Complaint No. - RERA-PKL-COMP-54-2018.

Surender Singh Rathee
Vs
M/s JOP Group

This order will dispose of the present complaint and also ten more complaints titled Rajender Singh V/s JOP Group, Suman Sehrawat V/s JOP Group, Surender Rathee V/s JOP Group, Surender Rathee V/s JOP Group, Reena Rathee V/s JOP Group, Reena Rathee V/s JOP Group, Reena Rathee V/s JOP Group, Jasvir Singh Chahal V/s JOP Group, Chandbir V/s JOP Group, Jasvir Singh Chahal V/s JOP Group bearing nos. 146/2018, 53/2018, 46/2018, 55/2018, 56/2018, 58/2018, 59/2018, 57/2018, 60/2018 and 61/2018, respectively as all these complaints are broadly based on similar facts and involve similar disputes for adjudication.

The complainants in all these cases had booked flats with the respondent and they had already paid part of the sale consideration. Their grievance precisely is that the respondent has neither executed the buyers' agreement in their favour nor has undertaken the construction work. It has been alleged that the complainant has been making inquiries from the respondent about the progress of the project but no definite

reply was given to them about the date of possession or for execution of the buyers' agreement. So, the complainants have prayed for refund of the amount which they had already paid along with interest and compensation.

The respondent filed written statement and has conceded that complainants have made part payments. It was pleaded that the respondent company had offered allotment to the complainants by sending letters and the complainants were also called to attend the draws held on 15.10.2014 and 19.05.2014. However, the complainants avoided participating in the draws. They were subsequently sent communications to pay the installments but they again defaulted to make the payment. So, the complainants' registration with the developer was cancelled vide letter dated 15.10.2014 and it was made clear to them that the respondent is ready to refund their amount after deduction of ten percent processing charges and they may collect the balance amount after submitting original registration receipts issued to them.

The complainants' argument, in substance, is that they are entitled to refund of the paid amount along with interest and

compensation because the respondent has not completed the project and has failed to deliver them the possession. The Authority does not find merit in their contention because the respondent have attached with the written statement letters Annex-R4 to R8 revealing that the respondent had called upon the complainants to attend first draw of flats carried out on 11.05.2014 and when the complainants did not turn up on the said date, another letter was issued to them to have a flat from the draw carried out on 11.05.2014. The complainants again committed default of appearance and had not deposited 35% of the sale consideration amount which was a condition precedent for inclusion of their names in the draw. Two more letters were subsequently issued calling upon the complainants to pay the required 35% amount and 2 percent per month penal interest, for including their names in the draw of eligible persons. The complainants continued to turn a deaf ear to all such requests of the respondent. So, the respondent ultimately sent a letter dated 15.10.2014 (Annexure R-9) informing the complainants that they may collect the refund of the deposited amount after 10% deduction on surrendering original payment receipts. Such action of the respondent by no stretch of imagination can be termed illegal or unwarranted.

The respondent has pasted on letter Annexure-R9 the postal receipt vide which said letter dated 15.10.2014 was dispatched to the complainants to inform them that they can withdraw the paid amount after 10% deduction on surrendering of original registration receipts. There is presumption that the letter so sent through post had reached the complainants in ordinary course. Although such presumption is rebuttable but the fact that the complainants could not dare to refute the receipt of letter dated 15.10.2014 even in their written arguments, would further strengthen the presumption that the letter had actually reached the complainants. Interestingly, the complainants even after the receipt of the letter dated 15.10.2014 have not paid the amount which was condition precedent for obtaining allotment of flat.

The only other arguments pressed on behalf of the complainants for claiming compensation is that the respondent is liable to compensate him because he has played fraud by collecting money even prior to the grant of license by the Town and Country Planning Department. This argument is not tenable firstly because the complainants have no-where pleaded such a ground for claiming compensation in their complaints and secondly, because respondent has produced receipt

revealing that the Town and Country Planning Department had already collected composition fee of around Rs.97,00,000/- from him on account of his indulgence in collection of money from the allottees prior to grant of license. After such compounding by the Town and Country Planning Department, the respondent cannot be penalised for paying compensation due to pre-launch collection of the money. Viewed from this perspective, the complainants are not entitled for compensation merely because the respondent had indulged in pre-launch collection of money.

So, the complainants in the aforesaid circumstances, have no right to claim compensation from the respondent. However, it is an indisputable fact that the respondent after deduction of 10% processing charges was duty bound to remit the balance paid amount through cheque/ draft to the complainants along with letter dated 15.10.2014. He committed default in making such remittance and continued to use the amount which otherwise was refundable to the complainant. So the complainants, atleast, in all fairness, are entitled to be paid 12% interest on the amount refundable to them from 15.10.2014 till the date of its payment.

The complaints are accordingly dismissed except for the relief that complainants will be entitled to approach the respondent for refund of their already paid amount after deduction of 10% processing charges, along with 12% simple interest with effect from 15.10.2014 till the date of its payment by the respondent. Copy of this order be sent to the complainant as well as the respondent for necessary compliance. File be consigned.

Dilbag Singh Sihag
Member

Anil Kumar Panwar
Member

Rajan Gupta
Chairman

Haryana Real Estate Regulatory Authority, Panchkula

Complaint No. - RERA-PKL-COMP-59-2018.

Reena Rathee
Vs
M/s JOP Group

Before: Sh. Rajan Gupta, Chairman
Sh. Anil Kumar Panwar, Member
Sh. Dilbag Singh Sihag, Member

Date of Hearing: 15.05.2018

Present: **None.**

District Attorney has put up the file as the complainant has filed written arguments. Vide a separate detailed order of even date, the present complaint and ten more complaints involving the same nature of dispute have been dismissed except for the relief that complainants will be entitled to approach the respondent for refund of their already paid amount after deduction of 10% processing charges, along with 12% simple interest with effect from 15.10.2014 till the date of its payment by the respondent. The original detailed order has been placed on the file titled Surender Singh Rathee V/s JOP Group and a copy of the same has been placed on each of the other complaint files.

Copy of the order be sent to the complainant and to the respondent. Files be thereafter up to consigned to the record room.

Dilbag Singh Sihag
Member

Anil Kumar Panwar
Member

Rajan Gupta
Chairman