



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 712 OF 2018

Baljeet SinghCOMPLAINANT

VERSUS

Lotus Infrastructure Pvt. Ltd.RESPONDENT

Hearing: 18th

2. COMPLAINT NO. 2714 OF 2019

Ramanand YadavCOMPLAINANT

VERSUS

Lotus Infrastructure Pvt. Ltd.RESPONDENT

Hearing: 9th

CORAM: **Rajan Gupta** **Chairman**
 Dilbag Singh Sihag **Member**

Date of Hearing: 05.08.2022

Present: - Sh. J.S. Rana, learned counsel for the complainant
 through VC (in complaint no. 712/18)

None for the complainant (in complaint no. 2714/19)

Ms. Nitika Sharma, learned counsel for the respondents
(in complaint no. 712/18)

None for the respondent (in complaint no. 2714/19)

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Captioned bunch of complaints is being disposed of together by this common order. Complaint No. 712 of 2018 titled “ Baljeet Singh Versus Lotus Infrastructure Pvt. Ltd.” has been taken as lead case.
2. While initiating his pleadings, learned counsel for complainant stated during the hearing that the decision dated 31.05.2022 taken by the Authority against the same project of the respondent in Complaint No. 957 of 2019 titled as Dinesh Garg And Pankaj Garg Versus Lotus Infrastructure Pvt. Ltd. squarely covers the controversy involved in the above mentioned complaints. To support his contention he briefly averred facts of the case that vide allotment letter dated 31.10.2012, a residential plot bearing no. B-3/014 measuring 299 sq.yrds. was allotted to complainant for total sale consideration of Rs. 79,21,486/-. Complainant had paid an amount of Rs. 62,85,640/- to the respondent-promoter till July 2015. As evidence of said paid amounts, receipts issued by respondent has been annexed by complainant at page no. 24,26,44 of complaint book. As per Builder buyer agreement dated 07.03.2015 builder was under an obligation to handover possession of booked plot within a period of 24 months plus 6 months of grace period, which comes to 17.09.2017. But till date neither refund of the paid amount nor possession of booked plot has been handed over to complainant. Aggrieved by the action of the respondent, complainant sought



refund of paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016. Hence, these complaints be disposed of in the same manner. Operative part of said order dated 31.05.2022 is reproduced below for ready references:

“ 4. Initiating his pleadings, learned counsel for complainant submitted that complainant had booked plot in respondent's project “LOTUS GREEN CITY”, Dharuhera, on 14.12.2012. As per builder byer agreement dated 04.01.2013, complainant was allotted a plot bearing no. C2/009 admeasuring 209 sq. mtr. for total sale price of ₹ 65,00,000/- against which complainant has already paid an amount of ₹ 50,83,220/- . In support of the contention that complainant has paid an amount of Rs. 50,83,220/-, complainant refers to statement of account issued by respondent which are placed on record as Annexure C- 3 at page no. 37-41 of complaint book. In terms of clause 15 of the BBA, possession was supposed to be delivered by 05.02.2016 but respondent has failed to do so. Despite lapse of six years from the deemed date of possession, and more than ten years from date of booking, respondent has not given possession of booked plot to the complainant. Therefore, Complainant has sought relief of refund of ₹ 50,83,220/- along with permissible interest as per Rule 15 of HRERA Rules, 2017.

5. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by the respondents in their reply are summarised as follows:-

I. That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.

II. Completion of the project has been delayed on account of certain force majeure conditions. Respondent stated that Project in question is 60 % complete as development works including construction of roads, sewerage lines has been laid down but due to economic slowdown and covid-19, development works were halted. Further, considering such situation respondent applied for migration of licenced land for grant of license under Din Dayal Awas Yojana vide application dated 31.05.2018.

Further, for development and marketing the project, landowning companies had entered into a collaboration agreement with the respondent on 10.03.2013. As per said

agreement, respondent was entitled for sale of the project. Respondent had also applied for registration of project vide letter dated 18.01.2018 with Authority. However, Authority had directed the landowning licensee companies along with original developer i.e. AMD Estates Pvt. Ltd. to apply for registration because the respondent herein has no locus to apply for registration of the project. Accordingly, Ms AMD developers are now getting the project registered and the collaboration agreement executed between respondent herein and landowning companies was cancelled on 16.04.2022.

