



Complaint No. 221 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 221 OF 2019

Unisys Infosolutions Pvt. Ltd.

....COMPLAINANT

VERSUS

M/s Ultratech Township Developers Pvt. Ltd.

....RESPONDENT

CORAM: Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 25.09.2019

Hearing: 5th Hearing

Present: - Mr. Manav Bajaj, Counsel for complainant.
Mr. Drupad Sangwan, Counsel for respondent.

ORDER (ANIL KUMAR PANWAR-MEMBER)

1. The complainant after paying a booking amount of Rs. 5.00 lacs to the respondent had booked a flat on 20.09.2011 in his project named "New World Residency" situated in Karnal.
2. The respondent could not deliver possession to the complainant on 19.02.2014 which was the agreed date and had rather offered possession on 18.06.2018. The complainant's grievance is that the respondent as a condition for delivery of possession had demanded Rs. 26,03,005/- in which a sum of Rs. 18,40,557 was shown as interest charged due to delayed payment of instalments. It is further averred that the respondent on 07.09.2017 when the complainant visited his office had calculated the interest liability at Rs. 9,50,653/- and after receiving the said amount had told that the complainant would be liable to pay only 5% amount of the total sale consideration at the time of handing over possession. So, the complainant through the present complaint has prayed for issuing a direction to the respondent to deliver him possession on payment of only 5% amount of the total sale consideration.
3. The respondent has admitted in his reply that the complainant was allotted a flat in his project and he had offer him possession on 18.06.2018. The only issue raised by him is that the outstanding amount was rightly calculated at Rs. 26,03,005/- and he had never agreed to settle the complainant's total liability towards interest at Rs. 9,50,653/-. The respondent



while admitting that the complainant had paid a sum of Rs.9,50,653/- on 07.09.2017, has pleaded that he is ready to offer possession to him even today on payment of the outstanding dues.

4. Learned counsel for the parties have been heard and record has been perused.

5. The only issue requiring determination is regarding the actual amount due against the complainant. The complainant's plea on this point is that the respondent after receiving from him an amount of Rs. 9,50,653/- on 07.09.2017 had told him that he would be liable to further pay only a sum equivalent to 5% of the total sale consideration of Rs. 3,77,690/- at the time of handing over the possession . In support of his contention, the complainant had relied on the writing which is appearing beneath the cheque vide which the aforementioned amount was paid by him. The writing endorsed on the cheque reads as under:-

“Ch. No. 006529 dated 07.09.17
for Rs. 950653/- with interest”.

The above endorsement is said to have been made by an official of the respondent company who had received the cheque and below the said writing are affixed the official's initial and the seal of the respondent company. The respondent's counsel without disputing the seal and the initials has argued that the words “with interest” are not in the hand of respondent's official and the same have been rather added subsequently either by the complainant or

someone else at his behest. The Authority finds merit in the contention because the words "with interest" do not appear to have been written at the time when the remaining words "Ch. No. 006529 dated 07.09.17 for Rs. 950653/-" were scribed. The disputed endorsement had been scribed in two lines. The words written in the upper line are " Ch. No. 006529 dated 07.09.17" while the lower line contains the words "for Rs. 950653/- with interest". Pertinent to notice is that the second line runs almost parallel to the first line except at the place where the words "with interest" exists. The pattern for the words "with interest" rather start gradually moving towards the upper line. As a result, the gap between the first and second line vis a vis words "with interest" is significantly narrower than the gap appearing above the words "Ch. No. 006529 dated 07.09.17". In the face of such circumstances, it cannot be safely concluded that the words "with interest" were scribed by the person who had acknowledged the receipt of cheque of Rs. 9,50,653/-.

6. The above conclusion gets further fortified from the writing that appears below the seal and the initials of the official of the respondent company. Said writing reads as under:-

" _____ Full and final amount withholding till date _____
 _____ apart from 5% amount to be paid at the _____
 _____ time of actual possession of Flat No. 202 _____ "

It was argued on behalf of the complainant that the above mentioned writing was also endorsed by the respondent's official. The Authority regrets its

inability to accept the argument because such writing is altogether different from the writing of the person who had written the words “ Ch. No. 006529 dated 7.9.17 for Rs. 950653/-”. Even otherwise, if the above referred three lines were also endorsed by the official of the respondent company then he must have put his initials below these lines and not in between the above referred two endorsements..

7. For the reasons discussed above, the Authority rejects the complainant's plea on the point that the respondent after receiving cheque of Rs. 9,50,653/- had agreed to deliver him possession on receiving only 5% of the total sale consideration.

8. The net result of the above discussion is that the complainant is entitled to receive the possession on payment of balance dues and the respondent is duty bound to deliver him possession along with interest on the already paid amount due to delay in delivery of possession. The possession which was agreed to be delivered on 19.02.2014 was actually offered on 18.06.2018. The respondent at the time of offering the possession has not calculated the complainant's outstanding liability after adjusting the delay compensation payable from 19.02.2014 onwards. So, the Authority directs the respondent to send a fresh offer of possession to the complainant along with a detailed statement of all payable and receivable amounts. For preparing such statement of account, the respondent will calculate the interest chargeable from complainant as also the interest payable to the complainant for the



delayed period @ 9% per annum. The amount of interest payable as delay compensation will be calculated from the agreed date of possession i.e. 19.02.2014 to the date of fresh offer of possession.

9. The complainant is directed to take possession of the purchased flat after paying the outstanding amount within 30 days of the fresh offer to be given by the respondent. He will be at liberty to file a fresh complaint in order to challenge the propriety and illegality of any amount reflected in the statement, which according to him was legally not chargeable. However, such right of filing a fresh complaint will not initially save the complainant from discharging the entire liability reflected in the statement of the receivable and payable amounts. In case any of the amount shown in the statement of accounts supplied to the complainant is found unjustifiable by this Authority, the Authority will take a serious note of it against the respondent and will take necessary action in accordance with law.

10. Case is disposed of. Order be uploaded on the website of the Authority and file be consigned to the record room.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]