



Complaint nos. 731/18 & Ors.

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 731 OF 2018

Krishi Rasayan Exports Pvt Ltd

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

2. COMPLAINT NO. 732 OF 2018

Krishi Rasayan Exports Pvt Ltd

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

3. COMPLAINT NO. 733 OF 2018

Krishi Rasayan Exports Pvt Ltd

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

4. COMPLAINT NO. 1007 OF 2018

Vibha Agarwal

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

5. COMPLAINT NO. 1008 OF 2018

Arun Kumar Goel

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

6. COMPLAINT NO. 1009 OF 2018

Bhagat Ram Aggarwal

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd

....RESPONDENT

CORAM: Rajan Gupta
Anil Kumar Panwar

Chairman
Member

Date of Hearing: 11.04.2019



Hearing: 4th hearing

Present: - Shri Vikasdeep and Smt. Nidhi Jain, Counsel for complainants

Shri Alok Jain, Counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

This matter had been listed for hearing five times earlier and today is the sixth and final hearing.

2. All the captioned six complaints have been taken up together as the grievances of all the complainants are of similar nature and pertains to the same project of the respondent. The facts of the **complaint No.731 of 2018 Krishi Rasayan Exports Pvt. Ltd. Versus Alpha Corp. Development Pvt. Ltd.** are being taken account for disposal of this bunch matter.

3. The case of the complainant is that they had booked a plot measuring 500 Sq. yards in the project named "Alpha International City", Karnal, Haryana on 12.12.2011. Total consideration of the plot was Rs. 99,25000 lakhs. An allotment letter in respect of the plot No.1508 in the project was issue on 25.06.2012. Plot buyer agreement was executed on 12.07.2012. As per stipulations in the agreement the project was to be completed within 28 months of the commencement of development work. The complainant alleges that the date of booking should be considered as the date of commencement of development work, but the respondent is considering the date of agreement



i.e.12.07.2012 as the date of commencement. The complainant further states that substantial payment i.e. Rs.89.76 lakhs had been paid till February,2014. The complainant further alleges that proper offer of possession has not been made till date.

4. The complainant further states that the entire colony is comprised of 227 acres out of which the respondent has obtained part completion certificate in respect of 85 acres only, vide letter dated 19.04.2018 of the Town and Country Planning Department, which has been annexed by the respondent as Annexure R-7. An offer of possession was allegedly given to the complainant vide letter dated 16.05.2016 by the respondent and the same has been annexed as **Annexure R-22** by the respondent with his reply. The complainant alleges that the said letter of offer of possession was actually not delivered to him which is proved from the fact that respondent has not annexed any postal receipt with the letter of offer of possession. In the end, learned counsel prayed that since part completion certificate was actually received by respondent in April, 2018, therefore the alleged offer of possession made in the year 2016 cannot be considered a valid offer, therefore, complainant prays for refund of the money paid by him along with interest.

5. In their reply the respondent states that the complainant had applied for the allotment of four plots. He has already taken possession of the fourth plot after making full payment but he has chosen to file complaints in respect of the remaining three plots. The project of the respondent is comprised of two phases, Phase I and Phase II. The plots of the complainant are located in Phase II. The offer of possession in the year



2016 was made after full development of the colony. Respondent presented photographs of the colony to demonstrate that it is fully developed and large number of people are residing there peacefully. The plots of complainant are situated in the area for which part completion certificate has been granted by the Town and Country Planning Department.

Further, the respondent had applied for grant of part completion certificate to the Town and Country Planning Department on 24.01.2014 after executing all development works. Chief Engineer of the department had visited the site and had raised certain technical objections. In the meantime, the license of the colony expired for which an application for renewal was filed on 16.03.2015. The department took more than two years to renew the license. The license got renewed in January, 2017 but still the department took one more year to grant part completion certificate. The respondent further states that the State Environment Impact Assessment Authority had also granted deemed environment clearance vide letter dated 26.11.2014. This was granted based upon the completion of development activities.

