



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 741 OF 2019

Ram Bhagwan Singhal

....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 742 OF 2019

Ankur Goel

....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd.

....RESPONDENT(S)

CORAM:

**Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 11.10.2022

Hearing: 12th

Present : -

Mr Dhrupad Sangwan, Counsel for complainant
through VC.
Mr. Kamaljeet Dahiya, Counsel for respondent

ORDER (NADIM AKHTAR- MEMBER)

Captioned complaints have been taken up together as grievances and facts involved are identical and against the same project of the respondent. This matter had come up before Authority on 05.04.2022, when after hearing both the parties, Authority had passed a detailed order, which is reproduced below for reference:-

"Complainant in present case had booked an apartment in the project of the respondent named 'Suncity Floors' situated at Sector-36 A, Rohtak. An allotment letter was issued in favour of complainant on 24.07.2013. As per clause 24 of letter of allotment, possession of the unit was to be handed over by January 2015. He has paid a sum of Rs 7,55,500/- till July 2013 against total sale consideration of Rs 30,69,450/- for said unit. It is alleged by the complainant that respondent has failed to execute a builder buyers agreement and possession of the unit has not been offered till date. Feeling aggrieved he has filed present complaint seeking refund of paid amount alongwith interest.

2. Shri Dhrupad Sangwan, learned counsel for complainant submitted that the payment plan opted by complainant was construction linked payment plan. However,



despite taking more than 20% of sale consideration from complainant by the year 2013 respondent had not even started construction of the project. In various demand letters sent to complainant respondent did not mention the stage of construction against which said payment was being demanded. Since complainant failed to see any progress in construction work, he stopped making further payments. It is the respondent who has defaulted in failing to develop said project to time. Therefore, complainant is entitled to refund of the paid amount alongwith interest.

3. Respondent in his reply has pleaded that project has already already received part completion certificate on 06.09.2016 which is annexed as Annexure R-2 in the reply book. Occupation certificate was also received in the year 2015. Complainant is presenting a wrong picture by stating that respondent was not in a position to hand over possession. Rather it is the complainant who is at fault on account of non payment of outstanding dues. Respondent had sent various demand/reminder letters to complainant to make balance payment. However, when complainant failed to adhere to payment plan, respondent was constrained to cancel allotment of said unit vide letter dated

06.04.2018 and also issued a cheque of Rs 3,02,083/- after deducting earnest money of Rs 4,52,917/-. Accordingly, now complainant is not entitled to any relief as respondent has discharged all his liabilities. Since copy of occupation certificate had not been placed on record, learned counsel for respondent sought time to produce copy of occupation certificate.

3. The case of complainant is that he had stopped making payments of instalments as per demands raised by respondents because allegedly construction of the project had stopped. The case of respondents, on the other hand is that construction progressed as per schedule which is proved from the fact that Occupation Certificate for the building had been received by respondents in the year 2015 and further Part Completion Certificate was received by the year 2016.

4. Authority observes that if the building was fully constructed by the year 2015 and Occupation Certificate thereof had been obtained then the contention of the complainant could not be considered correct. Now, the fate of the matter hinges on whether the respondent had indeed obtained Occupation Certificate in the year 2015.



5. *On the request of the learned counsel for the respondent last opportunity is granted to produce the occupation certificate obtained in the year 2015. Further equities will be decided thereafter.*

6. *Adjourned to 11.5.2022.*"

2. Vide order dated 05.04.2022, it was essentially observed that, complainant had booked an apartment in the project of the respondent in the year 2013 and had paid a total amount of ₹ 7,55,500/- till July 2013 against total sale consideration of ₹ 30,69,450/-. However, the complainant stopped making further payments towards booked unit as the respondent had failed to start construction work of said project despite taking nearly 20% of total sale consideration and also respondent had not executed any builder buyer agreement. Since, respondent failed to develop said project in time, complainant filed present complaint seeking refund of the paid amount along with interest.

On the other hand, the respondent in his written submissions had submitted that the project of the respondent already stands complete for which occupation certificate has been received in the year 2015. Rather it is the complainant who is at fault here on account of non payment of dues. Despite sending various demand/reminder letters the complainant has failed to adhere to the agreed payment plan because of which respondent

had cancelled the allotment of said unit vide letter dated 06.04.2018 and also issued a cheque of Rs 3,02,083/- after deducting earnest money of Rs 4,52,917/-. It is pertinent to mention that the cheque has not been encashed by the complainant and the entire amount lies with the respondent.

Since copy of occupation certificate had not been placed on record, learned counsel for respondent had sought time to produce the same.

3. In view of the statement of respondent's counsel that the project in question has already received occupation certificate in the year 2015, Authority vide order dated 05.04.2022 had observed that in case it is proved that the building in question is fully constructed and occupation certificate has already been received then the contention of the complainant could not be considered correct. Case was adjourned granting last opportunity to respondent to produce the occupation certificate, if so obtained for said project.

4. In compliance of direction issued vide order dated 05.04.2022, respondent had filed a copy of occupation certificate granted to the project on 29.08.2015, a copy of which has been supplied to complainant.

