be accepted at this stage. The issue remains to deliberate upon is delay compensation, for which complainant is duly entitled as there is an extraordinary delay in handing over of possession in terms of buyer's agreement. The relevant clause of agreement is reproduced below for ready reference: -

*14(A)- That the promoter shall endeavour to complete the construction of the said floor within a period of eighteen months from the date of signing of this agreement with the buyer or within an extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder and subject to other floor-buyer making timely payment as mentioned in payment plan given in Schedule - II of this Agreement or subject to any other reasons beyond the control of the promoter. No claim by way of damages/compensation shall lie against the promoter in case of delay in handing over the possession on account of any of the aforesaid reasons and the promoter shall be entitled a reasonable extension of time for the delivery of possession of the said floor, to the buyer.*

Ld. Counsel for respondent has not spelt out anything which can be treated as force majeure for seeking extra ordinary delay in completion of project. As a result, the Authority observes that delay compensation may be awarded to complainant-allottee as he has made a payment of more than 15 lacs, 7 years back without getting the possession of booked property within stipulated time.

It is an admitted fact that the offer of possession was made out on 23.05.2017 but without having occupation certificate. However, Ld. Counsel for respondent sought attention to a letter which is annexed as Annexure C-5, the said



letter indicates that an amount of Rs 1,85,568/- and Rs 1,02,736/- reported to be outstanding against the complainant and that the conveyance deed for the said floor could have got executed only after clearing these dues. On the other hand, the complainant alleged that these outstanding dues are arbitrary and unreasonable as respondent had never disclosed about them at the time of execution of agreement. Details of these amounts are incorporated as follows:-

S.No.	Particulars	Amount (Rs.)
1.	Outstanding dues (including service tax)	0.00
2.	Interest charged on delay payments	172.00
3.	Water and Sewerage Connection charges	28750.00
4.	Possession amount	156646.00
	Total	185568/-
1.	Club membership charges	57500.00
2.	IFMS 25/- Per sq. ft on built up area	21500.00
3.	Monthly maintenance charges (after possession) @1 /- per sq. ft on built up area deposit advance for 24 months	23736.00
	Total	102736/-

7 The Authority observed that the respondent has not given any justification against each of aforesaid charges for example; there is no clarification what is the possession amount and why he is entitled to charge such amount of Rs 1,56,646/-. Similarly, there is no clarification whether club has been constructed or not? In case, club has been constructed and presently not functional then the respondent is not allowed to charge for club membership. So is the case of maintenance charges such charges cannot be allowed without obtaining Occupation Certificate. The point raised by Ld. Counsel for complainant that he has not been intimated ever when Occupation Certificate was granted nor any information was provided by respondent on his website regarding receiving of Occupation Certificate, has some weightage. So, the respondent cannot be allowed to charge maintenance amount as he had not offered the possession after obtaining of occupation certificate. Therefore, the complainant is entitled to seek delay compensation along with justification of these alleged charges, if any.

8. In view of above it is observed that the offer of possession could have attained finality, in case it was duly supported with occupation certificate, further clarification with respect to charges mentioned in table at page no 4. and the

amount of delay compensation could have taken into account for the delayed period.

9. So, the Authority is of view that the said offer of possession dated 23.05.2017 was not valid in the absence of Occupation Certificate: however the unit in question stood complete/ready for possession as on the date of receiving of Occupation certificate. So, the respondent is liable for the delay compensation from the deemed date of offer of possession till receiving of Occupation Certificate in terms of Rule 15 of HRERA rules, 2017 i.e SBI MCLR+2% . Therefore, the Authority directs the respondent to issue an offer of possession to the allottee- complainant of his unit along with fresh statement of accounts of receivables and payables after duly adjusting the amount of compensation to be paid in above said terms and in case interest on delay payment had been charged for more than 9 percent that should be restricted to 9 percent, that amount shall also be reflected in fresh statement of accounts. Respondent is also directed to clarify and justify demanding the amounts shown against possession amount and monthly maintenance charges

The matter is adjourned to 10.04.2019 with the direction to the respondent that fresh statement of accounts be issued to the complainant up to 05.04.2019 and in case, complainant has any objection against the same, he can point out by filing his rejoinder."

(B) **4<sup>th</sup> hearing dated 26.09.2019:** Respondent in compliance of order dated 28.03.2019 filed a fresh statement of accounts Authority reiterated that complainant will be entitled to delay interest as per Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2% for the period starting from the deemed date of offer of possession till the date on which occupation certificate was obtained by the respondent. The respondent shall also be entitled to reasonable interest at the rate of nine percent for the delay in payment of instalment from the period of grant of occupation certificate till the date on which payment is actually made



by the complainant. Relevant part of order dated 26.09.2019 is reproduced as below:

"1. Mr. Akshat Mittal, learned counsel for the respondent has submitted a fresh statement of accounts and a copy of the same has been supplied to the complainant during the proceedings. Complainant is directed to file objections, if any, in writing at least one week prior to the next date of hearing with an advance copy to the respondent.

