



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1104 OF 2019

Chakarwati and Pawan Kumar

....COMPLAINANT(S)

VERSUS

Rangoli Buildtech Private Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 05.07.2022

Hearing: 15th

**Present: - Adv. Ramesh Malik, Ld. Counsel for the complainant.
Adv. Rupali Verma, Ld. Counsel for the respondent.**

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Broad facts of the complaint were recorded by the Authority in its order dated **05.01.2021** as reproduced hereunder: -

1. The case of the complainants is that they are the third allottees of plot bearing no. A-A6/4 measuring 350 sq. yards in the project TDI GREEN, situated at Sector 16, Sonapat, Haryana. The plot was originally allotted

to Smt. Meena Bansal for total sale consideration of Rs. 24,64,000/- which was sold to Mrs. Inderjit Kaur wife of Shri Darshan Singh and then the complainants have purchased this plot from Smt. Inderjit Kaur. Complainants have deposited a total amount of Rs. 15,89,000/-. Letter of allotment was issued to the complainants on 24.05.2007. The complainants' grievance is that the respondent has neither executed the Builder-Buyer Agreement (BBA) nor has delivered him possession till date.

2. The complainants are seeking possession of a plot booked in the respondent's project and the respondent's plea is that they are not entitled to possession because their allotment was cancelled in the year 2009. According to the complainants, they had never received the cancellation letter and had merely received some reminders vide which they were directed to collect a cheque from the office of respondent due to cancellation of allotment. Said reminders were allegedly issued on 23.08.13, 22.01.2014 and 18.03.2014.

3. It has transpired during the course of previous hearings of the case that complainants had earlier filed a complaint before the District Consumers Disputes Redressal Forum (hereinafter referred to as the Consumer Forum). So, the Authority in order to ascertain whether or not the present complaint is within limitation, had directed the complainants to place on record a copy of the complaint as also the reply filed by

4

the respondent in the Consumer Forum. Said copies have been filed. The arguments raised by the complainants' counsel is that the complainants had knocked the door of District Consumer Disputes Redressal Forum in the year 2014 and had filed the present complaint after withdrawing the said complaint. His plea thus is that the complainant had been diligently pursuing the legal remedy against cancellation of allotment and his complaint, therefore, cannot be held as time barred.

4. The respondent's case is that in 2008, based on the directions issued by DTCP, Haryana the plotted area of respondent's project was reduced from 113.383 acres to 105.663 acres, and accordingly, the number of plots were also reduced. The entire project of the respondent was sold at the time when the promoter was directed to reduce the project area. To deal with re-allotments in a rationale manner, uniform criteria was adopted and the allottees who has paid 60% of the basic sale consideration along with 100% of the EDC's were considered for the re-allotments. According to the respondent, total sale consideration of the plot was Rs. 26,63,850/- including EDC out of which complainants had paid Rs. 15,89,000/- towards BSP but no EDC component was paid. The complainants had to pay Rs. 17,88,850/- to get qualified for re-allotment.

5. The respondent has stated that vide communication dated 24.09.2009, the complainants were called upon to pay the outstanding amount within 15 days with a clear



notice that in case of default, the plot will be cancelled. After waiting for sufficient period, vide notice/letter dated 16.12.2009, the allotment was cancelled and complainants were advised to take refund of the registration amount on surrender of original documents/receipts. It has been stated that the respondent also wrote various communication letters dated 22.01.2014 and 18.03.2014 calling upon the complainants to collect the amount deposited, along with copy of cheques without deducting any amount.

6. Respondent has further stated that the licenses granted by DTCP were cancelled vide letter dated 09.07.2012 without assigning any valid reason. The said cancellation was finally revoked on 24.12.2015 and the licenses were renewed up to 04.08.2017 subject to certain conditions. After complying with conditions imposed in the renewal letter for license, the respondent submitted the revised layout plan to DTCP which was finally approved vide letter dated 28.12.2016. Thereafter, Respondent submitted the demarcation plan which got approved vide letter dated 02.06.2017. License has been renewed up to 04.08.2019 vide application for renewal which was accepted by the Department on 08.02.2018.

7. After taking into consideration pleas of both the parties, the following questions have arisen before the Authority:

(a) whether the cancellation of allotment of the complainants in 2009 was valid or not, keeping in



consideration the reduction in number of plots in the project of the respondent? Also, what happened in other cases in which cancellation of allotment was done by the respondent due to the said reason?

(b) whether refund of money by the respondent to the complainants in 2014 was in pursuance of cancellation of allotment of complainants in 2009 or due to the reason of cancellation of licenses of the respondent in 2012?

(c) why the complainants did not take any action from the date of cancellation of allotment in 2009 till filing of complaint before the Consumer Forum in 2014?

(d) whether unallotted plots are currently available with the respondent or not?

8. For this purpose, the respondent is directed to submit on affidavit the information regarding availability of plots with him, and also the complainants are directed to investigate on their part and submit the said information on affidavit with the Authority before the next date of hearing as to whether any unallotted plot is available with the respondent or not.

