



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 623 OF 2022

Ashok Kumar

...COMPLAINANT

VERSUS

Housing Board Haryana, Estate Branch, Panipat

....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Date of Hearing: 17.02.2025

Hearing: 10th

Present: Mr. Kamal Dahiya, ld. counsel for complainant.
Mr. VPS Namdev, ld. counsel for respondent alongwith
Mr. Inderresh Gulia, Estate Manager, Ms. Deeksha Malik,
Executive Engineer, Mr. Tejap1, CRO.

ORDER (NADIM AKHTAR-MEMBER)

1. In compliance of order dated 20.05.2024 and 09.12.2024, respondent had filed an application dated 17.12.2024, to prove the claim that all the basic amenities were present at the time of offer of possession and provided specific dates by which various amenities were available. Another application dated 14.02.2025 was filed by respondent wherein a copy of

statement of account, a copy of allotment letter and a copy of occupation certificate received from the department dated 25.07.2018 were filed.

2. Ld counsel for complainant argued this case alongwith complaint no. 491 of 2022 and submitted that facts of this case are similar to complaint no.491 of 2022. Hence, arguments/submissions made by him in the said complaint be also considered and taken on record for present complaint also.

3. Detailed order has already been passed by the Authority in Complaint No.491 of 2022. Relevant part of the order is reproduced here under:

“1.

2.

3.

4. *Ld counsel for complainant referred the orders dated 19.01.2023 passed by this Authority and stated that the original price of the unit of complainant was ₹7,50,000/-. However, subsequently possession of flat was offered to the complainant on 04.09.2018 by increasing price by 219% from the price of unit mentioned in brochure and revised price of the unit was fixed as ₹11,97,000/-. In pursuance to which complainant and other allottees requested Chairman of Housing Board, Haryana to reduce the price of the unit. Vide letter dated 11.06.2021, respondent offered physical possession of the flat to original allottee and a copy of said letter is annexed as Annexure C-3. A copy of possession certificate is annexed as C-4. Vide letter dated 16.06.2021, unit was transferred in name of the complainant. On 10.07.2021, allottees made representation for reduction of price which was consequently reduced to ₹11,97,000/- and same was informed to the complainant vide letter dated 10.07.2021, a copy of which is annexed as Annexure C-19. Ld. counsel for complainant emphasized that the offer of possession dated 11.06.2021 was not valid offer of possession in terms of law as the price of unit was*



not determined by the respondent while giving offer of possession to the complainant. Moreover, respondent forced the complainant to take possession of the unit within 30 days, by stating that otherwise allotment of unit will be cancelled. The allottees who did not take the forced possession of the unit, respondent had cancelled their allotment, which shows the mala fide intention of the respondent and therefore, under compulsion complainant accepted the possession of the unit.

5. Further, ld counsel for complainant stated that respondent had charged the GST at the rate of 12% per unit which is not leviable, reason being that GST can be imposed only on construction material and not on the unit of the complainant, as the project was completed in the year 2016, and GST was implemented subsequently. Prior to imposition of GST, VAT was applicable and complainant is ready to pay same, if valid. Also, by referring to the order dated 19.01.2023, ld. counsel for complainant mentioned that no proper basic amenities are laid down at the site. DHBVNL also raided the premises on 18.06.2021 and consequently penalty was also imposed on the respondent. Complainant is seeking possession along with delay interest after repair of structural defects and in this regard, nothing in reply came forward from respondent side whether any compliances have been made or not?
6. Ld. counsel for complainant pointed out that in reply of respondent it has been stated that present project of the respondent is not registered under RERA Act and hence RERA is not applicable. He further submitted that as basic amenities were not completed and completion obtained prior to coming into force of RERA, project of respondent falls under the category of "on going project". Respondent has violated the provisions of the RERA Act of 2016, by not registering the project till date with the Authority. Therefore, ld. counsel for complainant prayed that under the provisions of the RERA Act of 2016, suo motu complaint may be initiated against the respondent and all other actions be taken against the respondent which this Authority may deem fit.
7. For calculating the deemed date of possession, ld counsel for complainant stated that as no Builder Buyer Agreement (BBA) is executed between the parties till date, therefore, in this regard



reliance can be placed on judgment of M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr 2018 STPL 4215 SC wherein Hon'ble Apex Court has observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. Further, deemed date for handing over possession was in the year 2012 and the same can be substantiated with internal document of the respondent department dated 08.10.2010, obtained through RTI, i.e, an agreement between contractor and department regarding the construction of flats in the project, which as per the agreement were to be completed within 27 months.