2. Learned counsel for the respondent states that the offer of possession was made to the complainant one month after filing the application for grant of occupation certificate. He argued that as offer of possession was made to the complainant after applying for occupation certificate, the said offer shall be treated as valid offer of possession for calculation of delay compensation. Complainant on the other hand averred that as the said offer was made without obtaining occupation certificate such date shall not be deemed to be the date of valid offer of possession.

3. Considering the written and verbal averments made by both the parties, the Authority observes that a valid offer is necessary to be supported by occupation certificate. However, in this case, occupation certificate was merely applied and not granted at the time of offer of possession. Therefore, the Authority is of the view that complainant shall be entitled to delay interest as per Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2% for the period starting from the deemed date of offer of possession till the date on which occupation certificate was obtained by the respondent. The respondent shall also be entitled to reasonable interest at the rate of nine percent for the delay in payment of instalment from the period of grant of occupation certificate till the date on which payment is actually made by the complainant."

C) **5<sup>th</sup> hearing dated 26.11.2019:** The Authority as per the revised principles in Complaint no. 755 of 2019 titled Mapsko Builders Private Limited vs. Tilak Kumar & Anr. held that allottee shall be entitled to interest as per Rule 15 of HRERA Rules for period of delay beginning from the deemed date of possession (as per the agreement ) till the date on which valid offer of possession has been made by the promoter i.e. the date of occupation certificate. The developer shall also be entitled to same rate of interest for the period of



delay in payment of outstanding dues from the allottee. Relevant part of order dated 26.11.2019 is reproduced as below:

"1. The Authority had vide its order dated 26.09.2019 had held that the complainant shall be entitled to delay interest as per Rule 15 of HRERA Rules, 2017 for the period starting from the deemed date of offer of possession till the date on which a valid offer duly supported by occupation certificate was made by promoter. The respondent was held entitled to reasonable interest @ of 9% for the delay in payment of instalment from the date of grant of OC till the date of payment made by the complainant.

2. The Authority has revisited the principles laid down earlier, in Complaint no. 755 of 2019 titled Mapsko Builders Private Limited vs. Tilak Kumar & Anr. As per the revised principles, allottee shall be entitled to interest as per Rule 15 of HRERA Rules for period of delay beginning from the deemed date of possession (as per the agreement) till the date in which valid offer of possession has been made by the promoter i.e. the date of occupation certificate. The developer shall also be entitled to same rate of interest for the period of delay in payment of outstanding dues from the allottee. The revised principles would be applicable to all similar complaints.

3. In view of above, the promoter and allottee are directed to file fresh statement of accounts/ claims mentioning receivables and payables, as per the revised principles and supply advance copy to each other at least a week before the next date of hearing."

D) 7<sup>th</sup> hearing dated 03.03.2020: Complainant had filed present complaint seeking refund of already paid amount to the respondent for purchase of unit in respondent's project. Learned counsel of the complainant sought adjournment to seek instructions from his client whether he is



interested in having possession of the booked unit or not. Relevant part of order dated 03.03.2020 is reproduced as below:

"1. Complainant herein is seeking refund of already paid amount to the respondent for purchase of unit in respondent's project. The question as to whether or not the Authority has jurisdiction to deal with matter seeking refund is pending before Hon'ble Punjab and Haryana High Court, Chandigarh in civil writ petition which is now pending for 22.04.2020. Furthermore, learned counsel of the complainant prays for short adjournment as he wants to seek instructions from his client whether he is interested in having possession of the booked unit or not. Accepting his request, matter is adjourned to 23.04.2020."

E) **8<sup>th</sup> hearing dated 18.08.2020**: Ld. counsel for complainant had filed an application dated 19.03.2020 seeking possession along with delay compensation in compliance of previous order. Relevant part of order dated 19.03.2020 is reproduced as below:

"Ld. counsel for complainant had filed an application dated 19.03.2020 in compliance of previous order seeking amendment in the relief sought in present complaint. Now the complainant is seeking possession along with delay compensation. The said application is hereby allowed with a direction to the complainant that he shall file copies of amended complaint before the next date of hearing."

