



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 01 OF 2022

Rajesh Kumar Biyani

....COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

.....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** Member
Nadim Akhtar Member
Dilbag Singh Sihag Member

Date of Hearing: 27.09.2022

Hearing: 6th

Present : -Ms.Priyanka Aggarwal, Ld. counsel for the complainant through VC.
Ms. Navneet, Proxy counsel for the respondent.

ORDER (DILBAG SINGH SIHAG - MEMBER)

While perusing case file it is observed that today is the 6th hearing of case. Authority vide order dated 12.08.2022 had heard the matter at length and also gave its tentative view. Same is reproduced below for reference;

Perusal of file reveals that today is 5th hearing of the case. Brief facts of the complaint had already been captured by the Authority vide order dated 07.07.2022. Same is reproduced below for reference:

Perusal of files reveals that today is 4th hearing of the case. Brief facts of the case is that complainant booked a unit in respondent's project on 16.10.2012 by paying a booking amount of Rs. 2,77,380/-. Both

parties executed Builder buyer agreement on 22.02.2013 and deemed date of possession arrives at 22.02.2017. The basic sale price of the unit was fixed for Rs. 27,73,800/- against which complainant has claimed to have paid Rs. 25,98,409/-. Offer of possession of the said unit was made on 10.11.2021 after obtaining occupation certificate on 08.11.2021. Complainant has approached the Authority with grievance that since the offer of possession was not made within the agreed period he booked another unit in a different project and submitted that he was no more interested in the project. Therefore he has sought relief of refund.

2. The matter was earlier heard along with bunch related to the similar matter with lead case complaint no. 1272 of 2021 which was disposed of by the Authority on 27.04.2022 and prayer of refund was not allowed and relief of delay interest along with possession was granted to the complainants. This matter was separated by the Authority granting an opportunity to both the parties to amicably settle the matter amongst them. However, Ms. Priyanka Aggarwal ld. counsel for the complainant submitted that none approached complainants for settlement and no such talks were initiated by the respondent. Ld. counsel further pressed upon relief of refund and submitted that due to personal difficulty he would not be able to continue with the said project as he has already bought another unit in another project.

3. Authority observes and directs as follow:

i. The present matter was taken as a special case on the request of ld. counsel of the complainant allowing time for settlement and separating the said matter from the bunch.

ii. In the present case, Authority is going against its policy by treating it as a special case and allowing the complainant an opportunity to prove merit in their case and justify their relief of refund. Therefore, Authority directs complainant to file their written arguments suggesting his personal difficulty and why he is entitled to relief of refund annexing it with relevant documents. Based upon the following



written submissions, the Authority will decide the matter on the next date of hearing.

2. In compliance of order dated 07.07.2022 Ld. counsel for complainant had submitted written submissions dated 21.07.2022.

3. Shri. Kamaljeet Dahiya, appeared on behalf of respondent and filed his vakalatnama. He requested to grant him time to seek instructions from his clients and prepare the case. Same is acceded by the Authority.

4. Authority has gone through the submissions made by complainant. Complainant had booked the apartment in question in the year 2013 and had executed builder buyer agreement on 22.02.2013. Due date of possession was four years, thereafter i.e 22.02.2017. In the year 2015, however, stating that sufficient progress was not being made at the project site and also complainant was going through financial hardships, therefore, applicant wrote an email to respondent requesting for cancellation of the booked unit. The fact that actual offer of possession was given to the complaint on 10.11.2021, complainant had presumed in the year 2019- 2020 that completion of the project is uncertain. He, therefore, keeping in view his own circumstances purchased another apartment in November 2020. The other apartment was purchased after availing home loan. Complainant has annexed proof of the same vide Annexures A/3 and A/4.

5. Now, case of the complaint is that having purchased another apartment due to delay caused by respondent company complainant is not in a position to arrange more funds for continuing with booked apartment in the project of respondent company. Complainant had expressed his intention to withdraw from the project in the year 2015 itself. The facts and circumstances prove that at that stage the complainant was not satisfied with progress of the project.

6. Provision of Section 18 of the RERA Act, 2016 entitles an allottee either to continue with the

project or to withdraw from it in the event of delay taking place. Authority is of tentative view that the complainant is entitled to withdraw from the project. However, since respondents have eventually completed the project and have invested the money received from complainant ends of justice would be met if the money paid by the complainant to the respondent is returned after deducting 10% earnest money of the basic sales consideration. Remaining money deserves to be returned to complainant along with applicable interest provided for in Rule 15 of RERA Rules, 2017.

7. Final decision in the matter will be taken after further hearing of both parties. Authority grants an opportunity to both parties to arrive at a settlement failing which tentative view expressed above, will be confirmed.

2. Proxy counsel for respondent Ms. Navneet appeared and requested for amicable settlement. She did not apprise the Authority with any new fact neither argued the matter.

Ld. counsel for complainant objected to request of respondent submitting that enough opportunities had already been given to respondent and despite every opportunity they have failed to arrive at settlement. She further submitted that after every hearing there is no response from respondent/promoter or their representative and therefore objects to their request.


3. In light of oral averments, and written submissions Authority confirm its tentative view and allow the complainant to withdraw from the project and directs respondent to refund their amount after deducting 10% against basic sale consideration along with interest as per Rule 15 of HRERA Rules, 2017.



Authority accordingly has got calculated from the refund amount along with interest as shown below;

Complaint No.	Refund against Basic sale price after deducting 10% (Rs. 27,73,800/-)	Paid Amount	Interest @ 10%	Total refundable amount
1 of 2022	Rs. 24,96,420/-	Rs. 25,98,409/-	Rs.22,50,434/-	Rs. 47,46,854/-

4. Case is **Disposed of.** File be consigned to record room after uploading of order on website of Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]