



Complaint No. 1167 of 2019

BEFORE THE ADJUDICATING OFFICER OF
HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1167 OF 2019

Monika Mittal

....COMPLAINANT(S)

VERSUS

M/s Samar Estates Pvt. Ltd.

....RESPONDENT(S)

CORAM: Sh. Anil Kumar Panwar

Date of Hearing: 28.06.2019

Hearing: 1st

Present: - Mr. Vishal Madaan, Counsel for complainant

Mr. Tarun Gupta, Counsel for respondent

ORDER (Anil Kumar Panwar-Adjudicating Officer)

1. The complainant herein was allotted a flat bearing no. E-901 by the respondent in his project "Ess Vee Apartments, Sector-20, Panchkula". It has been averred that she has already paid a sum of Rs. 25,74,708/- to the respondent against the basic sale price of Rs. 71,50,000/-. Flat buyer

agreement (FBA) between the parties was executed on 10.01.2013. As per clause 32 of FBA, the respondent was obliged to offer possession of the flat within 36 months from the date of commencement of construction. The complainant's grievance is that neither the construction has been completed nor any possession has been offered even after lapse of over 8 years from the date of booking.

The complainant further alleged that the delay in offering of possession of flat caused great harassment to her and since the project has neither been completed nor is likely to be completed because of mismanagement and severe defaults on the part of the respondent, her money should be refunded along with interest. She has also demanded compensation for the mental torture and harassment suffered at the hands of the respondent who has already caused delay of more than 8 years.

3. The respondent does not dispute the payment of alleged money to him. His plea is that the delay in completion of the project is not intentional and it has been caused due to non-payment of the due amounts by the complainant, which were demanded vide letters dated 14.05.2017, 31.05.2016, 12.06.2015, 12.01.2015, 24.10.2014, 09.07.2014, 21.04.2014, 02.03.2014, 05.12.2013, 10.01.2013, 01.02.2012. Respondent further averred that inspite of the fact that no payment has been made after 07.01.2013 by the complainant, he had completed the final roof slab of Tower E and construction up to plaster work of the booked apartment. Claiming that he has paid all



enhanced EDC and IDC which was due to the State Government, the respondent has further asserted that he has full intention of completing the project and handing over possession of completed apartments to the allottees. He, however, seeks time up to 30th of September 2019 for completing the project and handing over the possession.

4. After consideration of the averments made by the both the parties, it is observed that the complainant had booked the flat in 2011 and he had only paid instalments till Jan 2013 amounting to Rs.25,74,708/-. Thereafter, the respondent raised various demands from time to time as per the payment plan agreed between the parties but the complainant failed to fulfill those demands. This clearly shows that the complainant is at default in making timely payments. So, he cannot be allowed to take benefit of his own wrong for claiming relief of refund.

The respondent had shown interest in the completion of the project and had already laid roof upto 10th floor of the tower in which complainant's flat situates with an endeavor to hand over the possession of the flats to all the allottees including complainant by 30.09.2019. To ensure fulfillment of his obligation, the complainant owes a duty to pay him his outstanding dues.

In view of the above circumstances, this Authority while declining the relief of refund directs the complainant to pay all the outstanding dues as per agreed payment plan so that respondent can complete the



construction of the Tower and deliver possession by 30.09.2019 failing which the respondent will be at liberty to cancel the allotment and forfeit a part of already paid amount as per terms and conditions of Flat Buyer's Agreement.

5. The complaint is, accordingly, **disposed of**. File be consigned to record room and order be uploaded on the Website.



Anil Kumar Panwar
(Adjudicating Officer)

