



Complaint No. 431 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No. RERA-PKL-431 of 2018

Satish Kumar and Renu.

...COMPLAINANTS

VERSUS

M/s Dhingra Jardine Infrastructure Pvt. Ltd.

...RESPONDENT

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 09.04.2019

Hearing: 6th

Present: - Mr. Rajan Hans, Counsel for complainants.

None for respondent.

ORDER: (Anil Kumar Panwar - Member)

1. Shri Ajay Girdharan and Ms. Sonia Menon, (hereinafter called the original allottees) were allotted flat No. G-29, Block-B measuring 1055

Sq. fts. in a project named "Suburban Floors, California Country, Sector-80, Faridabad" launched by the respondent. The respondent had executed a buyer's agreement in favour of the original allottees on 24.09.2009. Subsequently, in the year 2013, present complainants purchased the said flat from the original allottees and the respondent endorsed such transfer in their favour on 17.04.2013. The complainants had already paid Rs. 24,62,583/- till 27.04.2013 against the total sale consideration of Rs. 22,88,500/- including of EDC, IDC etc. The buyer's agreement provided that the possession would be delivered to the allottees within 18 months from the date of sanctioning the building plan or from the date of start of construction whichever was later plus grace period of 6 months. Since the complainants opted for Construction Linked Payment Plan and third demand was raised against them on 21.03.2010, the complainants have claimed that the commencement of construction has to be reckoned from 21.03.2010 and the deemed date of delivery of possession has to be treated as 21.03.2012 after addition of the grace period of 180 days as per buyer's agreement.

2. The complainants' grievance is that the deemed date of possession has already lapsed but the respondent has not offered them possession till date after obtaining occupation certificate. Further, grievance made by the complainants is that they were forced to pay Rs, 5,38,500/- for hiring a rental accommodation from April, 2013 to June, 2018 and were also burdened with



a liability of paying interest of Rs. 8,26,830/- on the loan amount borrowed for purchase of the flat in question, due to non-delivery of timely possession of the flat. So, they have prayed for directing the respondent to deliver them possession along with delay compensation in the nature of interest @ 18% per annum in addition to compensation for mental and physical harassment and also for the cost of litigation.

3. The respondent filed reply and therein not denied, the complainants' averments on the point that he had endorsed the transfer of original allottee right in flat No. G-29 in favour of the complainants on 17.04.2013 and had received Rs. 24,62,583/- from the complainants till 27.04.2012 against the total consideration of Rs. 22,88,500/- inclusive of EDC and IDC etc.

4. In his reply, he has further tried to explain the delay in handing over the possession by pleading that erstwhile Director Shri Virender Kumar Dhingra has committed suicide on 30.04.2018 and thereafter no competent person was available to manage the affairs of the respondent company. So, the project could not be completed. It was further pleaded that a tripartite agreement was executed between the deceased Director of the respondent company, California Country Flat Buyers' Association and a contractor firm – M/s H.S. Oberoi-VSPL JV (here in referred as Contractors), to carry out the construction and complete the balance work. In terms of the said contract, M/s. H.S. Oberoi was to complete the balance work on receiving payment of



Rs. 495/- per sq. ft. of super area from the allottees. So, the respondent pleaded, that the only way now available to the allottees is to get the pending work complete after paying the agreed charges of Rs. 495/- per sq. ft. to M/s H.S. Oberoi. Claiming that the complainant is aware of the tripartite agreement and has the remedy to get the unit completed in the aforesaid manner, the respondent pleaded that the present complaint against him is liable to be dismissed.

5. Even, today, none has appeared on behalf of respondent and the Authority has therefore decided to dispose of the present complaint on merits after initiating ex-parte proceedings against the respondent and hearing the complainants.

6. Learned counsel for the complainants has drawn the attention of the Authority towards a letter annexed as Annexure P-16 with the complaint to argue that the respondent on one point of time had offered the possession which they had refused because the respondent had made such offer without obtaining occupation certificate. According to him, the tower in which the complainants' flat is situated is complete and many families are already living in the said tower. So, the complainants are now ready to take possession of their flat No. G-29 without insisting for the occupation certificate.

7. The Authority has given though and full consideration to the submissions of the counsel. The letter (Annexure P-16) proves that the tower



in which the complainants' flat is situated is complete and is ready for fit-out possession. Since many families are already living in the said tower, the complainants are now also ready to occupy the flat in question without insisting for occupation certificate. They have already paid Rs. 24,62,583/- against the total consideration of Rs. 22,88,500/- . So, the Authority does not find any ground for not accepting the complainants' prayer for directing the respondent to deliver him possession of the flat in question after re-validating the offer of possession already made vide Annexure P-16. Granting such relief will save the complainants from mental and physical harassment which they had been suffering for the past many years due to non-delivery of possession of the unit for which they had already paid the entire consideration amount.

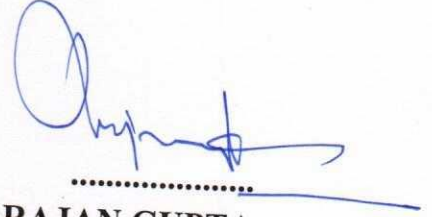
8. For the reasons recorded above, the complaint is **disposed of** with a direction to the respondent to hand-over the keys of the flat No. G-29 to the complainants within three months from uploading of this order. It is however made clear that the complainants will be at liberty to pursue their remedy before the Adjudicating Officer for claiming compensation as may be permissible to them under the law.

9. Before parting with the orders, it deserves to be mentioned that the respondent had incurred a liability of paying a cost of Rs. 16,000/- to the Authority and Rs. 2000/- payable to the complainants due to non-filing of the reply on time. So, the respondent is directed to pay the said costs to the

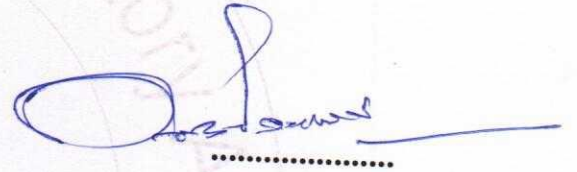


Authority and the complainants through Demand Draft/RTGS within a month from the date of uploading of this order on the website of the Authority.

10. Order be uploaded on the website and file be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]

