HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 442 OF 2021

Pratibha ...COMPLAINANT

VERSUS

M/s Green Space Infraheights Pvt. Ltd. ....RESPONDENT

CORAM: Rajan Gupta Chairman

Dilbag Singh Sihag Member

Date of Hearing: 09.08.2022

Hearing: 9th

Present: - Mr. Jagmohan Bansal, representative of the Complainants through VC.
Mr. Sumit Kumar, proxy counsel for respondent through VC.

<u>ORDER</u> (RAJAN GUPTA - CHAIRMAN)

1. Today is 9th hearing in this matter. Mr. Jagmohan Bansal, representative of complainant apprised the Authority that this case was heard at length on 26.04.2022 when Authority had given its tentative view that complainant is entitled to possession of booked property. Relevant part of the orders is reproduced below:

> "1. While perusing file, it is observed that complainant has sought possession of a unit booked in the year 2015, in the project of the

respondent namely 'Shree Vardhman Green Space' situated at Sector-14, Panchkula being developed under Affordable Housing Policy, 2013. Draw of lots for allotment of a unit in said project was held on 25.08.2015. Upon being successful applicant, complainant was allotted Flat no. B-0308, 3rd floor measuring 478 sq. ft. in said project. Total sale consideration of said unit was Rs 19,62,000/- against which complainant has made payment of Rs 17,33,265/-. It is alleged by complainant that even after five years of booking, unit is not complete and possession has not been offered till date. Feeling aggrieved, complainant has filed present complaint seeking relief of possession of flat along with delay interest for delay caused in delivery of possession.

2. Mr. Bansal, a representative appearing on behalf of complainant submitted that complainant had paid almost entire amount of sale consideration to the respondent by the year 2018. Complainant is ready to make balance payment and accept possession of flat, however, respondent has failed to handover possession of said unit. It is alleged by complainant that the project is still incomplete and despite repeated communication respondent has not apprised the complainant of current status of project.

3. Representative of complainant further submitted by referring to clause 4 of BBA at page no. 49 of the complaint file that respondent undertook to reimburse monthly installment of interest/Pre-EMI interest payable by allottee to the bank for amount of housing loan taken by complainant from bank/NBFC. Respondent admittedly reimbursed the interest amount to the complainant till May 2019 but thereafter abruptly stopped paying

said interest amount. He prayed that respondent be directed to refund interest paid by complainant to the bank from May 2019 till date.

3. Respondent in his reply admitted that complainant has paid Rs. 17,33,265/- towards total sales consideration. He further submitted that as per BBA date of delivery of possession was tentative and subject to force majeure circumstances. The construction of project was hampered due to covid-19 pandemic. Vide order dated 03.02.2022 respondent was directed to furnish information about current status of construction of the project and when he will be able to handover possession of the unit to the complainant. Today none is present for respondent.

4. Factual position of the matter reveals that possession has not yet been offered by respondent and respondent has not even provided any specific timeline for handing over of possession. Since due date of delivery of possession is not mentioned in BBA, therefore, Authority deems it fit to consider it 3 years from the date of execution of BBA which comes to 07.06.2019. Three years has elapsed from such deemed date of delivery but respondent has not offered possession to complainant. Moreover, as per clause 4 of BBA, respondent had agreed to reimburse monthly installment of interest paid by complainant to bank, while the respondent reimbursed till May 2019, but stopped paying thereafter. These are now being paid by complainant to the bank. Therefore, Authority would direct the respondent to clear outstanding monthly interest from May 2019 till date immediately because that is causing additional hardship to the complaint.

Further, it is made clear that respondent will be liable to pay monthly interest till the actual date of handing over of possession.

5. Aforesaid view expressed by Authority is tentative in nature subject to final arguments by respondent. Last opportunity is granted to respondent to argue his case failing which Authority will confirm its tentative view expressed in this order.

6. Case is adjourned to **12.07.2022**."

2. On 12.07.2022 respondent raised objection that complainant had not placed on record any proof to show that she had been making regular payment of EMIs to the bank. Neither any letter or email has been placed on record to show that complainant made request to the respondent for re-imbursement of paid EMIs. Complainants submitted an application dated 14.07.2022 with supporting documents to show that they have been making regular payment of EMIs to the bank and have also sent various emails requesting reimbursement of the paid EMIs to the respondent. On the basis of these documents Authority vide order dated 20.07.2022 observed that respondent is liable to clear the outstanding EMIs to complainant. Operative part of the order dated 20.07.2022 is reproduced below:

"3. Today, Mr. Jagmohan Bansal stated that in compliance of the orders dated 12.07.2022, complainant has submitted documentary proof in the office of Authority on 14.07.2022 to show that they have been making regular payment of EMIs to the bank and have also sent various emails requesting re-imbursement of the paid EMIs to the respondent.

4. Taking into Account the arguments put forth by both parties and the documents placed on record, Authority observed that respondent is making a wrong statement before the Authority that complainant has not paid EMIs to the bank, nor made any request for re-imbursement to the respondent. Complainant vide application dated 14.07.2022 submitted statement of account of PNB Housing Finance Limited dated 14.07.2022 which reflects the regular payments of EMIs made by the complainant to bank. Furthermore, complainant has submitted copies of emails dated 10.07.2019, 11.02.2020, 25.08.2020 sent to the respondent requesting re-imbursement of the EMIs paid by the complainant. All these documents unequivocally prove the case of complainant. In view of these documents, the statement made by the respondent that complainant has not been paying EMIs to bank is highly unbelievable. Therefore, respondent is hereby directed to clear the outstanding EMIs. On the basis of statements of accounts submitted by complainant, Authority has quantified the amount of outstanding EMIs. Admittedly, respondents reimbursed the EMIs till May 2019. Therefore, the amount of outstanding EMIs to be reimbursed by the respondent for a period ranging from 10.06.2019 till 11.07.2022 comes out to be Rs. 4,61,633/-

5. In view of the financial difficulties & hardships faced by the complainant, Authority directs the respondent to clear said outstanding EMIs within 15 days from the date of uploading of this order failing which Authority will be constrained to take coercive actions against the respondent-promoter apart from attaching his bank account.

6. Case is adjourned to **<u>09.08.2022</u>**."

3. Today, when Authority enquired from the respondent what has been done in regards of payment of outstanding EMIs to the complainant, Mr. Sumit Kumar, proxy counsel for respondent stated that they were unable to communicate to Management of the respondent-company for payment of outstanding EMIs for the reason that two main counsels of their office are not attending office from the last 3 weeks due to medical emergency.

4. Authority observes that more than 3 opportunities have been availed by respondents to comply with the orders of Authority dated 26.04.2022. Complainant has been facing financial hardships due to non payment of EMIs by respondent. In view of these facts Authority directs ld. counsel for respondent to seek instructions from his client and clear overdue EMIs within 7 days failing which Authority will take coercive actions against the respondent.

5. Case is adjourned to **17.08.2022**.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]