F) **11<sup>th</sup> hearing dated 12.01.2021**: Authority accepted the request made by the Ld. Counsel for the complainant to amend the relief sought from refund of already paid amount to the respondent for purchase of unit to handover of possession along with delay compensation and directs the respondent to file their reply accordingly. Relevant part of order dated 12.01.2021 is reproduced as below:





"1. The present complaint was initially filed by the complainant seeking refund along with interest of their amount paid to the respondent. The Authority vide orders dated 03.03.2020 had observed as follows:

"Complainant herein is seeking refund of already paid amount to the respondent for the purchase of unit in respondent's project. The question as to whether or not the Authority has jurisdiction to deal with matter seeking refund is pending before Hon 'ble Punjab & Haryana High Court, Chandigarh in civil writ petition which is now pending for 22.04.2020. Furthermore, learned counsel for the complainant prays for short adjournment as he wants to seek instructions from his client whether he is interested in having possession of the booked unit or not. Accepting his request, case is adjourned to 23.04.2020."

2. Thereafter, the matter was listed before the Authority on 18.08.2020 when counsel for the complainant informed the Authority that they are now seeking possession of their apartment along with delay compensation. The complainant was, therefore, directed to amend their complaint accordingly.

3. Today, Shri Kamal Dahiya appeared on behalf of the complainant and stated they have filed an application for amendment of their complaint on 19.03.2020 by amending the relief sought clause which is as follows:

i. To give necessary directions to the respondent to handover the possession along with delay interest till the date of offer of possession as per the provisions of Section 18 of the RE (R&D) Act, 2016.

ii. To direct the respondent to pay interest, penalty as per rule 21 (3) Of the HRERA Rules, 2017.

Ld. Counsel Shri Dahiya also stated that the other clauses of the complaint will remain the same and requested the Authority to treat their application as amendment in the complaint.

4. Taking note of the above, the Authority accepts the request made by the Id. Counsel for the complainant and directs the respondent to file their reply accordingly before the next date of hearing.

5. Case is adjourned to 09.03.2021."



G) **15<sup>th</sup> hearing dated 15.09.2021**: Learned counsel sought time to settle the matter amicably. Relevant part of order dated 15.09.2021 is reproduced as below:

“ Ld. counsel for the respondent stated that they are in process of settling the matter amicably with the complainant.

Taking note of the above, the Authority directs the respondent to send the terms of proposed settlement to the complainant within 10 days. Further action in the matter will be taken on the next date of hearing.”

2. Present case was 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 in view of previous orders decides as follows:

i) **Water and Sewerage Connection charges:**

Complainant is aggrieved on the account of levy of Water and Sewerage Connection charges amounting to Rs.25,000/-. As per complainant since it is unreasonable, therefore, he has requested that same may be quashed. Learned counsel for the respondent stated that Water and Sewerage Connection charges have been levied as per clause 3 of the FBA. Clause 3 of agreement reads as follows:

“**Clause 3-** That it is clarified by the promoter and agreed by the Buyer that the individual electric water, sewerage, connection charges are not included in the aforesaid Total sale

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price and shall be payable by the Buyer in addition to the Total Sale Price of the said Floor. Such charges i.e. (i) Individual Electricity Connection Charges including deposit of Meter (ii) Individual Water Connection Charges including deposit for Meter and (iii) Sewerage Connection charges from the said Floor to the Internal Sewerage line etc. shall be borne and paid by the Buyer, on demand to the promoter as may be determined at the time of providing such necessary connection(s) by the concern department(s)/ authority(s) as the case may be."

Thus, it is the sole responsibility of the promoter to develop both basic infrastructure of the project like provisioning of roads, sewage system, storm water disposal, electricity connection, water supply etc. Since the promoter signs an agreement with Department of Town and Country Planning to provide Water and Sewerage Connection at the time of issuance of license, therefore, it is mandatory obligation of promoter to provide the same to the allottees within the licensed area. Cost of such mandatory obligations of the promoter have already been included in the basic sale price of the unit. Therefore, promoter cannot charge amount for Water and Sewerage Connection exclusive of basic sale price of the unit.

Thus, Authority observes that respondent is liable to provide for Water and Sewerage Connection and basic cost of apartment includes cost of Water and Sewerage Connection.



Therefore, levy of Water and Sewerage Connection over and above basic price on complainant is illegal and hence Water and Sewerage Connection charges amounting to Rs. 25,000/- are quashed. Respondent is directed to return amount charged from complainant on account of said charges.

ii) **Interest Free Maintenance Security:**

The Authority vide order dated 01.04.2021 in **Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd.** has laid down certain principles in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by the complainant. However, the respondent shall deposit it in a separate interest earning account. Further till taking over of the project by RWA, the builder-respondent shall render periodic account of income and expenditure made out of this account to the general body of residents of the colony. Therefore, Rs. 21,500/- charged from complainant on account of "Interest Free Maintenance Security" is upheld subject to aforesaid condition.



