



Complaint No. 1130, 1132 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1130 OF 2020

Anuj Kumar

...COMPLAINANT(S)

VERSUS

RPS Infrastrucure Limited

....RESPONDENT(S)

2. COMPLAINT NO. 1132 OF 2020

Saurabh Bajpai

...COMPLAINANT(S)

VERSUS

RPS Infrastrucure Limited

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 26.07.2022

Hearing: 22nd

Present: - Mr. Sandeep Joshi, Ld. Counsel for the complainant through VC.
Ms. Manpreet Khurana, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Captioned complaints have been taken together as a bunch for disposal since nature and facts of these complaints are identical and relates to

same project of the respondent. Complaint no. 1130/2020 titled Anuj Kumar vs. RPS Infrastructure Limited has been taken as lead case and facts of this case has been taken into consideration for disposal of this bunch of complaints.

2. The case of the complainant is that a unit no. 0904 on 9th floor in Tower No. Purple Hazel-4 (Tower- B-4), measuring 1791 sq. ft. was booked by him in the Group Housing Project of the respondent namely 'RPS Savana' situated in Sector-88, Faridabad, Haryana. Thereafter, Builder buyer agreement was executed between complainant and the respondent on 26.11.2014 and in terms of it, possession was supposed to be delivered by 26.11.2017. Allotment letter dated 26.11.2014 has also been attached at page no 16 of complaint vide which booked unit was allotted to the complainant. It has been alleged that respondent failed to handover the unit to the complainant within stipulated time.

Grievance of the complainant is that initially said unit was allotted to the complainant for basic sale price of Rs. 71,64,000/-. Total amount of Rs.77,25,390/- paid by the complainant (Rs.18,12,000/- by complainant himself and Rs.59,13,390/- disbursed by LIC Housing Finance Ltd to respondent No. 1 as per tripartite agreement under Interest Subvention Scheme). Receipts of said payments have been annexed on Page no. 40-42 in complaint book. Thereafter, complainant came to know on visiting the site that respondent no. 1 had sold the same unit to some other allottees Mr. Tarun and Sonia without any intimation to the complainant. Respondent no. 1 has even registered the sale deed in favour of

such allottees. Respondent no. 1 has cancelled allotment of the complainant. Respondent no. 1 states vide letter dated 19.02.2020 that he will foreclose the housing loan, of which he issued a post-dated cheque bearing No. 910142 dated 28.02.2020 of Rs. 56,92,246/- in favour of LIC housing finance in respect of loan account of complainant. However, after issuance of cheque, respondent asked the complainant not to present the said cheque as respondent no. 1 was facing some financial issue. Thereafter, Promoter/ respondent no.1 issued another letter dated 24.02.2020 stating that they will re-issue the cheque after 2 months. Despite issuance of letter dated 24.02.2020 for re-issue of fresh cheque after 2 months, the cheque was actually issued on 31.08.2020 bearing no. 915098 drawn on oriental bank of commerce. Complainant states that even second cheque issued by respondent was dishonoured. Thus, by way of this complaint, complainant has sought relief of refund of the entire amount along with interest etc.

3. On the other hand, Ld. Counsel for respondent argued that complainant had given a notice to the respondent on 05.05.2017 intimating that quality of construction was not up to the mark and there were lots of problem in respect to maintenance of the project. Therefore, he was no more interested to continue with said booking. Complainants had requested for refund of total deposited amount without any deduction. Respondent has further argued that as per request of complainant himself, settlement was arrived at between complainant and respondent no.1. As per settlement, a cheque dated 31.08.2020 for a sum of Rs. 56,92,246/- was given to the complainant. Further, in view of settlement arrived

at between complainant and respondent no.1, booking of allotted unit no. 0904, 9th floor, Tower No. Purple Hazel-4 (Tower- B-4), having super area of 1791 sq. ft. in RPS Savana project, Sector-88, Faridabad was cancelled. After cancellation of booking of complainant, it was re-allotted to other allottees Mr. Tarun and Sonia. Now, complainant has no right to reagitate his claim before this Hon'ble Authority.

During the course of arguments, it was pointed out by Ld. Counsel for respondent no.1 that a Memorandum of Understanding was executed between the complainant and M/s Wonder Infracon Private Limited (Respondent No. 2) on 29.11.2014 vide which complainant had agreed to sell booking of said allotted unit to M/s Wonder Infracon Private Limited and had collected a premium of Rs.1,00,000/-. Further, M/s Wonder Infracon Private Limited in their written submissions have stated that payment of Rs.1,00,000/- was made to complainant by way of cheque no. 035789 dated 30.12.2014 annexed as Annexure-R2/3, and also have alleged payment of Rs. 2,25,473/- towards part re-payment of housing loan to the financial institution on behalf of complainants. However, no evidence in this regard has been placed on record.

