



Complaint no. 2665 of 2019

**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: www.haryanarera.gov.in

**COMPLAINT NO. 2665 OF 2019**

Subhash Soni

....COMPLAINANT(S)

VERSUS

M/S Arcity Builders Pvt. Ltd.

....RESPONDENT(S)

**CORAM:** Rajan Gupta Chairman

Dilbag Singh Sihag Member

**Date of Hearing:** 31.05.2022

**Hearing:** 10th

**Present:-** Mr. Anurag Jain, Learned counsel for the complainant

Mr. Shekhar Verma, Learned counsel for respondent

**ORDER (RAJAN GUPTA-CHAIRMAN)**

In this case complainant had booked an apartment in the project of the respondent namely 'Regency Park' situated at Hisar in the year 2011 for a total sale consideration of Rs 34,31,800/- against which complainant had paid an amount of Rs 11,00,000/- to the respondent by July 2014. Flat buyer agreement was executed between both the parties on 24.11.2012 and complainant was allotted apartment no. 0703 in Tower A of said project. As per said agreement, possession of flat should have been delivered by the year 2015. It is alleged by the complainant that Tower A in which the unit allotted to

him is situated is in a bad shape and no development works have been carried out in the project Therefore, present complaint has been filed seeking refund of paid amount alongwith interest.

2. This matter was taken up together for hearing with a bunch of complaints as major facts and grievances alleged therein were directed against the same project of the respondent. In said complaints, complainants were allottees of apartments in Towers A,B,C,D,E and G of the respondent's project namely "Regency park". Their grievance was that respondent had stopped construction and only a concrete structure stood on the land with raw materials scattered around. It was alleged that no further development or construction work was being carried out for completion of the project. Some of the complainants had prayed for refund of the paid amount alongwith interest while others prayed for issuance of direction to the respondent for delivery of possession within a fixed period.

3. On the other hand, learned counsel for the respondent had submitted before court that respondent company despite having invested huge sum of money was unable to complete the project within aforesaid period due to various factors including lack of funds due to non payment of instalments by allottees. Initially, respondent had received funds from allottees, but many allottees including complainant had stopped making payments which has adversely affected construction of this project. He submitted that respondent company is serious about completing construction of the project and is making



all efforts to complete the project. Now order of refund shall jeopardise the project, hence, refund should not be allowed.

4. This matter was adjourned sine die vide order dated 23.12.2020 because the matter pertained to relief of refund of the paid amount, awaiting outcome of proceedings before Hon'ble Supreme Court in which jurisdiction of Authority to deal with such cases was sub-judice.

5. For adjudication of cases in which relief of refund was sought, Authority had passed its resolution no. 6705-6709 dated 14.01.2022 and had resolved to take up all such complaints.

6. Thereafter when the matter had come up before Authority on 24.03.2022, learned counsel for complainant had submitted that complainant in this case had recently come to know that respondent company has actively undertaken construction of the project and has also sent offer for relocation to various allottees to transfer their booked flat to other towers of the project which are close to completion. In case respondent offers a valid offer for relocation which is suitable to complainant, complainant is willing to accept the same. Accordingly, Authority vide order dated 24.03.2022 had directed respondent company to send a valid offer of relocation to the complainant for transfer of booked unit to different unit which is ready for possession, and the same was sent by respondent on 26.03.2022. However, said offer of relocation was not acceptable to the complainant as he did not find the re-allotted unit suitable. Thereafter, respondent was directed to provide the complainant with a



list of available of all available flats in the project and complainant was at liberty to choose out of those.

7. Shri Anurag Jain, learned counsel for complainant submitted that as per orders of Authority, complainant had been provided with a list of available units and upon consideration any apartment on 11th floor is acceptable to the complainant and he is ready to take possession of the same as and when the project is complete. He prayed the Authority that directions be issued to the respondent to issue him an offer of relocation of the freshly chosen unit and deliver him physical possession of the same. He further pleaded that respondent be directed to provide delay interest for delay caused in delivery of possession in accordance with Rule 15 of HRERA Rules 2017 and further demand of instalments be raised in consonance with construction work. Also vide order dated 22.10.2020 Authority had imposed a cost of Rs 5,000/- payable to complainant which the respondent has yet to pay.

