



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1356 OF 2021

Vanita Singhal and Sanjay Singhal

.... COMPLAINANT(S)

VERSUS

Gnex Realtech Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 12.08.2022

Hearing: 3rd

Present through video call: - Sh. Rohan Gupta, learned counsel for the complainant

Sh. Vivek Sheoran, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his pleadings, learned counsel for the complainants stated that complainants have booked a residential plot bearing no. C-075 admeasuring 116 sq. yds in respondents project, named "Asha Bahadurgarh, Phase-III" in the year 2017 by paying a booking amount of ₹1,00,000/-. Copy of allotment letter dated 22.12.2017 has been placed on record at Annexure C-6 page 29. Complainant and respondent had entered into builder buyer Agreement on 27.12.2017 for total sale consideration of ₹15,66,000/- against which complainant had paid ₹10,96,200/-. Copy of the agreement and receipts issued by respondent has also been placed on record at Annexure C-7, C-5,C-8 and C-9 at page nos. 27-73 . As per builder buyer agreement respondent was under an obligation to handover the possession of booked plot by 26.12.2018.

In para 8 of the complaint, complainant has stated that all the demands raised by the respondents were paid as and when demanded. He submitted complainant was paying amounts as per construction plan however, respondent had demanded more money from complainant's without reaching the said level of construction. As per complainant project is still incomplete as there is no electric cabling work at site neither the top road has been carried out by respondent till date, however respondent had raised the demands for the same in the year 2019. Counsel for complainant argued that

as per clause 10.2 of agreement complainant is well within their rights to stop making further payments if respondent defaults in delivering the possession to allottees within the agreed time.

Further, complainant stated that even after receiving substantial amounts from him. Respondents have failed to deliver the possession on agreed date. Rather respondents have demanded ₹3,91,500/- along with interest as outstanding dues vide letter dated 03.08.2021 failing which allotment of complainant would be cancelled/terminated. Complainant had already made said payment on 31.10.2021 vide cheque bearing no. 20408 to be drawn in name of the respondent. However, respondents had sent an email dated 24.11.2021 confirming that above said cheque was received to the respondents on 21.11.2021 whereas allotment of disputed plot was cancelled with effect from 05.11.2021. Complainant's grievance is that respondents have cancelled their allotment despite receiving substantial payments from the complainants in time. In this background, complainants pray for restoration of allotment of plot in question. In addition, they pray for handing over of the plot along with permissible delay interest.

2. On the other hand, respondent's case is that present complaint is not maintainable for the reason that complainants themselves have defaulted in making payments as per agreed payment plans. Further respondent stated that construction of project got delayed due to reason beyond their control such as demonetization, GST, defaults committed by allottees in making

payments and dispute with construction agencies etc. Further it is stated in para 11 of reply, that respondent had issued various demand letters to the complainant but complainant had failed to make timely payments. To support his contention, respondent has annexed copies of email as Annexure A-3 at page nos 51-57. Respondent also clarified that allotted plot got cancelled vide letter dated 15.11.2021 by respondent as respondent has refused to put cheque of Rs. 3,95,500/- because cheque was received on 21.11.2021, whereas allotment stands cancelled w.e.f. 05.11.2021. Intimation with regard to above fact was also sent to complainants. Further, respondent argued that allotment was cancelled after waiting for 90 days as per the opportunity granted to complainant.

3. During hearing, learned counsel for complainant reiterated the facts stated in para 1 of this order. On the other hand, none had appeared for respondent, however at end of the cause list, Sh. Vivek Sheroan appeared and requested to be marked present as he was unable to attend the court due to personal difficulty.

4. After hearing both parties and facts placed on record, Authority observes that complainant had booked the plot in the year 2017. In support of his allotment, he attached allotment letter dated 22.12.2017 at Annexure C-6 page 29. Complainant had also made a payment of ₹10,96,200/- against total sale consideration of ₹15,66,000/- and the same has been admitted by the respondents in the cancellation letter dated 15.11.2021. Builder buyer

agreement had also been executed between complainant and respondent on 27.12.2017, copy of which has been placed at Annexure C-7. Respondent had further issued a demand letter dated 03.08.2021 for an amount of ₹3,91,200/- as outstanding dues and the same has already been paid. Complainant has placed on record letter dated 31.10.2021 which shows that he had paid outstanding dues of ₹3,91,500/- on that date by issuing a cheque to be drawn in favour of the respondent promoter.

Whereas respondent had pleaded one contention that complainant is a defaulter and had defaulted in making payments due to which his allotment was cancelled. However, records reveal that when allotted plot was cancelled by the respondent it was only accompanied with a cheque of Rs. 3,91,200/- which was the last payment made by complainant. However, refund of full amount paid by the complainant was never offered to the complainant even while cancelling the allotment of allotted plot.

5. Authority on the basis of above facts and after perusing relevant records, is of the view that complainant is a genuine allottee of the project as all the documents since booking are valid and complainant has proved his contention with relevant documents as stated in above para's of this order. But respondent's allegation are not accompanied with any of the document which shows that cancellation was rightly done. Mere returning the last paid amount with cancellation notice is not a good cancellation. So,

cancellation/termination made by the respondent cannot be legally or meticulously sustained.

6. Accordingly, it is concluded that complainant has paid more than sixty percent amount to the respondent and respondent despite having received substantial amounts of the plot has failed to deliver the possession to the complainant till date.

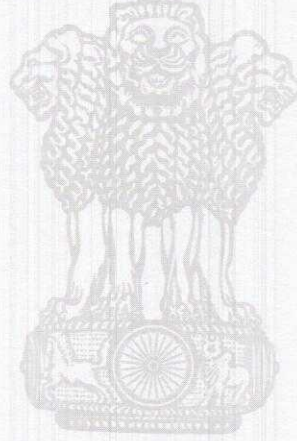
Complainant has sought relief of possession of allotted plot and interest on account of respondent's failure to deliver possession on the agreed date. In these circumstances, the complainant despite delay on the part of the respondent in completing the project, is not interested in withdrawing from the project, therefore the only relief which at present can be awarded to him is to direct the promoter to pay interest for every month of delay till the handing over of possession as provided in Section 18 of RERA Act, 2016.

So, Authority concludes that the complainant is entitled to possession of allotted plot along with interest on the already paid amount from the deemed date of possession i.e. 26.12.2018 till the date of passing of this order i.e. 12.08.2022 at the rate of 9.8%. Authority has got calculated interest, which works out to be ₹ 3,90,271/-. Besides the said amount of interest, complainant is also entitled to receive each month's interest on the already paid amount of ₹ 10,96,200/- from 13.08.2022 onwards till the

delivery of actual possession after obtaining Occupation Certificate. Such interest works out to ₹ 9,124/- per month as calculated by the Authority.

In view of above findings, the complaint is **disposed of** with a direction that respondent shall pay to the complainant interest of ₹ 3,90,271/- within 90 days from the date of uploading of this order and will further pay to the complainant every month's interest of ₹ 9,124/- till actual handing over of possession of the booked plot after receiving Occupation Certificate.

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



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]