



Complaint No. 591 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 591 OF 2019

SACHIN KANSAL

....COMPLAINANT(S)

VERSUS

RAS DEVELOPMENTS PVT. LTD.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 09.10.2019

Hearing: 4th

Present: - Mr. Naveen Bansal, Counsel for the complainant
Mr. Harish K. Garg, Counsel for the respondent.

ORDER (ANIL KUMAR PANWAR- MEMBER)

1. The complainant booked a residential unit on 15.06.2012 in the respondent's project namely "Palm Residency" situated in Sector-75-76, Faridabad. He has already made part payment and has filed the present complaint for refund of the paid amount on the ground that respondent had

failed to offer him possession within a period of 36 months as stipulated in the buyer's agreement.

2. The Authority on the basis of averments made in the respondent's reply and documents attached therewith, has found that the respondent filed an application for grant of occupation certificate on 28.09.2018 and had already received the same on 02.04.2019. Thereafter, the respondent had even offered possession to the complainant on 04.04.2019. So, the Authority does not consider it to be a fit case for grant of refund for the simple reason that respondent had already completed the project and offered possession of the unit to the complainant.

3. Faced with the aforesaid situation, the complainant has requested the Authority to treat his complaint for granting relief of possession along with compensation for the period by which the respondent had delayed delivery of possession. Section 11(4)(b) of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the Act) makes the promoter responsible to obtain Completion Certificate/Occupation Certificate from the competent Authority and to make it available to the allottee. Section 19 of the Act deals with rights and duties of allottee and Sub-section (10) thereof provides that allottee shall take physical possession of the purchased unit within two months of the occupation certificate issued for the said unit. So, cumulative effect of the above referred provisions is that valid delivery of possession to the allottee



becomes effective only from the date on which the promoter sends the allottee information to take possession after obtaining occupation certificate. Such intimation in this case was sent only on 04.04.2019 and therefore the respondent will be liable to pay delay compensation from the agreed date for delivery of possession i.e. 04.03.2016 till the date on which possession was offered along with occupation certificate i.e. 04.04.2019.

4. In view of the above, the matter stands disposed of with the direction to the complainant to take possession of the unit on payment of balance if any and the respondent is directed to pay him interest as per Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2 % for the period of delay i.e. from 04.03.2016 till 04.04.2019. The amount of delay compensation shall be adjusted against dues payable by the complainant. File be consigned to record room.

Separate adv recorded.

[Signature]

RAJAN GUPTA
[CHAIRMAN]

[Signature]

ANIL KUMAR PANWAR
[MEMBER]

[Signature]

DILBAG SINGH SIHAG
[MEMBER]

ORDER (RAJAN GUPTA- CHAIRMAN)

While agreeing with the rest of the orders passed by my learned colleagues, I would maintain the ratio of my order passed in complaint No.49 of 2018 Parkash Chand Arohi Versus Pivotal Infrastructures Pvt. Ltd. Admittedly, delay of 3 years have been caused in delivery of the possession. The project however has been completed. As per clause 2.7 of the Builder-Buyers agreement delay compensation @ of Rs.5 per Sq. ft. of the super area is payable by the respondent. In terms of the orders passed in complaint No. 49 of 2018 for first two years of delay the compensation shall be Rs 74,400/- per year and together for two years it will be Rs 1,48,800/-. And for the third year of delay compensation @ SBI MCLR + 2% which works out to Rs 3,86,167/-. Thus, total Rs 5,34,967/- as delay compensation shall be payable.

Disposed of.



RAJAN GUPTA
(CHAIRMAN)