



Complaint no.562/18

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 562 OF 2018

Adhir Kapoor and Rashi Kapoor

....COMPLAINANT

VERSUS

1. M/S Ansal Buildwell Ltd.
2. Pivotal Infrastructure Ltd.
3. Pivotal Reality Pvt. Ltd

.....RESPONDENTS

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 03.04.2019

Hearing: 6th hearing

Present: - Shri Suvir, Counsel for complainant

Shri Rohan Gupta, Counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

The complainants have impleaded three parties as respondents i.e. M/s Ansal Buildwell Ltd., M/s Pivotal Infrastructure Pvt. Ltd. and Pivotal Reality Pvt. Ltd. Learned Counsel for respondents stated that the project has been developed and marketed by respondent no. 2 and 3 and respondent no. 1 is only a proforma respondent. Hence, the Authority is disposing off the mater by directing this order towards respondent no. 2 and 3. Respondent no. 1, however, shall be kept in the list as proforma respondent.

2. The case was heard at length on 05.02.19 when issue regarding compensation for delay in delivery of possession was finally decided by the Authority. Second issue raised by the complainant was regarding demand of Rs. 3,72,502.23/- and the same was alleged by the complainants to be illegal, but the respondents rebutted the same by submitting that the demand is justified. Hence, the Authority had directed the complainants to submit an affidavit to the Authority in support as to why the demand of Rs. 3,72,502.23/- is illegal in nature.

3. The complainants have filed their affidavit with the Authority stating that the below mentioned amounts are required to be adjusted from the demand of Rs. 3,72,502.23/-:



- (i) The respondents have charged preferential location charges amounting to Rs. 1,11,375/- for park facing flat but the flat allotted to complainants is not park facing.
- (ii) The respondents offered a discount of 2% of the net basic sale price for timely payment of all demands. The complainants have paid all the payments to respondents in time except one payment of Rs. 1,39,310.67/- which was delayed by only two days; therefore, the complainants are entitled to discount of Rs. 66,290/- on account of timely payments and same is required to be adjusted.
- (iii) The respondents have failed to provide all amenities to the complainants as promised. As per Annexure III of the builder buyer agreement, the respondents had promised to provide air conditioner in master bedroom and wooden laminate flooring in bedrooms, but the same have not been provided by the respondents till date. Therefore, the complainants demand compensation of Rs. 35,000/- and Rs. 34,000/- for deficiency in aforesaid services and same may be adjusted.
- (iv) The complainants further submit that service tax amounting to Rs. 1,64,842.37/- and CGST+SGST amounting to Rs. 25,391/- be also adjusted against the said amount of Rs. 3,52,959.35/-.



4. The respondent submits that the discount of 2% was given as an incentive to the complainants for making timely payments and respondent is not bound to provide the same to complainants. He further stated that the respondent has already offered possession to the complainants on 27.06.18 and complainants have not come forward to take the possession. The respondent did not install AC in master bedroom and did not provide wooden laminate flooring in bedrooms because the matter has been pending for litigation and if respondent had provided the afore-said services, same would have become obsolete. He further stated that respondent is ready to provide such services when the complainants are ready to take possession of the unit.

5. The Authority observes that the complainants have failed to justify how the said demand of Rs. 3,72,502.23/- is alleged to be illegal. The Authority had directed the complainants to substantiate their argument and prove to the Authority that the complainants are not bound to pay the said amount to the respondents. After going through the verbal and written submissions of both the parties, the Authority orders as follows: -

- (i) As per builder buyer agreement, the complainants have been allotted unit no. 1203 on 12th floor in the project but nothing has been mentioned in the agreement about allotment of park facing apartment to the complainants. The complainants have accepted the said location of the apartment by signing the



agreement and terms and conditions of agreement are binding on the complainants. Therefore, the PLC amount of Rs. 1,11,375/- cannot be waived off. The complainants are bound to pay the same.


- (ii) The complainants have made all the payments to the respondents in time, except one payment of Rs. 1,39,310.67/- for which there is delay of only two days. It is observed that delay of two days in making payment is reasonable. Therefore, the respondents are directed to provide a discount of 2% amounting to Rs. 66,290/- to the complainants for making timely payments.
- (iii) The respondents are directed to provide air conditioner in master bedroom and wooden laminate flooring in rooms at the time of possession of unit to the complainants.
- (iv) The complainants are directed to pay service tax, CGST and SGST to the respondents in accordance with law. The respondents are directed to communicate an advice of the tax expert explaining the basis of these charges to the complainants within forty-five days.

6. The respondents are directed to prepare a fresh statement of account showing the compensation payable by the respondent to the complainants for



delay in delivery of possession; and the receivables from the complainants on account of above-mentioned charges, and furnish the same to the complainants along with letter of possession within a period of forty-five days.

Disposed of in the above terms. The orders be uploaded on the website of the Authority and the files be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]