**iii) Value Added Tax:**

Value Added Tax is the tax paid to the State Government. On perusal of record, it is inferred that as per Clause 7 of the agreement provides "that the Buyer specifically agree to pay directly or if paid by the Promoter then reimburse to the Promoter on demand all Government charges, levies, Property Tax, Value Added Tax (VAT), Wealth Tax, Service Tax, or any other taxes, duties, charges, cess etc. levied or leviable in future on the said Floor/Colony, developed or to be developed as the case may be, assessable/applicable. If such charges are increased (including with the retrospective effect) after the sale deed/ conveyance deed has been executed then such charges shall be treated as unpaid sale price of the said floor and the promoter shall have the first charge/lien on the said Floor for recovery of such charge from the Buyer."

Thus, a plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Since the VAT charges have been quantified and demanded by the company through the final account statement, therefore, demand of Rs. 43,696/- payable on account of VAT is justified and hence allowed.



iv) **Club Membership Charges (CMC):**

Authority vide its order dated 28.03.2019 had already resolved this issue. It held that there is no clarification whether club has been constructed or not, therefore, in case, club has been constructed and presently not functional then the respondent is not allowed to charge for club membership. Moreover respondent did not submit any evidence in Court justifying levy of club membership charges, therefore, it is presumed that no club exist at site and hence club charges amounting to Rs.50,000/- stands quashed.

v) **Maintenance Charges:**

As per **clause 14 (c)** of the agreement " in the event of Buyer to take possession for any reason whatsoever, Buyer shall be deemed to have taken the possession of the said floor on expiry of 30 days of offer of possession for the purpose of payment of maintenance charges or any other taxes, levies, outflows on account of the said floor or for any other purpose." Hence, demand of Rs. 20,640/- raised on account of maintenance charges is held valid and complainant shall be liable to pay the same to the respondent.

vi) **Interest for delay in delivery of Possession:**

In the present complaint, possession was offered to the complainant on 23.05.2017 and Occupation certificate was received by respondent on 06.10.2017. As per Agreement, possession of the



unit should have been handed over to the complainant by 31.07.2012. Actual offer of possession was sent on 23.05.2017 along with demand of Rs 1,85,568/-. Therefore, complainant is entitled to get interest for delay in handing over of possession of unit in terms of Rule 15 of HRERA rules, 2017 i.e SBI MCLR+2%.

Issue as to till which date complainant will be entitled to receive interest for delay in handing over of possession of unit was argued at great length by both parties on 28.03.2019. Authority vide order dated 28.03.2019 held that said offer of possession dated 23.05.2017 was not valid in the absence of Occupation Certificate, however the unit in question stood complete/ready for possession as on the date of receiving of Occupation certificate. So, the respondent is liable for the delay compensation from the deemed date of offer of possession till receiving of Occupation Certificate in terms of Rule 15 of HRERA rules, 2017 i.e. SBI MCLR+2% .

Thus, complainant is entitled to get interest on account of delay in delivery of possession on the already paid amount from the deemed date of possession i.e. 31.07.2012 till the date of obtaining completion certificate i.e. 06.10.2017. Therefore, respondent promoter is directed to pay interest for delay as provided in Rule 15 of HRERA Rules, 2017. Accounts branch of this Authority has calculated the interest as per Rule 15 of HRERA, Rules 2017, to the



tune of ₹ 5,87,748/- as interest payable to the complainant from deemed date of possession i.e. 31.07.2012 till valid offer for possession after receipt of Occupation Certificate i.e. 06.10.2017.

Similarly, the respondent-developer is also entitled to get holding charges for the period from 06.10.2017 i.e. date of grant of occupation certificate till date of actual taking over of possession by the respondent-allottee.

3. 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- Mapsko Builders Pvt Ltd vs Harsh Rohra** whereby this Authority has allowed the verbal submission/plea of developer that in case the allottee fails/not ready to pay the outstanding amount, 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.”





4. Further it is observed that in case, the complainant-allottee is not ready to pay outstanding dues, the respondent-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 allottee for making payment of the outstanding amount. Accordingly, the respondent is directed to issue a fresh statement of accounts to the complainant within 30 days of uploading of this order. It is further made clear that if the complainant fails to make payments to the respondent within a period of 90 days from the date of issuing fresh statement of accounts, the respondent will be at liberty to exercise his right to cancel allotment of unit as per terms of the agreement.

5. Case is disposed off in above terms. File be consigned to record room.

  
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RAJAN GUPTA  
[CHAIRMAN]

  
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DILBAG SINGH SIHAG  
[MEMBER]