



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No. 717 of 2019

Rajender Prasad Singal and Anr.

....Complainant(s)

Versus

RPS Infrastructure Limited

...Respondent.

CORAM:

Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of hearing: 17.02.2022

Hearing: 17th

Present: -

Complainant in person

Mr. Rahul Rathore, Learned counsel for complainant through Video Conference

Mr. Rajesh Jain, AR of respondent through VC

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings, learned counsel of the complainant submitted that he had booked a unit bearing no. 105, T-12 in the project being developed by the respondent at Faridabad on 17.05.2008. Total sale consideration of the apartment was Rs. 41,70,940/ against which he has already paid Rs. 34,35,598/- constituting almost 82 percent by 25.06.2015. Builder Buyer agreement was executed on 19.05.2008 between both the parties and as per agreement, possession was to be delivered within 36 months from the date of execution of agreement i.e. by 19.05.2011. However,

possession of unit was offered on 22.06.2017 accompanied with following illegal demands i.e.,

- a) Interest on account of delayed payments;
- b) Increased super area from the original 1590 Sq. Ft to 1661 Sq. Ft;
- c) Payment of enhanced EDC with interest;
- d) Club membership charges;
- e) Demand for ECC and FFC;
- f) Meter connection charges;
- g) Electricity consumer security;
- h) Prepaid meter card;
- i) Labour cess @12 PSF;
- j) Administration charges VAT Charges;
- k) Escalation charges etc.

Complainant also sought permissible interest on delayed delivery of possession.

2. Before approaching the Authority, complainant had filed a complaint in Permanent Lok-Adalat bearing complaint no. 2886/2017 whereby he had challenged illegal demand made by the respondent and also claimed compensation for delay in handing over the possession of the unit. However, the same was dismissed as withdrawn for the reasons that respondent in their counterclaim made huge demand on account of delay in making payments, holding charges and maintenance charges etc. which made the complainant beyond pecuniary jurisdiction of Permanent Lok Adalat. For the reasons of extra ordinary delay in offering possession, now complainant demands relief by way of delay permissible interest on account of handing over of possession and quashing of illegal demands and execution of conveyance deeds etc.

3. On the other hand, respondent argued that this project does not fall in the definition of "Ongoing Project" as defined under HRERA Rules, as,

occupation certificate of the project was received on 21.06.2017. Therefore as per rules, this complaint is not maintainable before this authority. Respondent further argued that a tripartite agreement for availing loan was executed on 20.05.2008 among complainant, respondent and LICHFL. He pleaded that third party i.e. LICHFL should also be impleaded as necessary party. Besides, respondent also pleaded that despite repeated requests, complainant had failed to remit outstanding payments of Rs. 30,95,241/- calculated as on 31.03.2019 in terms of Buyers agreement dated 19.05.2008. This amount includes various components as mentioned below:

- a. Rs. 17,97,734 towards BSP and additional charges;
 - b. Rs. 8,44,803/- towards interest on outstanding amount from 22.06.2017 to 31.03.2019;
 - c. Rs.1,76,658 towards holding charges from 22.06.2017 to 31.03.2019;
 - d. Rs. 1,91,250/ towards stamp duty prior to taking over possession of the said unit.
4. While perusing case file, it is also observed that Authority vide order dated 23.04.2019 has made certain observations based on the pleadings of both the parties. Relevant paragraphs are reproduced as follows:

4. The Authority has gone through the written as well as oral pleadings of both the parties and it observes as follows: -

i) The arguments of the respondent that this Authority has no jurisdiction to deal with this matter because the respondent had received occupation certificate on 21.06.2017 is not acceptable. While disposing of Complaint No. 144 of 2018 titled Sanju Jain Versus TDI Infrastructure Ltd. detailed reasoning had been given on this subject. That reasoning will as such be applicable in this case also. Accordingly, this objection of the respondent is over ruled,

ii) The second contention of the respondent is to implead LIC Housing Finance Company Limited as a necessary party. This plea also is not acceptable because LIC Housing Finance

Company Ltd. is only a finance company. The loan raised from the said company does not alter the promoter allottee relationship of the respondent and the complainant. This Authority is adjudicating upon the relationship of the promoter and the allottee in accordance with law and the terms of agreement. Therefore, LICHFL need not be impleaded as a necessary party.

iii) The demand along with interest raised by the respondent on account of enhanced EDC should be withdrawn because this matter is sub-judice before the Hon'ble Court. Any demand in this regard can be raised only after a decision by the Hon'ble Court.

iv) The respondent has charged interest on the delayed payments made by the complainant @ 24%. This too is not acceptable. As per law laid down by the Hon'ble Apex Court, interest on such detailed payments can be levied @ 9% per annum only. The respondent shall re-calculate the interest payable by the complainant on account of detailed payments @ 9%.

v) The respondent shall submit the status of operation of the club, club membership fee can be charged only if the club is operational.