5. Today, Shri Dhruvad Sangwan, learned counsel for the complainants submitted that in view of the grant of occupation certificate, complainant prays that he may be allowed to withdraw from the project after deducting



the booking amount towards earnest money and refund the remaining amount with interest.

6. Shri Kamal Dahiya, learned counsel for the respondent submitted that in view of the occupation letter dated 29.08.2015, the contentions of the complainant that the project has not been developed are henceforth proved wrong. The fact of the matter is that the project already stands completed and it is the complainant who is at fault on account of non payment of dues. On account of default committed by the complainant by not clearing outstanding dues respondent had cancelled the unit of the allotment in favour of the complainant on 06.04.2018 and further issued a cheque of ₹ 3,02,083/- after deducting earnest money of ₹ 4,52,917/- which was not encashed by the complainant. Therefore, complainant is only entitled to refund of amount of ₹ 3,02,083/- after deducting earnest money.

7. In light of the facts and circumstances, Authority observes that in present complaint, the complainant had booked an apartment in the project of the respondent in the year 2013 for which he has paid an amount of ₹ 7,55,500/- till July 2013 against total sale consideration of ₹ 30,69,450/-. Complainant had alleged that he had stopped making further payments since respondent had not even begun construction at the site of the project. Respondent on the other hand submitted that the project in question already stands complete and has received occupation certificate on 29.08.2015. In

view of said occupation certificate, the contentions raised by complainant that respondent had failed to develop the project cannot be accepted. It is the complainant who is at fault on account of failure in making payments as per the payment schedule. Therefore, Authority observes that respondent is entitled to forfeit the earnest money. Respondent is directed to refund the amount of ₹ 7,55,500/- to the complainant alongwith admissible interest till date of order in terms of Rule 15 of HRERA Rules 2017 after deducting earnest money. Amount shall be refunded as per provisions of Rule 16 of HRERA Rules 2017.

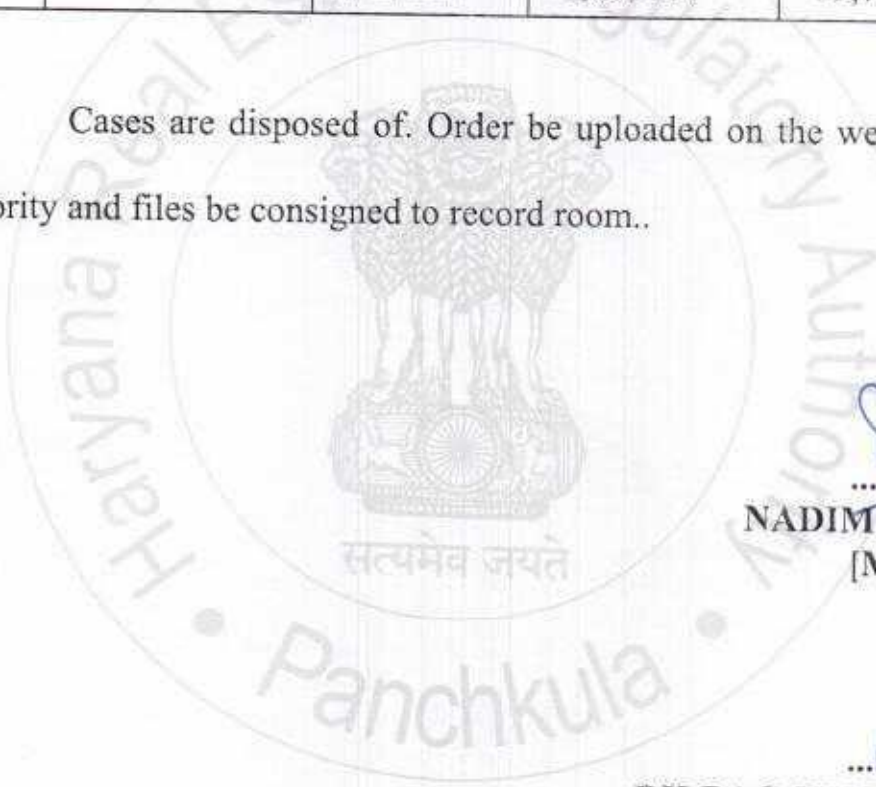
8. As per clause 16 of the terms and conditions of allotment letter earnest money was to be the payment made to the developer either with the application for provisional allotment or thereafter to the extent of 15% of the basic sale of said unit. Authority observes that 15% earnest money is too high. Authority would therefore consider it unconscionable and unreasonable. RERA provides for Earnest money of 10% of basic cost price of the unit. This is also a standard market practice. Therefore, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant along with admissible interest.



9. Authority accordingly orders refund of the amount paid by the complainants alongwith interest as shown in table below:

S. No	Complaint No.	Principal amount (In ₹.)	Interest @10.00% (In ₹) till 11.10.2022	Total amount to be refunded by respondent (In ₹)
1.	741 of 2019	7,55,000/-	7,15,642/-	14,70,642/-
2.	742 of 2019	7,05,000/-	6,69,218/-	13,74,218/-

10. Cases are disposed of. Order be uploaded on the website of the Authority and files be consigned to record room..




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NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]