2. Complainants have filed an application dated 16.03.2021 under Section 151 of CPC for recalling the order dated 05.11.2020 and restoration of order dated 30.09.2020 passed by the Authority. Complainants have prayed that action deserves to be taken in accordance



with order of Authority passed on 30.09.2020. Operative part of order dated 30.09.2020 is reproduced hereunder: -

4. The Authority on perusal of the complaint filed before the Consumer Forum and the reply filed thereto finds that the respondent in his reply has nowhere pleaded before the Consumer Forum that the complainant's allotment was cancelled in the year 2009. So, the Authority finds an element of truth in the plea raised by the complainant in this complaint that he had never received the cancellation letter which was alleged to have been issued by the respondent in the year 2009.

5. The alleged cancellation even otherwise is not sustainable in the eyes of law for the reasons discussed hereinafter. The respondent has not disputed the complainant's averment on the point that he had paid Rs. 15,89,000/- till the year 2008 against the total sale consideration of Rs. 24,64,000/-. If so, the respondent at the time of effecting cancellation of allotment was duty bound to refund to the complainant the already paid amount after deducting the earnest money which reasonably should not exceed more than 10% of the total sale consideration amount. The cancellation letter, relied upon by the respondent, does not show that the amount so refundable was remitted to the complainant. Rather, the cancellation letter merely recites that the complainant would be entitled to collect refund of the registration money from the respondent company.



There was no mention in the cancellation letter as to what was the exact amount of registration money and what money out of the amount already paid to the respondent would be treated as the registration amount. The complainant had purchased allotment rights from the previous allottee and the promoters often charge registration fee for effecting transfer of purchaser's name in their records. Thus construed, the registration amount would imply the amount collected by the company for endorsing the allotment rights in favour of the complainant. So, the alleged cancellation for the reason that it was not accompanied by the refund amount payable to the complainant after deduction of the earnest money, was void-abinitio and unsustainable.

6. Moreover, the respondent has himself averred that he had annulled the cancellation by effecting re-allotment in favour of all such defaulter-allottees who had paid 60% or more amount out of the total sale consideration. The present complainant had paid 64% of the total sale consideration till the year 2008 and therefore, the cancellation made in respect of his allotment in the year 2009, even otherwise, cannot sustain. The complainant rather deserves re-allotment on the same terms as had been effected in favour of other defaulter-allottees who had paid 60% or more money out of the total sale consideration.



7. In view of above-mentioned reasons, the complaint cannot be dismissed on the ground of maintainability and the alleged cancellation is set-aside.

3. Authority has gone through the contentions of application and have considered oral submissions made by learned counsel for complainant. Authority observes that in para 6 of order dated 30.9.2020, it has categorically arrived at a conclusion that complainant deserves re-allotment of plot on same terms as had been effected in favour of other defaulter allottees who had paid 60 per cent of money out of the total sale consideration. Authority is inclined to agree with the contentions of learned counsel. No appeal has been filed against the orders dated 30.9.2020. Accordingly, categorical observations made by Authority have to be acted upon. No circumstance has been presented by respondents to justify alteration of the order dated 30.9.2020.

4. Since, respondent has neither executed the Builder-Buyer Agreement (BBA) nor has delivered possession of plot to complainants till date. So, in a case where the promoter had collected substantial money from the allottee of his project and has not executed the BBA, the promoter cannot escape his responsibility to deliver possession indefinitely. The promoter was required to complete the project and deliver possession within a reasonable time. Three years period from the date of making substantial payment can be safely considered reasonable.



The plot in the present case was booked by the erstwhile allottee in October, 2005 by paying Rs. 4,37,500 towards booking amount. A copy of receipt dated 28.10.2005 of said booking amount has been annexed at page no. 22 of complaint. Further payments of Rs. 225,000/- and Rs. 9,26,500 were made by complainants. Copies of receipts dated 06.04.2006 and 17.04.2007 of said payments has been placed on record by respondent in his reply file. Accordingly, 17.04.2007 will be considered as reasonable date of making substantial money by the allottees of this project and three years period from the date of making substantial payment can be safely considered reasonable to be deemed date of delivering possession by respondents. Therefore, deemed date of delivering possession has to be necessarily assumed as 17.04.2010.

5. Since the respondent has not offered possession of plot till date, he is liable to pay interest on the already paid amount to the complainant from said deemed date of possession till the actual legally valid delivery of possession of booked plot is made to the complainants barring the period wherein licence of the respondent was revoked by DTCP from period 09.07.2012 to 24.12.2015. Such revoked period will be considered as force majeure circumstance and respondents are not liable to pay delay interest for such revoked period.


Further as per provisions of Section-18 of the RERA Act, 2016, the accrued interest upto the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter till the actual legally valid delivery of possession of plot shall also be paid. Both the amounts will be worked out as per

Rule 15 of the HRERA Rules, 2017. Interest shall be calculated as per SBI MCLR +2% which was 9.7% per cent at the time of passing this order.

6. As per calculations verified by Accounts Branch, the amount payable by respondent to the complainants on account of interest for delay in handover possession of the plot upto the date of passing of this order has been worked out to Rs.13,50,881/-. The authority orders that upfront payment of **Rs.13,50,881/-** will be made to the complainants on account of delay caused in offering possession within 90 days and further monthly interest @ **Rs13,091/-** will be paid to complainant by the respondent w.e.f. 06.07.2022 till the date of legally valid offer of possession is made. Respondent however, will be entitled to claim balance consideration amount from the complainant.

Respondent is further directed to make a fresh offer of possession. Said offer letter shall be accompanied with statement of accounts showing payables and receivables by both sides.

7. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]