vi) There has been a considerable increase in the super area of the apartment proposed to be handed over to the complainant. This Authority in a complaint No. 607 of 18 titled as Vivek Kadyan Versus TDI Infrastructure Limited and in complaint No. 22 of 2019 titled as Parmeet Singh Versus TDI Infrastructure Limited has laid down certain parameters for calculating the admissible super area. Super area on the basis of which the respondent charged shall be recalculated in accordance with the principles adopted in the above mentioned two complaints Nos. 607 of 2018 and 22 of 2019. Revised super area calculations shall be placed before the Authority on the next date of hearing.

vii) Labour cess charges taken from the complainant also appears to be unjustified. Detailed justification for the same shall be furnished.

viii) The complainant has made certain arguments which are beyond the scope the written pleadings. The complainant shall submit their written arguments and shall supply a copy of the same to the respondent well before the next date of hearing.

ix) While respondent shall revise the amount payable by the complainant in accordance with the aforementioned principles, a copy of which shall be provided to the complainant before the

next date of hearing. Similarly, the complainant shall submit his written arguments and supply a copy of the same to the respondent.

5. Adjourned to 18.06.2019 for arguments.

5. Several further directions were also given to the respondent vide order dated 17.12.2019 as to calculation of interest for delays.

2. The Authority gives another opportunity to the respondent to furnish the following details within fifteen days from uploading of this order: -

(a) File a detailed statement about the balance amounts recoverable from the complainant along with interest and also the amounts which will be payable to them on account of delay in delivery of possession. Respondent for this purpose will charge interest @ 9% per annum on the amounts of delayed instalment and will assess the delay compensation as well by calculating interest @ 9% per annum on the amount already collected from allottees.

(b) The increase in the super area shall be calculated as per the principles laid down in a complaint No. 607 of 18 titled as Vivek Kadyan Versus TDI Infrastructure Limited and in complaint No. 22 of 2019 titled as Parmeet Singh Versus TDI Infrastructure Limited.

6. In pursuance of orders dated 23.04.2019 and 17.12.2019, respondent had filed two applications first dated 28.01.2020 and second dated 31.10.2020. In the first application, respondent have annexed statement of account as on 21.11.2020 wherein Rs. 30.85 lacs were shown as recoverable from complainant. Whereas in the second application, respondent while disputed all the allegations of the complainant stated that except this complainant all other allottees had accepted the possession of their booked apartments without any objections. Vide order dated 03.11.2020, Authority had given following observations:



4. A cursory look at the statement of accounts submitted by the respondent reveals that there are serious discrepancies therein. For instance, Rs.7,42,747/ are being added on account of "escalation on account of exorbitant rise". This is a vague expression. Admittedly, the possession of the apartment has been delayed by about six years by the respondent. If any cost escalation taken place it is due to delay caused by the respondent. The complainant cannot be held answerable for that. The Authority in the order reproduced in Para 1 above had ordered that enhanced EDC will not be charged because a stay against recovery of this charge had been granted by the Hon'ble Punjab & Haryana High Court and the matter is still sub-judice. Despite that the respondents have included Rs. 2.01 lacs as enhanced EDC and Rs.2.74 lacs as interest on enhanced EDC. These charges could not be included in the statement. Further, Rs.2.57 lacs have been demanded as holding charges whereas the complainant justifiably had not taken the possession because respondents had made the undue demands. Therefore, prime facie even the holding charges do not appear to be applicable. Similarly, the demand of GST @ 18% p.a. amounting to Rs.2.7 lacs, and stamp duty @ Rs.1.91 lacs also appears to be unjustified. No justification has even been given for levying Rs.1.23 lacs as maintenance charges.

5. Besides, in the statement of accounts the orders dated 23.04.2019 of this Authority does not appear to have been adhered to in letter and spirit. The respondents have calculated Rs. 5.39 lacs payable to the complainant as interest for delay in offer of possession. This interest has been calculated as per the builder buyer's agreement whereas the Authority had ordered that it should be calculated @ 9% p.a. Accordingly, this calculation also does not appear to be acceptable.

6. For the foregoing reasons the statement of accounts submitted by the respondents cannot be admitted as correct. The Authority would advise the respondent to call the complainant in their office and recalculate the amounts to be payable by each party. Further the complainant is justifiably not taking possession of the apartment because he cannot be expected to fulfil illegal demands of the respondent. The respondents are advised to settle the matter in the complainants in the spirit of this order failing which the Authority will appoint some accounts expert to work out the justified demands. The cost of such account's expert shall be borne by the respondent.

