



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 669 OF 2020

PREETI GARG AND ACHAL GARGCOMPLAINANT

VERSUS

LOTUS INFRAESTATES PVT LTD.RESPONDENT

CORAM: Rajan Gupta Chairman
Dilbag Singh Sihag Member

Date of Hearing: 31.05.2022

Hearing: 7th

Present through video calling: - Adv. Karan Nagpal , learned counsel
for complainant

Ms. Rupali Verma, learned counsel
for the respondent with Sh. Sanjay
Malhotra, Representative for the
respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Complainant's case is that he had booked a residential plot bearing no. 014, in Tower B admeasuring 150.54 sq. mtr. in respondent's project "LOTUS GREEN CITY", Dharuhera in year of 2013. Total sale consideration of the plot was Rs. 50,41,570/- against which he has already

paid an amount of Rs. 48,41,319/-. In support of payment made, complainant has annexed receipts placed as to Annexure C- 2,5 at page no. 26-28; 44-62 of complaint book. Both parties signed flat buyer agreement on 05.02.2014. As per Clause 17 of the agreement, possession of booked property was to be delivered within 24 months with an additional grace period of 6 months from signing of agreement. Therefore, deemed date of possession in this case works out to 06.08.2016. Complainant submits that in January 2019, he was informed by representative of respondent/ promoter that booked plot comes under "NPNL" category and not in general category. However, complainant had executed agreement for general plot and the amount of consideration was paid accordingly. Complainant felt cheated and sent an email dated 23.07.2019, requesting the respondent to cancel their agreement and refund of total paid amount. Respondent agreed to refund the paid amount i.e. ₹ 48,41,319/-. An amount of ₹ 4,84,132/- was refunded to him on 12.08.2019. Remaining amount of 43,57,188/- was to be refunded by respondent in six equal instalments, as per understanding of both parties as is evident from email dated 12.08.2019 annexed as Annexure C-6 at page no. 63-66 of complaint book. However, respondent has failed to abide by terms of said understanding for making payments.

2. On the other hand, respondent in their reply have raised by and large technical objections like complaint is not maintainable; RERA Act cannot be implemented with retrospective effect; Authority does not have jurisdiction

4

to hear the complaint; complaint has not been filed on proper format etc. Further in para 13 of reply respondent had admitted that a commitment was made by them in year 2019 to refund total amount paid by complainant as per terms and conditions of settlement executed vide email dated 12.08.2019, annexed at page no 63-65 of complaint book. Respondent states that they are willing to pay entire due amount within a period of next six months. Further Id. Counsel for respondent submitted that respondent is ready to re-allot the booked unit to complainant if he is ready to stay invested in the project.

3. Learned counsel for complainant reiterated the stated facts and submitted that complainant do not wish to continue with the project for the reason that complainant had booked the plot under general category and had paid the amounts accordingly, whereas respondent has changed his booked plot to NPNL Category after receiving almost 95% of the amount. The change has been made without his consent. Therefore, he had filed present complaint on 30.07.2020 seeking relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that total paid amount of ₹ 43,57,188/- may be refunded along with permissible interest.

4. Since, vide captioned complaints complainants have sought relief of refund but the same was kept by Authority due to disputes of jurisdiction of the Authority to deal with complaints in which relief of refund was sought was subjudice before Hon'ble High Court and Hon'ble Supreme Court.

4

Now, the position of law has changed, in view of Judgment passed by Hon'ble Supreme Court in lead SLP Civil Appeal No. 13005 titled as "M/S. Sana Realtors Pvt. Ltd. vs. Union Of India" plea raised against the maintainability of the complaint is no more tenable. Since the issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with all the matter on their merits.

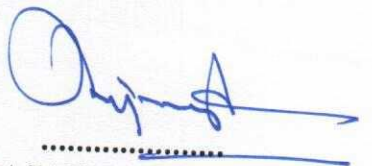
5. After going through the record and submissions made by both parties, Authority observes that respondent has admitted the claim of complainant and is also ready to refund remaining amount within 6 months as per terms and conditions of settlement agreement executed vide an email dated 12.08.2019. However, fact remains that the time period of 6 months agreed between the parties in the said email has already expired on 12.02.2020. Admittedly an amount of Rs 4,84,132/- was refunded to complainant on 12.08.2019, but remaining amount which was supposed to be refunded within 6 months starting from 12.08.2019 has not yet paid by respondent. Moreover, respondent has not furnished any justification for not abiding by the terms of email dated 12.08.2019 agreed by them. Fact remains that complainant is not interested in continuing with the project and has filed present complaint on 30.07.2020 after lapse of period of 6 months as agreed in email dated 12.08.2019 for refund of remaining paid amount of Rs 43,57,188/-. Besides, respondent admittedly is ready to refund the entire due amount of 43,57,188/- to the complainant but within time frame of six



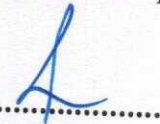
months. Further time of six months can be accepted by complainant by way of mutual agreement or out of court settlement. This Authority cannot allow such additional time. Accordingly, relief claimed by complainants i.e. refund of the amount paid by them to the respondents along with interest in terms of Rule 15 of RERA, Rules, 2017 is hereby granted from respective dates of making payments till passing of this order.

Accordingly, Authority directs the respondent to refund entire principal amount of ₹ 43,57,188/- to the complainant along with interest. Authority has got the interest calculated from its account department, which works out to ₹ 32,12,230/-. This interest has been calculated from the date of making payments by complainant upto the date of passing of this order i.e. 31.05.2022 at the rate of 9.50%. Now, respondent has to pay total amount of ₹ 75,69,418/- (43,57,188/-+ ₹ 32,12,230/-) to the complainant within the period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]