8. Ld counsel for complainant submitted that no reply has been filed by the respondent regarding why the project is not completed as per layout plan and specifications. No rebuttal is made in reply regarding why the transformer is installed in green area. No communications are made by the respondent from the year 2010 till 2018 with the complainant and complainant is not informed about the status of the project, thereby, violating the provisions of section 19(2) and (5). For the said lapse of respondent, penalty may be imposed on the respondent under section 60, 61 for violation of section 12, 13, 14 of RERA Act of 2016.
9. In rebuttal, ld counsel for the respondent stated that present complaint is not maintainable before the Authority as complainant has not impleaded DHBVNL as necessary party. Complainant had taken the possession of the unit after ascertaining all the basic amenities. Further, respondent had received the occupation certificate on 25.07.2018 from Haryana Urban Development Authority, which is annexed as page no.49 of application dated 14.02.2025.
10. Ms. Deeksha, Executive Engineer stated that water supply, sewerage, storm water drainage were laid down by 28.03.2018, electricity connection for PH supply of flats was obtained on 24.01.2019 in the project. After receiving occupation certificate in year 2018, only then respondent offered the possession of unit to the complainant, therefore same is valid offer of possession. Further, respondent had discharged its liability by providing electrification work inside the colony by 26.06.2019. The department had applied to the DHBVN, Jind for energization of the electrical system of the



project vide letter dated 13.02.2019. However, no satisfactory reply was received till the year 2021. On 02.07.2021, SDO (E), DHBVN, Jind informed AE(E) Karnal that residents of Housing Board Colony Sector-8, Jind had visited the office of SE(OP), DHVBN regarding the irregularities in the colony. Then it was intimated by the SDO(OP), DHVBN, Jind to maintain distance of 1.2 mtr from the HT line, and in compliance transformers were temporarily shifted to park area. Further, for shifting transformers from park area, SDO(OP) DHBVN, Jind submitted an estimated cost of ₹75,64,600/- to AE(Electrical) HBH, Karnal. Also, for ensuring proper safety measures, fencing has been done near the transformer area. The green area is also complete in all respect. It is only due to inter-departmental issues and representation made by the allottees of the project that led to delay in energizing the electricity services at the project site. All the services were timely laid down by the respondent prior to handing over of possession.

11. Sh. Inderresh Gulia, Estate Manager stated that occupation certificate is received by the respondent in accordance with approved layout plan and specifications. There are 252 flats in the colony and all the allottees are satisfied with the services. Only, few allottees, who are complainants in the present matters, are unnecessarily filling the complaints. Regarding delay in delivering the possession of the flats, he stated that respondent had already paid the delay interest to the complainant. Moreover, complainant has also filed the complaint in the GST Council regarding the imposition of GST which is pending as on date. He further submitted that it was specifically mentioned in the brochure that specification of material, handing over of possession, construction material, plans of the promoter are not challengeable in any court. At the time of handing over of the possession, complainant also signed a NOC which shows that complainant willfully accepted the possession of the unit. Thereafter, subsequent maintenance of the unit is the responsibility of complainant.
12. In reply to the status of complaint pending before the GST Council, ld counsel for complainant stated that it is an admitted fact that a complaint has been filed before the Council, however, the cause of action for that complaint is different. Here, complainant is challenging the imposition of GST, however, before the Council,



complainant is challenging the rules and provisions by which complainant is made liable to pay the GST.

13. *After hearing all the parties, Authority observes RERA do not differentiate between the original allottee and subsequent allottee. RERA Act of 2016 is enacted for safeguarding the rights of the allottees. The plea of the respondent that inter-departmental issues and representation made by the allottees led to delay in laying down the basic amenities services, cannot hold good because when an allottee becomes a part of a project, it is with the hope that he will be able to enjoy the fruits of his hard earned money in terms of safety and security of his own home. However, in this case due to peculiar circumstances/ inter-departmental issues, complainant has not been able to completely enjoy the fruits of his investment capital as respondent made complainant to wait endlessly in the hope the possession of the unit will be handed over on time. Said possession is handed over to the complainant after waiting for so many years and that too under compulsion of cancellation of allotment if not accepted within 30 days. However, same is mere allegation of the complainant and no documentary evidences to proof the same have been placed on record. Therefore, complainant is directed to place on record documentary evidence to prove that the complainant took over possession of his unit under threat of cancellation and the units of allottees have been cancelled who have not paid the amount due at the time of offer of possession.*
14. *With regard to the plea of respondent that complaint is not maintainable for the reason that complainant had not made the DHBVNL as necessary party, Authority observes that the responsibility of the DHBVNL is to provide the electricity connection in surroundings of the plot. It was the responsibility of the respondent to provide the same to allottee of the project. Therefore, said plea of the respondent is rejected. Another point raised by the respondent is that respondent had already given the delay interest to the complainant for delay caused in handing over of the possession. However, relevant documents to prove the same have not been placed on record, therefore, Authority directs the respondent to place on record relevant documents to substantiate the said plea. Also, if respondent had not issued any cancellation threat to the complainants, said submission is also be proved on record.*



15. In respect of contention raised by counsel for complainant that respondent has not yet register its ongoing project and appropriate action be taken by registering a suo motu complaint against the respondent. In this regard, it is observed that respondent has obtained the occupation certificate on 25.07.2018, i.e, after coming into force of RERA Act of 2016 and has not applied for registration of project till date. Therefore, respondent is directed to submit written submissions as to why suo motu complaint be not registered against them for not registering the project. ”

4. With these directions, case is adjourned to 07.04.2025.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]