

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB

GC No. 1660 of 2020UR
Date of filing: 02.06.2020
Date of decision: 29.09.2021

1. NXTEP Maintain Infraz Private Ltd, 523, 5th floor, Block D and E, Chandigarh City Centre, VIP Road Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.
2. Singla Builders and Promoters Limited, Plot No.1265C, Sector 82, Sahibzada Ajit Singh Nagar, (Mohali), Punjab.

...Complainants

Versus

Kapil Kumar son of Shri Vijay Kumar, Flat No.608, Floor 6th Tower No.2, SBP North Valley, Santemajra, Kharar, District, Sahibzada Ajit Singh Nagar (Mohali), Punjab.

...Respondent

Present: Sh. Tushar Arora, counsel for the complainants.
Sh. Kapil Kumar respondent in person.

ORDER

1. This order will decide a complaint filed against the respondent for non-payment of maintenance charges by him, in violation of the apartment buyer's agreement dated 16.09.2012 entered into between the complainant No.2 and the respondent.
2. It is alleged in the complaint that the respondent was an allottee of Flat No.608, Floor 6, Tower No.2 in the project titled as "SBP North Valley", situated at village Santemajra, Tehsil Kharar, District Mohali, measuring

1390 Square Feet promoted by complainant No.2 Singla builders and promoters and M/s. Maintain Infraz Complainant No.1 was nominated as maintenance agency of Complainant No.2. On the basis of apartment buyer's agreement dated 16.09.2012, the respondent agreed to pay charges at the rate of Re.1/- per square foot including the statutory charges. It is further the case of the complainants that completion certificate in respect of the project in question has already been obtained on 19.12.2016 and the complainants provided the maintenance services to the respondent. However, the respondent is in arrears of maintenance charges for the period from March 2016 till March 2020 amounting to Rs.81,682/-, which also includes, GST. Hence, this complaint.

3. Upon notice, the respondent contested the complaint by way of filing written reply dated 09.04.2021 alleging that, the complainants have not provided him the occupation certificate and two years advance maintenance charges were obtained from him without completing the unit in question and without providing any services. It is alleged that, the complainants stopped providing maintenance services to the respondent in the middle of the year 2017. It is further alleged that, the complainants have not yet provided the promised facilities and even illegally covered the open areas. It is

further alleged by the respondent that there were several shortcomings in the maintenance services, as pointed out in paras 7 to 14 of his reply.

4. The complainants filed rejoinder to the written reply, wherein the averments as contained in the complaint have been reiterated and those of the written reply have been controverted. The main contentions of the complainants in their rejoinder are as follows:-
 - a. That as per clause 3(a) of the apartment buyer's agreement the purchaser was duty bound to pay maintenance charges at the rate of Re.1/- per square foot from the time of taking possession of the apartment.
 - b. As per clause 3(i) of the said agreement, the developer was well within his rights to increase the maintenance charges from time to time to cover any escalation in costs.
 - c. That the complainant No.2 has completed the entire project to the satisfaction of the respondent and after obtaining the necessary sanctions from the concerned authorities. The satisfaction of the respondent, while handing over the possession of the flats, was attached at Annexure AD2 to AD10.
 - d. Completion certificate was obtained from the appropriate authorities on 19.12.2016.

e. In support of its contention of having carried out regular maintenance work, the complainants have attached copies of invoices of expenses incurred by them in para 9 of their rejoinder.

f. Lastly, the complainants have relied upon the order of the SDM Kharar in the case of Capt. Avtar Singh and others and M/s Singla Builders and Promoters dated 18.12.2020, wherein, the said authority has asked the respondents to pay maintenance charges to the complainant.

5. Arguments in this case were heard on 01.09.2021. We have gone through the pleadings of the parties and facts of the matter. The factum of the respondent having purchased a flat in the project "SBP North Valley", and then having entered into agreement with the complainant No.2 for purchase of the apartment has been established on record. There is no separate agreement on record with respondent No.1. Nevertheless, the provisions of clause 3(a) are very clear to the effect that maintenance charges, at the rate of Re.1/- per square foot per month, were payable by the respondent from the date of taking possession of the said apartment. Pursuant to the said clause, the respondent has paid two years advance maintenance charges and security at the rate of Rs.25/- per square foot at the time of taking possession. The complainants

have also put on record sample invoices of expenses incurred over the years for maintenance services. It is also not in dispute that possession was handed over after receiving statutory permissions. It is also not in dispute that the respondent has not paid charges for the period from March 2016 till March 2020. Sh. Tushar Arora further pointed out that a sum of Rs.81,682/- alongwith interest had become due from the respondent. He further pointed out that default was continuing and the arrears on account of maintenance charges had increased further since the filing of the complaint. The stand taken by the respondent for non payment of maintenance charges is that the promised facilities and occupation certificate have not been provided to him and the project is still in complete. No evidence has been placed on record to substantiate these charges. On the other hand, the complainants have placed on record necessary statutory approvals and satisfaction of the respondent while taking possession of the apartment. Necessary invoices have also been placed on record.

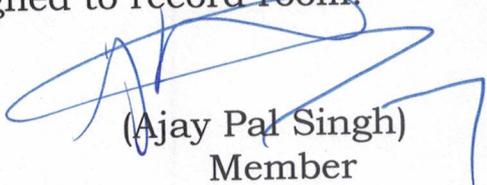
6. The documents available on the record are enough to corroborate the allegations made in the complaint as far as the payment of maintenance charges at the rate of Re.1/- per square foot as per the assertion in the agreement dated 16.09.2012 is concerned. However, there is no evidence on record showing that the

respondent had entered into a further agreement for payment of monthly maintenance charges at the rate of Rs.1.10/- per sq. foot per month w.e.f. August 2019 till March 2020 as against the rate of Re.1/- per square foot per month. As such, the complainants are unable to substantiate their claim for payment at a higher rate i.e. Re.1.10/- per square foot per month from August 2019 till March 2020. Hence, the complainants are held entitled to maintenance charges w.e.f. March 2016 till March 2020 at the rate of Re.1/- sq. foot per month. The complainants have wrongly claimed a sum of Rs.12,232/- (@ 1.10/-) instead of Rs.11,120/- (@ Re.1/-) for the period w.e.f. August, 2019 till March, 2020). As such, the complainants are entitled to arrears of maintenance allowances and GST as under:-

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|---|-------------|
| w.e.f. March 2016 till July, 2019 (41 months) @ Re.1/- per square foot | Rs.56,990/- |
| w.e.f. August, 2019 till March 2020 (8 months) @ Re.1/- per square foot | Rs.11,120/- |
| Total arrears of maintenance allowance | Rs.68110/- |
| GST at the rate of 18% on the above amount. | Rs.12,259/- |
| Grand total | Rs.80,369/- |

7. As a result of above discussion, the complaint is partly accepted and the respondent is directed to pay a sum of Rs.80,369/- (i.e. Rs.68,110/- on account of arrears of maintenance charges at the rate of Re.1/- per sq. foot

per month w.e.f. March 2016 till March 2020 alongwith an amount of Rs.12,259/- on account of GST at the rate of 18%) with interest at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%), within a period of 2 months from the date of this order. A copy of this order be supplied to both the parties free of costs under rules and file be consigned to record room.


(Ajay Pal Singh)
Member


(Sanjiv Gupta)
Member


(Navreet Singh Kang)
Chairperson