8. Shri Shekhar Verma, learned counsel for the respondent submitted that the complainant had booked a unit in the project of the respondent in the year 2011 for a total sale consideration of Rs 34,31,800/-. By the year 2014 complainant had only paid a sum of Rs 11,00,000/- towards said booking and had then stopped making further payments. Since 2014, respondent company has been chasing such allottees including present complainant who have defaulted in making payments. Development of the project under question came to a halt due to severe shortage of funds because of such allottees. Now that



respondent has invested considerable amount of its own money and taken responsibility, the project is nearing completion and flats are ready for possession. Therefore, for said default in making payments, respondent should be allowed to charge delay penalty for delay in making payments. Further in regard to offer of possession, phase 1 of the project in which unit of the complainant is located is near completion and respondent company will soon issue offer of possession to all allottees including present complainant. Shri Shekhar Verma tendered a cheque bearing no. '024004' issued by IDBI Bank for payment of a sum of Rs 5,000/- in the name of complainant Shri. Subhash Soni in compliance of order dated 22.10.2020. Complainant is directed to collect the same from the office of the Authority.

9. After considering submissions of both parties, Authority observes that complainant had booked the unit in the project of respondent in the year 2011 and by 2014 had paid an amount of Rs 11,00,000/- for the booked unit. It is an admitted fact that possession of the flat has been extra ordinarily delayed because of which the complainant had filed this complaint seeking refund of paid amount alongwith interest. Subsequently when it appeared to the complainant that respondent is finally in a position to complete construction and deliver possession of flats, complainant had opted to accept an offer of relocation of his booked unit to a different tower which is ready for possession. Accordingly, complainant has accepted an apartment for offer of relocation upon payment of balance sale consideration including additional charges which

may accompany said unit. As per said buyers agreement, possession of flat should have been delivered by the year 2015 however, possession of the flat has still not be delivered till date therefore, for the delay caused in delivery of possession complainant is entitled to delay interest from deemed date of possession till an offer of possession is issued to the complainant for the freshly chosen unit in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR+ 2% (= 9.50%).

10. In the year 2011, complainant had agreed to purchase the unit in the project of respondent and opted for construction linked payment plan which means that development of the project as a whole was dependent upon timely payment of outstanding dues by various allottees including complainant who had chosen to become a part of the project. Total sale consideration of the flat was approx Rs 34 lakh , however, complainant had paid an amount of Rs 11,00,000/- only to the respondent till 2014 which is less than 35 per cent of total sale consideration. Since 2014 onwards complainant failed to make further payment despite several demand letters issued by respondent, without providing any reasonable justification for the same. Respondent had given several opportunities to complainant to clear dues and show his intent to stay with the project but complainant time and again failed to honour those demands. Such default on part of several of the allottees in making timely payments and adhering to the agreed payment plan created cash deficit for the respondent promoter resulting in delay in development of project. Since, complainant has



defaulted in making payments in accordance with the construction linked plan, respondent would be entitled to charge delay interest from the complainant from the date when particular demand was due till the date of offer of possession in terms of Rule 15 of HRERA Rules 2017 i.e @ SBI MCLR + 2%(= 9.50%) at Simple interest.

11. For the reasons mentioned above, when the project of the respondent is complete and units are ready for possession, respondent shall issue the complainant an offer of possession for the relocated unit alongwith a comprehensive statement of accounts in terms of the principle laid down in this order.

12. If the complainant feels aggrieved from statement of accounts to be issued by respondent, he will be at liberty to approach the Authority for assailing said statement of accounts.

13. Case is disposed of. Order be uploaded on the website of Authority and file be consigned to the record room.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]