



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 310 OF 2021

Sunita Dhodi

....COMPLAINANT

VERSUS

ORS Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 31.05.2022

Hearing: 6th

Present: - Sh. Prabhat Kumar, learned counsel for the complainant
through video conferencing
None for the respondent

ORDER (RAJAN GUPTA - CHAIRMAN)

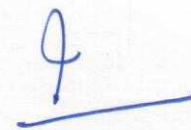
1. The complainant in captioned complaint is seeking relief of refund of the money paid to respondent in respect of booked apartment along with interest as applicable as per rules, for having caused inordinate delay in offering possession and even now project being nowhere near completion.

2. Brief facts as averred by complainant are that he had booked a 3BHK apartment in the project 'Royal Residency' located at Sector -89, Faridabad, promoted by respondent, in July, 2008. An allotment letter dated 17.10.2008 was issued vide which flat No. 102, Block - A with 1500 sq. ft. super area on 1st floor was allotted to the complainant. Flat Buyer Agreement was also executed on 17.10.2008. In terms of Clause 28 of the FBA, possession was to be delivered within 36 months i.e. by 17.10.2011. Complainant has already paid Rs. 30,43,125/- against basic sale price of Rs. 27,75,000/- and total sale consideration of Rs. 35,28,750/-. The fact of basic sale price of Rs. 27,75,000/- having been agreed between the parties is supported by the Flat Buyer Agreement executed between the parties which has been annexed as Annexure P/4 to the complaint.

3. Grouse of the complainant is that despite lapse of about thirteen years from the date of booking, respondent has failed to deliver possession of plot to the complainant. Complainant had visited the project site but there were no signs of its completion and project is lying abandoned. Learned counsel for complainant stated that after lapse of about thirteen years from the date of booking; purpose of booking the flat has been totally frustrated and now, complainant no longer needs the booked apartment. Therefore, complainant is seeking refund of paid amount Rs. 30,43,125/- along with interest as per Rule 15 of the HRERA, Rules 2017.

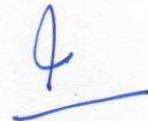


4. Notice was successfully delivered to respondent on 16.10.2021. During the hearing dated 10.03.2022, Sh. Sourabh Goel, Advocate who was appearing before Authority in certain other matters of the respondent, submitted that respondent has neither received notice nor copy of the complaint book in complaint no. 310 of 2021. He accepted notice on behalf of the respondent and sought time to file reply.
5. However, no reply has been filed. Thereafter, on hearing dated 12.05.2022, Shri Sourabh Goel, sought more time, when Authority granted last opportunity to respondent to file his reply. However, today, none has appeared on behalf of the respondent, nor any reply has been filed. It is pertinent to mention that there is no memo of appearance/ vakalatnama placed on record by Sh. Sourabh Goel, who had earlier appeared on behalf of respondent.
6. Authority observes that this case has already been adjourned twice on the request of learned counsel for respondent for filing reply. On the last date of hearing i.e., 12.05.2022, last opportunity was granted to the respondent to file reply. Therefore, no further opportunity can be granted to respondent for filing reply and Authority decides to proceed ex-parte. Case is being heard and disposed on merits on the basis of facts available on record.
7. On the basis of submissions of complainant and perusal of record, Authority observes that despite lapse of about thirteen years from the date of booking in July, 2008, no offer has been made by respondent for handing over



possession of plot to the complainant. Admittedly, respondent has been using the amount deposited by complainant for the last thirteen years without any justifiable reason. Failure on part of respondent to deliver possession of plot even after a huge delay of about thirteen years has frustrated the very purpose of booking the plot. Such inordinate delay itself is a justification for accepting the prayer for refund.

8. It has also come into the knowledge of Authority that an agreement dated 01.09.2008 was executed between Triveni Ferrous (now Maximal Infrastructure Pvt. Ltd.) in respect of land measuring 3.456 acres (FAR 380562 Sq.ft) which was purchased by respondent M/s ORS for a total consideration of Rs. 26,56,99,525/-. Based on above DTCP, Haryana granted permission of joint development and marketing rights to ORS vide letter dated 07.03.2022. M/s Maximal went in appeal against the said orders before ACS Town and Country Planning. The appeal was dismissed on 21.02.2022 by Id. ACS being devoid of any merits. Respondent thereafter, filed a CWP before the Hon'ble High Court against the orders of ACS Town and Country Planning mentioning that agreement dated 1 Sept. 2008 has been cancelled vide cancellation deed dated 08.06.2016 for failure on part of respondent to abide by the terms and conditions of the agreement. M/s Maximal while suspending the GPA and also development agreement, had also issued a cheque to refund the agreement amount of Rs. 26,56,99,525/- vide Cheque no. 466083 dated 08.06.2016 drawn on Corporation Bank NFC New Delhi.



However, the cheque was honoured/encashed. The matter is now pending adjudication before Hon'ble Punjab and Haryana High Court and is listed for hearing on 25.08.2022.

This itself establishes that project is in legal dispute and not likely to be completed in foreseeable future.

9. In such circumstances, Authority finds it to be a fit case for allowing refund of the amount paid by complainant and directs respondent to refund amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

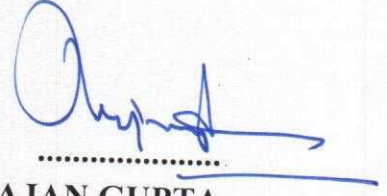
10. After perusal of record, Authority observes that complainant has attached receipts of payment made by him of Rs. 32,91,966/-, as Annexure – P/5. Therefore, respondent shall refund Rs. 32,91,966/- paid by complainant along with interest calculated from date of making payments as per receipts upto the date of passing this order.

11. As per calculations, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 72,01,151/- (Rs. 32,91,966/- + Rs. 39,09,185/-). Therefore, Authority directs the respondent to refund Rs. 72,01,151/-.

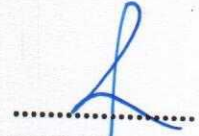
12. The respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.



13. **Disposed of** in these terms. File be consigned to the record room and the order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