4. In rebuttal, Ld. counsel for complainant submitted that neither any letter was written by complainant on 05.05.2017 requesting to cancel his allotment nor any settlement was arrived at between complainant and respondent no. 1. So as far as, signature of the complainant on cancellation notice at page no.29 of paper book of reply placed on record as Annexure R-4, are concerned,

signatures of complainant, have been forged by respondent no. 1. Complainant plans to file criminal complaint against respondent no. 1. Complainant and his Ld. counsel have argued that as per tripartite agreement signed among the parties, bank loan of Rs. Rs. 59,13,390/- has not been repayed and discharged by the respondent till date, for which bank has been harassing the complainant to clear his outstanding dues. Cheque dated 31.08.2020 bearing no.915098 of oriental bank of commerce as issued by respondent in favour of LIC housing finance loan account of the complainant was dishonoured later on. Since, complainant has not received any amount from respondent no. 1, complainant has right to file their complaint against the respondent before this Authority.

5. Authority has gone through the respective averments. It observes that sum and substance of the matter is that it is not in dispute that unit No. 0904, 9th Floor, Tower B-4 with super area 1790 sq. ft. was agreed to be sold to complainants for a basic sale price of Rs.71.64 lacs. A builder-buyer agreement for this purpose was executed on 26.11.2014. Against basic sale consideration of Rs. 71.64 lacs, complainant admittedly has paid Rs.77,25,390/- to the respondent. As is clear from the statement issued by financier LIC Housing Finance Ltd. the entire consideration amount was paid by complainant by November, 2014. Admittedly, as per clause-13 of BBA due date of handing over of possession of apartment to complainant was 26.11.2017.



6. Complex arguments have been made by both sides. Respondents state that on the request of complainant, allotment of unit was cancelled and a settlement deed was executed. As a part of settlement, cheques for discharging entire loan liability were issued by respondents-company in favour of LIC Housing Finance Ltd. Complainant states that not once but twice cheques were issued by respondents-company, but each time cheques were dishonoured. As a result, loan liability has still not been cleared by respondents.

7. Further fact of the matter is that complainants in these cases have sought relief of refund of Rs. 18,12,000/- in complaint no.1130/2020 and of Rs. 23,75,000/- in complaint no.1132/2020 directly paid by complainants to the respondent, and also clearance of entire loan amount which as per the statement issued by LIC Housing Finance Ltd. stood at Rs.56,89,162/- in complaint no.1130/2020 and Rs. 48,20,463/- in complaint no.1132/2020.

8. Authority is not taking cognizance of allotment of the apartment by respondents in favour of some other allottees or any dealing having been made by complainant with M/s Wonder Infracon Pvt. Ltd. because averments made in this regard will have no bearing on outcome of the proceedings.

It is sufficient to note that contract between the parties has got frustrated. Both parties clearly stands and have accepted that the amount paid by complainants in each case to respondent has to be returned and also respective loan accounts have to be cleared. It is relevant to observe that entire loan amount



over Rs. 59.13 lacs in complaint no.1130/2020 and of Rs. 53 lacs in complaint no.1132/2020 was directly disbursed by the financial institution to respondent company in one single instalment. For this reason, as well as in terms of agreement executed between the parties, it is the responsibility of respondent-company to clear entire loan amount inclusive of interest and penal interest if any upto date. Complainant has no responsibility towards clearance of loan amount. Clearance of loan is exclusive responsibility of respondent.

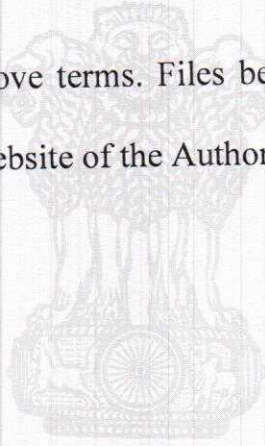
9. In brief, complainants have prayed for refund and respondent has no objection to the same. Authority, therefore, disposes of both these matters by ordering that respondent shall return entire amount of Rs.18.12 lacs in complaint no 1130/2020 and Rs. 23.75 lacs in complaint no 1132/2020 to complainant along with interest as per Rule 15 i.e., @ SBI MCLR+2% i.e., @ 9.8% from the date of making such payment upto the date of passing this order.

The amount to be returned to the complainant in complaint no. 1130 of 2020 works out to **Rs. 31,73,224/-** (Principal amount Rs.18,12,000/- plus interest Rs.13,61,224/-). The amount to be returned to the complainant in complaint no 1132 of 2020 works out to **Rs. 40,89,832/-** (Principal amount Rs. 23,75,000 /- plus interest Rs. 17,14,832/-). Respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.



Further, respondent should clear loan accounts and obtain no dues certificate in favour of complainants and deliver the same to them. Complainants may ask LIC Housing Finance to provide latest statement of accounts showing therein the total amount payable in respect of loan account and supply the same to respondent. Respondent shall clear same at their own responsibility within a period of 45 days. Authority would reiterate that if any delay is caused by respondent in clearing the loan and if for that reason any interest or penal interest becomes applicable, respondents themselves only shall be responsible for payment thereof.

10. **Disposed of** in above terms. Files be consigned to record room and orders be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]