8. Adjourned to 30.12.2020



7. Pursuant to order dated 03.11.2020, respondent was again directed to submit its recalculations as per directions passed in the order thereby. Vide order dated 03.03.2021, respondent was directed to make a new offer of possession along with recalculations. Subsequently on 19.04.2021, learned counsel for respondent submitted that as per the directions of the Authority, demand from complainant has now reduced from Rs. 30,95,241/- to Rs. 15,85 lacs but the complainant had not taken possession. While hearing, Authority again observed that respondent has not complied with order in letters and spirit. So, Authority passed directions to the respondent vide order dated 07.07.2021 which is as follows:

4. The Authority after hearing contentions made by both the parties directs the respondent as follows:-

- (a) Submit component wise breakup of demands raised respondent along with justification for each component.
- (b) File detailed calculation of the amount which will be payable to the complainant as delay interest till offer of possession or else the amount calculated by this Authority vide order dated 03.03.2021 will be taken as correct.

8. But there were multiple discrepancies in the statement of account submitted by respondent. So, respondent was again directed vide order dated 28.10.2021 to furnish the given details:

3. (a) Issue fresh demand notice to the complainant before next date of hearing clearly specifying latest amounts payable by complainants to the respondent under separate heads.
- (b) Submit latest statement of account before the authority on next date of hearing duly accounting for the amounts payable by the complainants under separate heads and the amount payable to the complainant as delay interest to be calculated at the rate 9% per annum, till date.

9. Complainant as well as respondent promoter have submitted their respective calculations of receivables and payable. Both these statement of accounts have been got examined by the Authority and found that fresh statement of accounts submitted by the respondent again included those components which have been turned down by the Authority vide its order dated 03.11.2020. Since Authority finds genuineness and legal reasoning in refusal of the complainant to accept offer with additional demands on 22.06.2017 because Authority vide order dated 03.11.2020 have already struck down those arbitrary and illegal demands. Therefore amount of Rs. 17,97,734/- as shown by respondent is not found correct because delay interest to be paid to the complainant by respondent at the time of offer of possession i.e., 22.06.2017 has not been considered while showing an outstanding amount of Rs. 17,97,734/-. As per the order of the Authority dated 03.11.2020 following components are required to be adjusted against the said amount of Rs. 17,97,734/- as submitted on 22.07.2017.

- a. Deduction of enhanced EDC amounting to Rs. 2,01,546/-;
- b. Deduction of interest on enhanced EDC amounting to Rs. 2,87,264/-;
- c. Deduction of difference in rate of interest amounting to Rs. 48,630/-.

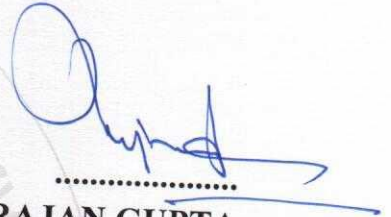
The amount after above deductions which the respondent was entitled to recover from the complainant as on 22.07.2017 comes out to be Rs. 12,60,294/- before adjustment of delayed interest which the complainant is entitled to receive.

10. Complainant had paid Rs. 31,14,492/- to the respondent by due date of possession i.e., 19.05.2011. Thereafter on 30.12.2014, complainant paid Rs. 1,65,224/- and subsequently he paid Rs. 1,65,882/- on 26.06.2015. All these payments were made by complainant before the offer of possession i.e., 22.06.2017. As possession has not been handed over till the date of this order, therefore complainant is entitled to receive delayed interest on the amount paid by him to the respondent from the said date of payments till date of order pronouncement (17.02.2022). In terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % the amount of delayed interest payable to the complainant has been calculated at the rate of 9.30% and same works out to Rs.33,26,992/-.

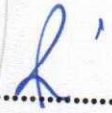
11. As far as the right of the respondent for his receivable amounting to Rs. 12,60,294/- as on 22.07.2017 is concerned, Authority is of the view that the obligation to deliver possession within stipulated time is cast upon respondent and so is the case with complainant in making payment of justified charges. For default the respective parties become liable to pay interest in terms of provisions of RERA Act, 2016. Therefore, it is decided that complainant will pay interest on the amount of Rs. 12,60,294/- from the date when it was demanded (22.06.2017) till date of this order (17.02.2022). Such interest after calculation in terms of Rule 15 of HRERA Rules, 2017 (9.30%) works out to Rs 5,46,219.

12. Therefore as on the date of this order, amount which then respondent was entitled to recover was Rs. 12,60,294 /- along with permissible interest Rs.5,46,219/- calculated as per HRERA Rules, 2017. The amount as delayed interest which complainant was entitled to receive till date of this order works out to be Rs. 33,26,992/-. Hence respondent is liable to a payment of Rs.15,20,479/- to the complainant within 90 days of uploading of this order.

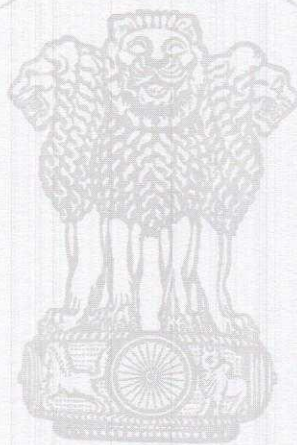
13. **Disposed of** in above terms. File be consigned to record room after uploading the order on website of Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]



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