6. Both parties have argued their case at length. Complainant reiterates that project is nowhere near completion and there is no hope of its completion in near future, therefore, he does not wish to continue with the project any longer. Accordingly, he press for refund of the amount paid by them along with interest as applicable under the Rules. Respondent on the other hand argues that construction is going on and an offer of possession will be made soon after completion of the project.

7. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides. It observes an order as follows:-

1. Respondents first of all have challenged jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with in forgoing para No.s 2 and 3 of this order. Accordingly, this objection of the respondents is not sustainable.

2. As per information gathered from Project branch of the Authority, certain orders were passed on 11.04.2022 by the Authority in regard to respondent status of the project. Relevant portion of the order is reproduced below:

(i)“ Five landowning companies were given license no 39/2012 for development of plotted colony in collaboration with M/s AMD Estates Pvt Ltd. M/s AMD Estates Pvt Ltd is also one of the landowner-licensee. In the year 2013, these five licensee companies executed a collaboration agreement with M/s Lotus Infrastructure Pvt. Ltd. M/s Lotus sold 35 plots to allottees. M/s Lotus Infrastructure Pvt. Ltd has not been recognized as promoter by Town and Country Planning Department.

(ii) Accordingly, **Authority could not considered M/s Lotus Infrastructure Pvt Ltd as a promoter** and the application filed for registration has not considered. Authority was of the view that collaboration agreement executed by 5 licensees with M/s Lotus Infrastructure Pvt Ltd may has to be rescinded and a fresh collaboration agreement with M/s AMD Estates Pvt Ltd has to be executed because as per license, with M/s AMD Estates Pvt Ltd is developer of the colony.

(iii) M/s AMD Estates has substituted itself for M/s Lotus Infrastructure Pvt Ltd in respect of 35 allottees with whom Builder Buyers Agreement has been executed by M/s Lotus Infrastructure Pvt. Ltd.”

3. In view of above order, collaboration agreement dated 10.03.2013 has come to an end. Now, admittedly, project in question is neither complete nor registered till date. Further for the reason of inordinate delay of over six years having already occurred and no hope of its completion in near future, relief of refund is admissible. Further there is no denial to the fact of Rs. 50,83,220/- having been paid by complainants to the respondents. Payment of this amount is further adequately proved from the statement of account issued by respondents to the complainant. Said statement has been placed on record as annexure C-3 at page no. 37-41 of complaint.

4. The complainant being entitled to refund of entire amount of Rs. 50,83,220/- paid by him, Authority orders refund of the said amount along with interest from the date of receipt of payment till date of passing of this order.”

3. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 957 of 2019 titled as Dinesh Garg And Pankaj Garg Versus Lotus Infrastructure Pvt. Ltd. Therefore, the captioned complaints are disposed of in terms of the order passed by Authority in Complaint no. 957 of 2019.

4. In furtherance of above mentioned observation, Authority would dispose of both these complaints with the order that refund of the amounts


paid by them to the respondents along with interest in terms of Rule 15 of RERA, Rules, 2017 deserves to be granted from respective dates of making payments till passing of this order. If delay is caused further by the respondents, additional interest will also be payable.

5. Authority accordingly orders refund of the money paid by both the complainants along with interest as shown in the table below-

| Sr. No. | COMPLAINT NO. | Total amount claimed to be paid by the complainant (In Rs.) | Total amount on which interest is calculated (in Rs.) | INTEREST (In Rs.) @ 9.8 | TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.) |
|---------|---------------|---|---|-------------------------|---|
| | 712/2018 | 62,85,640/- | 62,85,560/- | 46,43,736/- | 1,09,29,296/- |
| 2. | 2714/2019 | 44,78,743/- | 44,78,743/- | 37,56,082/- | 82,34,825/- |

6. Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.

Disposed of. Files be consigned to the record room after uploading of this order on website of Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]