Learned counsel for the respondent further states that the project has received all the clearances. Rs.38 crores have been paid as EDC and nothing is outstanding or pending on their part. He further states that part completion certificate is only a formal document and the complainant could not have refused taking possession of his plots. Complainant never raised any objection since 2016. Now at this stage the complainant is only wanting to go back from his obligations because property prices in the market have come down. Every facility including the infrastructure club and other facilities



etc. have already been provided in the colony. In fact, the complainant himself is defaulting in payment of balance amount. Despite several reminders the complainant has failed to clear his outstanding dues. The respondent has been issuing reminders to the complainant since 2015. The allegations of the complainant that no development work has taken place is totally baseless and false.

6. The Authority has gone through the pleadings as well as verbal submissions made by both the parties and observes and order as follows: -

- (i) The payments made by the complainant to the respondent amounting to Rs.89.76 lakhs have been admitted (the complainant has mentioned slightly different figures of payment). As per clause 10.1 of the agreement, respondent was required to complete the colony and offer the possession within 28 months of the commencement of the development works. Since the date of commencement of work has not been specified and this clause by itself is little vague, the Authority assumes that the period of 28 months shall be calculated from the date of execution of plot buyer's agreement i.e.12.07.2012. Accordingly, the deemed date of offer of possession comes to November, 2014. Accordingly, the offer of possession was made with a delay of nearly 1 year and 6 months.

The argument of the learned counsel for the complainant that the offer of possession was not received by him because the respondent has not enclosed any postal receipt with it is not tenable. Since a copy of the



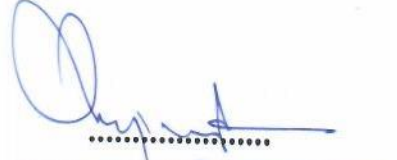
letter of possession has been produced (Annexure R-22), it will be presumed to have been delivered to the complainant and mere absence of postal receipt doesn't give rise to a presumption that it was not delivered. In property transactions, such letters are exchanged by hand or even by post. It was correctly argued by the counsel for the respondent that the private developers are not like public sector developers like HUDA, who undertake all correspondences on a formal basis. The private developers offer several incentives, concessions and make several adjustments from time with each other. Accordingly, the Authority would assume that the actual offer of possession was made in May, 2016.

- (ii) After receipt of the offer of possession the complainant should have taken the possession and paid the remaining amount. Having not done so he has contributed to non-conclusion of the contractual obligations between both the parties. The complainant should have taken the possession and executed the conveyance deed. Having not done so he has defaulted in fulfilling his part of obligations.
- (iii) Admittedly, an application for issuance of a part completion certificate was filed in 2014 which remained under consideration of the department for one or the other reason. It is correct that part completion certificate is a formality between the developer and the Town and Country Planning Department. It doesn't affect rights of the complainant in any manner. The complainant was obliged to take possession after it was offered to him. If

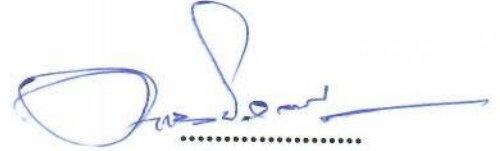
there was any lack of development, he should have objected, which in this case he never did.

- (iv) Admittedly the plot buyer agreement was executed in July, 2012 and possession was to be delivered in 28 months therefore, deemed date of offer of possession works out to November, 2014. Accordingly, a delay of nearly one year six months has been caused in offering the possession, which is reasonable in real estate transactions. However, the complainant deserves to be compensated for this delay. Accordingly, for the period for one year six months, in the absence of any specific provision in the agreement, a reasonable compensation at the rate of 9% by way of compensation on the entire amount deposited for this period shall be paid by the respondent to the complainant.
- (v) The complainant has delayed in making payments of the remaining consideration amount. The respondent shall be entitled to levy reasonable interest at the same rate i.e. 9% simple interest per annum for the period of delay in making payment caused by the complainant.
7. Now the respondent shall send a fresh offer of possession accompanied with a statement of accounts showing therein clearly the amount payable by the complainant to the respondent after duly adjusting the amounts payable by the respondent to the complainant in accordance with the principles stated above. The respondent shall do the needful within a period of 45 days.

Disposed of. The orders be uploaded on the website of the Authority and the file be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]

