



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1080 OF 2018

RahulCOMPLAINANT(S)

VERSUS

M/s Omaxe Pvt LtdRESPONDENT(S)

CORAM: **Rajan Gupta** Chairman
Anil Kumar Panwar Member
Dilbag Singh Sihag Member

Date of Hearing: 05.03.2019

Hearing: 2nd

Present: - Mr. Rahul, complainant in person

Mr. Sanjeev Sharma, Counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. The complainant's case is that he purchased a unit measuring 930 sq ft in respondent's project named "Omaxe Shubangan" situated in sector 4a, Bahadurgarh, district Jhajjar from an original allottee named Mukesh Kumar Saini on 13.02.2013, following which buyer's agreement was executed between the parties on 22.08.2015. As per terms of the agreement the respondent was duty bound to deliver possession of the unit within 24 months from the date of

execution of agreement i.e. upto 22.08.2017, but they have failed to do so despite receiving an amount of Rs 20,03,756/-.

Complainant alleges that the respondent company has arbitrarily increased the basic price of unit from Rs 17,29,000/- to Rs 20,20,231/- and have increased the area of the unit from 800 sq ft to 930 sq ft without his consent. The present complaint has been filed seeking possession of the unit at earliest alongwith delay compensation and also to waive off the unjustified charges demanded by respondent on account of GST.

2. In the written reply the respondent has denied the allegation as follows: -
 - a. The present complaint is not maintainable as the flat in question is in name of two purchasers namely Rahul Saini and Sunaina Saini, whereas this complaint has been filed by only one complainant.
 - b. The relief sought by the complainant relating to compensation falls within the jurisdiction of Adjudicating Officer but the complainant has incorrectly invoked the jurisdiction of this authority.
 - c. It is an admitted fact that respondent had sent a copy of buyer's agreement to the complainant on 05.12.2013, but it is the complainant who never returned the same and is responsible for the delay caused in signing of agreement.
 - d. Initially, the original allottee had booked the unit measuring 800 sq ft for a total cost of Rs 19,09,900/-. The complainant stepped into the shoes of original allottee on 06.02.2013 and signed the agreement dated



21.08.2015, wherein it was stipulated that the basic price of the unit is Rs. 20,24,750/- for an area measuring 930 Sq. Ft and total cost of the unit will be Rs 22,30,750/-. The complainant was fully aware of increased area as he had signed and accepted annexure-A which is the part of buyer's agreement.

e. The unit allotted to the complainant is nearly complete and the possession of same will be handed over within next few months.

3. Today Ld. Counsel for the respondent stated that the price of the unit has been charged for the same area i.e 930 Sq. Ft. and at the same basic cost on which complainant agreed at the time of signing of agreement. Further respondent seeks time upto December, 2019 to handover possession of the unit.

4. The written as well as oral pleadings of both the parties have been examined. The Authority will not reject the complaint only on account of a technical objection that the allotment of the apartment has been made in favour of two allottees whereas only one has filed this complaint. Since this complaint has been filed by one of the allottees, it is very much maintainable. The objections of the respondent regarding lack of jurisdiction of the Authority is also not sustainable because the institution of Adjudicating Officer is meant to determine the quantum of unliquidated compensation claimed by the parties in much detailed evidence is required to be taken for arriving at fair and just compensation. Hence, the core of the agreement falls within the jurisdiction of this Authority to adjudicate upon.



5. Admittedly, deemed date of handing over of the possession was 22.8.2017. The respondent states that they will offer the possession by December,2019. The respondents are directed to do the needful accordingly. If the apartment is handed over by December,2019, it will be within a delay of nearly two years and four months. It has been held by me in complaint case No.49/2018.Prakash Chand Arohi versus M/S Pivotal Infrastructures Pvt.Ltd. that for a reasonable delay in completing the project, the compensation as provided for in the agreement shall be paid by the developers. Accordingly, Clause 40 (e) of the agreement provides that Rs 5 per sq. ft on the built up area of the unit will be paid for the delay caused in handing over of possession. Accordingly, for the delay caused the complainant shall be compensated in accordance with the provisions of the agreement. However, if the respondents do not offer the possession by December,2019 complainant shall be free to approach the Authority again where-after a further appropriate order shall be passed. However, since in a majority judgement in complaint case No.113 of 2018 Madhu Sareen Versus BPTP Ltd. a separate formula for awarding compensation had been ordered, now the ratio of the majority judgement however, shall be applicable in this case till such time the majority judgement holds good.

6. Regarding area of the unit, since agreement has been executed by complainants for an area measuring 930 sq. ft. Therefore, now they cannot go

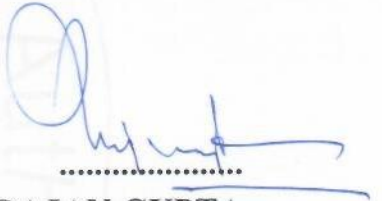



back with their contractual obligations. So, the cost of the apartment shall be calculated on the basis of 930 sq. ft.

Regarding the GST charges, since the deemed date of possession was 22.08.2017 and the GST had already come into force before that, so the liability on account of statutory taxes shall be paid by the complainants.

7. Now the respondents are directed to issue a fresh statement of account showing amounts receivables from the complainant and amount of compensation payable by the respondent within 30 days of uploading of this order. The final receivables shall be calculated after duly adjusting for the amount of compensation payable by the respondents.

Disposed of. File be consigned to record room.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]