HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1124 OF 2021

Hemwant Silswal ...COMPLAINANT(S)

VERSUS

RPS Infrastrucure Limited ....RESPONDENT(S)

CORAM: Rajan Gupta Chairman

Dilbag Singh Sihag Member

Date of Hearing: 05.07.2022

Hearing: 6th

Present: - Mr. Gopal Singh, Ld. Counsel for the complainant through VC.

Ms. Manpreet Khurana, Ld. Counsel for the respondent though VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant is that he booked a residential flat no. 1204 at 12th Floor having super area of 1565 sq. ft in Tower T-06 of Group Hosing Project of respondent namely "RPS Auria" situated in Sector-88, Faridabad by paying booking amount of Rs. 5,00,000/- vide cheque dated 05.05.2016. Allotment letter dated 10.05.2016 was issued by respondent. Builder Buyer Agreement was executed between the parties on 10.05.2016. As per clause 22 of

Builder Buyer agreement, construction of the apartment was to be completed within 48 months from the date of execution of agreement, thus deemed date of delivery of possession was on 10.05.2020.

2. He further stated that said apartment was booked under INTEREST SUBVENTION SCHEME whereby down payment of Rs.11,96,000/- was made by complainant and a bank loan of Rs. 55,00,000/- was sanctioned and disbursed by ICICI bank directly to builder without informing and taking consent of the complainant. A tripartite agreement dated 20.05.2016 was executed. Thus, total amount of Rs. 66,96,000/- was paid to the respondent out of the agreed consideration amounting to Rs. 76,93,350/-. As per tripartite agreement dated 20.05.2016, respondent was supposed to pay EMI's to the bank on account of loan amount disbursed till handing over of possession of the unit to complainant. However, respondent has failed to pay bank EMI's ,as a result, burden of paying EMI has fallen upon the complainant.

3. Complainant further submitted that he had withdrawn from the project by issuing a legal notice to respondent on 08.03.2017, and asked respondent to refund Rs.55,00,000/- to ICICI bank along with initial amount paid by complainant to him. But respondent has neither cancelled the unit yet nor refunded the money paid, therefore now he prays for refund of Rs. 66,96,000/- which includes entire loan amount as well as the amount paid by complainant, along with interest from the date of payment till its realization.

4. On the other hand, Ld. counsel for respondent pleaded that various force majeure circumstances including periodic ban on all construction activities imposed by National Green Tribunal, Delhi during 2016 and 2019; a blanket ban on all construction activities imposed by Supreme Court from November 2019 till February 2020; nationwide lockdown imposed by Government of India vide notification dated 24.03.2020, are the main reasons for delay in completion of project. Still respondent had immediately taken all endeavours and completed the project. Therefore, due to Covid-19 i.e., about 9 months and thereafter due to NGT Ban on construction i.e., about 12 months, completion date should be extended to 10.03.2022.

5. Further, Ld. Counsel for respondent apprised the Authority that respondent-promoter has already completed construction work of project and has also applied to DTCP, Haryana for grant of occupation certificate on 05.04.2022. Thus, possession will be offered to the complainant after obtaining occupation certificate from competent authority.

6. After hearing submissions of both parties and perusing relevant record, the Authority is of the view that relief of refund cannot be allowed to the complainants on the ground that project construction is complete and occupation certificate has already been applied for. Authority prima facie is of view that upfront delay interest from the due date upto actual handing over of possession deserves to be allowed to complainants-allotees, and the same will be credited by respondent in the accounts of complainant.

Further, Authority directs complainant to submit latest statement of accounts issued by bank stating the amount of EMI's to be paid by respondent to ICICI bank towards housing loan and also to submit calculations of upfront delay interest payable to them by respondent from deemed date of possession till the date of passing of this order i.e., 05.07.2022. Further, monthly interest which shall be applicable w.e.f. 27.07.2022 also needs to be calculated. Respondents are directed to handover possession of allotted unit to the complainant on obtaining occupation certificate from the authority concerned. They are also directed to clear backlog of EMI's to ICICI bank.

7. Adjourned to **20.09.2022** for final arguments.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER