



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

53

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| Day and Date | Thursday and 20.04.2023 |
| Complaint No. | CR/2001/2022 Case titled as Pallavi Rani Vs Ashiana Dwelling Private Limited |
| Complainant | Pallavi Rani |
| Represented through | Shri Divanshu Saraswat Advocate |
| Respondent | Ashiana Dwelling Private Limited |
| Respondent Represented | Shri Deeptanshu Jain Advocate |
| Last date of hearing | 18.11.2022 |
| Proceeding Recorded by | Naresh Kumari and HR Mehta |

Proceedings

The present complaint has been received on 13.05.2022 and the reply on behalf of respondent was received on 21.11.2022.

On the last date of hearing, the respondent was directed to provide fresh statement of account after adjustment of delayed possession charges and legal charges as per BBA within 15 days. Further, the complainant was also directed to make payment of outstanding dues thereafter and take the possession of the allotted unit.

Succinct facts of the case as per complaint and reply are as under:

| S.no. | Particulars | Details |
|-------|---------------------------------------|--|
| 1. | Name of the project | Ashiana Mulberry, Sector-2, Gurgaon |
| 2. | Project type | Group Housing Project |
| 3. | RERA registered/not registered | Registered vide registration no. 44 of 2017 dated 11.08.2017 |
| | Validity status | 30.06.2020 |
| | DTPC License no. | 16 of 2014 dated 10.06.2014 |



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| 4. | Validity status | 09.06.2014 |
| | Licensed area | 10.25 acres |
| | Name of licensee | Ashiana Dwellings Private Limited |
| 5. | Provisional allotment dated | Not placed on record |
| 6. | Unit no. | 1201 on 12 th floor, tower T1 (As per page no. 36 of complaint) |
| 7. | Unit area admeasuring | 1730 sq. ft. (As per page no. 36 of complaint) |
| 8. | Date of apartment buyer agreement | 21.11.2015 (As per page no. 34 of complaint) |
| 9. | Possession clause | Clause 11.2 of agreement <i>The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within <u>a period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date")</u> and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee.</i> |
| 10. | Date of start of construction | Not available on record |

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016की धारा 20के अर्तगत गठित प्राधिकरण



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| 11. Due date of possession | 21.08.2019 (Calculated from date of agreement i.e. 21.11.2015 as date of start of construction is not available on record + 6 months grace period) Grace period of 6 months is allowed |
| 12. Payment plan | Construction linked payment plan (As per applicant ledger dated 14.10.2022 on page no. 43 of reply) |
| 13. Total sale consideration | BSP- Rs. 74,73,600/- TSC- Rs. 93,24,350/- (As per payment plan on page no. 72 of complaint) |
| 14. Amount paid by the complainants | Rs 92,18,945/- (As per applicant ledger dated 14.10.2022 on page no. 43 of reply) |
| 15. Occupation certificate | 02.11.2022 (As per page no. 127 of reply) |
| 16. Offer of possession | Offered on 03.11.2022 as confirmed by the counsel of respondent and complainant during the proceedings. |

1. Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.

The respondent submitted that the complainant has failed to make payment of outstanding dues of Rs. 4,40,439/- despite reminder as per demand issued on 03.11.2022. Further the counsel for the respondent requests for considering the delay in the project which occurred due to ban imposed on construction by NGT as well as Hon'ble Supreme Court from time to time as well as time relaxation for Covid restrictions. However the counsel for the complainant states that due date of possession for handing over of possession was much before the occurrence of Covid and hence, benefit for the own wrong of the respondent cannot be allowed. Further the restriction



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on construction was only for small durations and are periodic in nature and hence, no relaxation on their account may be allowed. However, this demand of outstanding dues is being made without adjusting the delayed possession charges.

Considering the above-mentioned facts, the authority calculated due date of possession as per clause 11.2 which comes out to be 21.08.2019 along with grace period of 6 months. The occupation certificate has been obtained on 02.11.2022 i.e. after due date of handing over of possession and no offer of possession has been made till date.

Non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 21.08.2019 till handing over of possession or offer of possession after obtaining occupation certificate plus two months, whichever is earlier.

The complainant present in person requests for handing over of physical possession as despite having paid more than the basic sale price and delay of more than 3 years in offering the possession, the possession is not yet handed over despite multiple visits. The respondent is directed to issue revised account statement after adjusting the delayed possession charges as per above within 15 days and to hand over the possession in next 15 days on payment of outstanding dues, if any, remains. The counsel for the respondent offers to hand over the possession after finishing the flat and installing the fixture as per agreed specifications.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

V.1 - 3
Vijay Kumar Goyal
Member
20.04.2023