



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 3102 OF 2022

Anand Kumar Maheshwari COMPLAINANT

Versus

Aarcity Builders Pvt. LtdRESPONDENT

2. COMPLAINT NO. 3103 OF 2022

Anand Kumar Maheshwari COMPLAINANT

Versus

Aarcity Builders Pvt. LtdRESPONDENT

3. COMPLAINT NO. 3104 OF 2022

Surender KumarCOMPLAINANT

Versus

Aarcity Builders Pvt. LtdRESPONDENT

CORAM:

**Parneet Singh Sachdev
Dr. Geeta Rathee Singh
Chander Shekhar**

**Chairman
Member
Member**

Date of Hearing: 24.10.2024

Hearing: 10th in all cases.

Present: Mr. Anurag Jain, Counsel for the complainants in all complaint.
Mr. Jai Kishan, Authorised representative of respondent in all cases.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. On the last date of hearing, i.e. 30.05.2024, Authority had observed as follows:-

"Today, ld. counsel for complainant argued that objections had been filed in registry on 27.05.2024 with advance copy supplied to respondent in captioned complaints. He further argued that delay interest has not been calculated by respondent in terms of HRERA Rules, 2017 and demand of maintenance has been raised by respondent whereas possession is still to be handed over. In respect of issue of car parking charges to tune of Rs 1,50,000/- and club membership charges to the tune of Rs 25,000/-, he submitted that said charges have not been raised by respondent as both of the amenities are not yet available at site. Today, no has put in appearance on behalf of respondent in captioned complaints.

Fact remains that the respondent w.r.t towers B, D and G of project in question 'Regency Park', Hisar has already received occupation certificate on 21.06.2023. Therefore, the units located in said towers are fit for occupation. Complainant's units are located in towers B and D. Considering this fact, Authority vide order dated 25.01.2024 had directed the respondent to offer possession alongwith statement of receivables and payables in terms of HRERA Rules, 2017 and to arrange a physical site visit for inspection of respective units. The respondent has made an offer of possession to the complainants on 22.02.2024 by email. The complainants have confirmed that the offer for their respective units was made by respondent. However, the aforementioned offer, though accompanied by a statement of receivables and payables, but did not reflect the correct picture of receivables and payables as per the version of counsel for complainants. The complainant's counsel in his written submissions said as follows:-

"That the statement of receivable and payable as provided by the respondent s per illegal and contrary to the provisions of RERA Act and HRERA Rules and in violation of the directions issued by this Hon'ble Authority vide order dated 25.01.2024, which has been so reproduced in order dated 21.03.2024"



Further, physical site visit for inspection of unit has not been arranged by respondent till date.

In the aforesaid circumstances, Authority directs the respondent to handover actual physical possession of respective units to complainants on or before 20 June, 2024 without insisting upon issue of receivables and payables. Before handing over of possession, respondent shall arrange a physical site visit of complainants for inspection of unit so that complainants may point out the deficiencies, if any, that exist in their allotted units. Details of said physical site visit alongwith name and contact no. of concerned official be informed through mail to the complainant within next 10 days. Complainants are at liberty to file details of deficiencies or any other shortcoming existing in the units with photographs in registry.

However, complainants will remain liable to get paper formalities done for taking keys of unit. Issue of receivables and payables will be adjudicated by this Authority in further hearing. Both parties are directed to provide their statement of receivables and payables amount within next 4 weeks with an advance copy exchanged with each other.

Cases are adjourned to 24.10.2024."

2. Today, Id. counsel for complainant argued that respondent instead of complying with directions issued vide previous order had filed an application seeking review/modification of order dated 30.05.2024. He requested that respondent be strictly directed to provide possession of the unit.

3. Mr. Jai Kishan, appearing on behalf of respondent stated that arguing counsel Adv. Tarun Ranga is having/facing certain health issues today so he could not appear before the Authority for assistance. He requested that before issuing any directions to the respondent, application filed for seeking review/modification of order dated 30.05.2024 be decided.



