



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1341 OF 2021

Pankaj Gorski

....COMPLAINANTS

VERSUS

Fantabulous Town Developers Pvt Ltd

....RESPONDENTS

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 09.08.2022

Hearing: 4th

Present: - Sh. Pankaj Gorski, complainant.

Sh. Mintu Kumar, Learned counsel for the respondent through video call

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his pleadings, learned counsel for the complainant submitted that Complainant via application form dated 25.03.2019 had booked a 2bhk unit bearing no. FD-4-FF, admeasuring 97.500 sq. mtr in the project of respondent namely, " Signature Global City-2", situated in Karnal, Haryana by paying an booking amount of Rs. 1,11,000/-. Receipts of paid amount has been annexed as C-1 in complaint book. Respondent had assured the complainant that possession of the booked unit would be delivered within two years i.e. 25.03.2021. Vide his allotment letter dated 24.05.2019, Respondent had allotted Apartment no. FD-50-FF in block D to the complainant. Thereafter, receiving allotment letter, complainant had paid an amount of Rs. 95000/- and Rs. 57,711/- by cheque to the respondent. As evidence of these paid amounts, complainant has annexed statement of account issued by the respondent as Annexure C-3. For remaining amount to be paid for booked unit, complainant had applied for a loan of Rs. 16,00,000/- from HDFC Bank and same was sanctioned by bank and payments were released to the respondent as and when demanded by them. As per record, respondent had got released five instalments amounting to Rs. 10,22,198/- from the loan account. However, in total, an amount of Rs. 12,85,909/- out of total sale consideration of Rs. 18,90,000/- has been paid to the respondent-promoter.



Complainant stated that sixth instalment to be paid to the respondent was refused by bank for the reason that bank had visited the site of the project and found that construction work has not even yet started by the respondent. Therefore, further loan amount was not disbursed in the account of the respondent.

Complainant apprised the Authority that he had informed above stated fact to the respondent via email. However respondent to cover up their misdeeds, had given excuse of Covid-19 pandemic for not undertaking construction work of the project at site. Thereafter many emails were sent by the complainant to enquire about current status of the project but no reply was given by them. Complainant has annexed annexure C-6 and 7, whereby copies of email forwarded to respondent has been attached. Complainant has also sent an email dated 09.08.2021, requesting the respondent to refund his paid amount on account of non-construction of project.

Aggrieved by the illegal conduct of respondent, complainant has filed the complaint seeking relief of possession of booked apartment or in alternative refund of the paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017. Further, complainant has sought refund of Rs. 55,979/- with interest, paid on account of insurance Amount.

2. On the other hand, respondent had denied each and every averment, facts mentioned in the complaint. While submitting that due to Covid-19 situation construction work was not undertaken and complainant was dully notified about

the situation. Therefore, refund of paid amounts by the complainant was initiated by the respondent in year 2021 but it is the complainant who remained interested in allotment instead of refund. Respondent argued that vide an email dated 10.12.2021 process of refund was initiated. Copy of said email is annexed as Annexure R-2 of reply. Thereafter, cheques of Rs. 10,35,123/- in favour of complainant after taking his consent was sent to concerned bank. However bank had refused to accept the said cheque stating that complainant has not given his consent.

3. During hearing, complainant reiterated the facts stated in para 1 of this order and gave a statement that he wishes to peruse relief of refund along with permissible interest as project does not see the day of the light. On the other hand, counsel of the respondent reiterated the facts mentioned in para 2 of this order and he argued that respondent was never at fault, it is the complainant who has not accepted the refund initiated by respondent on 28.01.2022 along with cheque of Rs. 10,35,123/- .

4. After hearing both parties and perusing records of the file, Authority observes that admittedly complainant had booked apartment in the year 2019 , as stated in para 1 of this order which is dully supported with documents. Complainant had paid an amount of Rs. 10,22,198/- via loan and Rs.2,63,711/- from his own pocket to the respondent for allotted an apartment, totalling to 12,5,909/- from April 2019 till year 2021. In support of this contention, complainant has annexed Annexure C-1 to C-6 from page no. 33-57 of

complaint book. As per complainant, respondent had cheated him as no construction work was carried out by the respondent, nevertheless, respondent was taking money from complainant's loan account from the bank on false pretext that construction work was going on site of project in question.

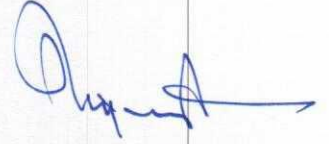
Further he argued that when bank had denied to pay further loan instalments to the respondent knowing the fact that non- construction of the project by them. Then respondent has issued a cheque amounting to Rs. 10,35,123/- for refund to hide his misconduct and to avoid the interest amount to be paid by them to the complainant. Complainant rebutted that respondent's claim that above mentioned amount for refund was initiated by the respondent after taking consent of complainant. Aggrieved by respondent actions, complainant seeks refund of the paid amount along with permissible interest as per rule 15 off HRERA Rules 2017.

On the other hand, respondent denied contentions raised by the complainant on the ground that due to covid-19 pandemic respondent was unable to start construction work at site. In this regard complainant was also informed. Moreover, a cheque amounting to Rs 10,35,123/- was issued in name of complainant accordingly, after taking complaints consent and by mutual understanding but the same was not accepted by the complainant. He argued that bank had also refused to accept the said cheque by stating that complainant has not consented for this amount. Therefore, respondent-promoter was not at fault to hold the money paid by the complainant with them.

5. Admittedly respondent has taken substantial amounts from the complainant without undertaking construction at site. So, Authority comes to the conclusion that respondent have failed to develop the project. Accordingly, booked apartment of complainant cannot be completed in foreseeable future. Further, respondent has failed to establish that he tried to refund an amount of Rs.10,22,198/- as he has failed to show any document in this regard. Rather he kept money of the complainant for more than two years without investing it in construction work. Therefore, relief claimed by complainants i.e. refund of the amount 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.

6. Accordingly, respondent is directed to refund an amount of ₹ 12,85,909/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payments till passing of this order. Authority has got the interest calculated, which works out to ₹ 3,39,335/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 09.08.2022 at the rate of 7.80 plus 2%= 9.8%. Respondent shall pay ₹ 16,25,324/- (12,85,989/-+ ₹ 3,39,335/-) to the complainant within period prescribed under Rule 16 of HRERA Rules.

Disposed of. Files be consigned to the record room after uploading of order.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