4. As per office record, respondent had filed an application in registry on 16.09.2024 seeking modification of order dated 30.05.2024, whereby respondent was directed to handover possession without insisting upon issue of receivables and payables. Grounds pointed out in said application for modification are as follows:-

- i. Order was passed considering one-sided arguments as respondent could not appear on said date.
- ii. Said order was uploaded on 11.06.2024 due to which aforesaid directions could not get complied within given time frame work.
- iii. Present cases includes issue of cancellation which has not been decided.

5. In respect of objections, it is observed that occupation certificate for the tower-B,D and G has already been received by respondent on 21.06.2023 and units of complainants in captioned complaint duly falls in these towers so the directions were rightly passed considering the factual position of the case. Moreover, there was no intimation from side of respondent regarding his non-appearance on said date, therefore order on basis of relief sought and factual position of the cases was passed. Secondly, in respect of time framework for handing over before June,2024 and uploading of order on 11.06.2024. It is observed that in case respondent had an intention to abide by the directions, the time upto today's hearing, i.e. 24.10.2024 was available with respondent. No justification of delay of 4 months has been provided by respondent. Lastly, in



respect of issue of cancellation, reference is made to order dated 25.01.2024 whereby cancellation letter was quashed by the Authority. Relevant part of the order dated 25.01.2024 is reproduced below for reference:-

"Arguments of both parties have been heard and relevant record has been perused. It is pertinent to mention here that status quo with respect to allotment rights of unit was ordered vide order dated 07.02.2023 against cancellation letter dated 26.11.2022 in order to avoid further complications and as of today, no third party rights have been created by the respondent. With respect to the cancellation, the Authority observes that possession was supposed to be delivered by 16.11.2015 in terms of builder buyer agreement but the respondent had offered only a fit out offer on 22.08.2022. A demand for Rs 10,93,589/- was also created. The said offer was not accompanied with occupation certificate. The respondent itself, at the time of hearing admits the receipt of occupation certificate on 21.06.2023; meaning thereby that the impugned offer of possession in year 2022 was not a valid offer. Complainant was not bound to accept the offer and to pay remaining amount in year 2022. Therefore, the cancellation letter dated 26.11.2022 holds no sanctity in eyes of law. It stands quashed.

Facts reveal that respondent has not offered valid offer of possession after receipt of occupation certificate till date to complainant. Complainant is interested in having possession of unit alongwith delay interest. Therefore, respondent is directed to issue offer of possession to complainant alongwith statement of receivables and payables strictly made as per provisions of RERD Act,2016 and HRERA Rules,2017. Said statement of receivables and payables be mailed to complainant within next 7 days from today. Thereafter, respondent should arrange a physical site visit of complainant on 05.02.2024 for inspection of unit. Complainant is at liberty to point out deficiencies, if any, in writing to respondent after said site visit. Respondent shall file statement of receivables and payables and list of deficiencies in registry atleast two weeks prior to next date of hearing."

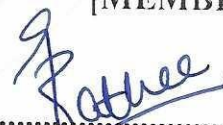
6. Objections raised by the respondent on the basis of which modification of order dated 30.05.2024 is being sought stand dealt with in aforesaid



paragraphs. As such, there is no reasonable justification provided by respondent for non-compliance of order dated 30.05.2024. In essence, respondent has intentionally acted in defiance of order/directions passed by the Authority. Such a conduct is not acceptable specifically in cases where complainants are waiting from year 2015-2016 to have possession of their units. In these circumstances, last opportunity is granted to the respondent to comply with directions issued vide order dated 30.05.2024 within next 45 days, failing which exemplary penalty under Section 63 of RERA Act, 2016 will be imposed upon respondent. For the said purpose, this order be treated as show cause notice to the respondent. In case of non-compliance, it is further directed that one of the Directors of the respondent company shall remain present on next date of hearing to explain the position of respondent.

7. With these directions, the cases are adjourned to 23.01.2025.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR .GEETA RATHEE SINGH
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]