



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2750 OF 2019

Mange Ram Sangwan

....COMPLAINANT(S)

VERSUS

Alpha G Corp Development Pvt. Ltd

.....RESPONDENT(S)

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

Date of Hearing: 28.09.2022

Hearing: 25th

Present: Mr. Shevtanshu Goel, Ld. counsel for the complainant through VC.

Mr. Bahul Bunger, Ld. Counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG - MEMBER)

Perusal of file reveals that today is 25th hearing of the matter. Relevant facts of the case have already been recorded by the Authority. Part pleadings of the complainant were heard and recorded by Authority vide its order dated 26.04.2022. Relevant part of the order dated 26.04.2022 is reproduced below;

4. *Complainants had booked a plot in the respondent's project by paying booking amount of Rs.*

8,74,000/- on 03.05.2011, and signed plot buyer agreement on 21.10.2011 for a plot bearing no. 1430 measuring 360 sq. yards, situated at sector 29, Alpha International City, Karnal. Deemed date of possession of the plot was 28 months from the date of commencement of development works. Complainants have alleged that the development work started in 2011 itself, but when they approached the manager of respondent on 02.03.2012 about the progress of the project they were told that there is slump in the market due to which they are carrying out development work slowly. Complainants claim that respondent was liable to deliver possession of plot with all amenities by 22.05.2014. Complainants have further submitted that they have paid a sum of Rs. 70,52,651 against basic sale price of Rs. 58,32,000/-. Complaints have approached this Authority with grievance that no offer of possession has been made till date by respondent and now they are not interested in the plot, therefore their money should be refunded along with interest.

5. In light of facts put forth by the Ld. counsel for complainant Authority observes that there is an inordinate delay in the offering of possession of the plot and is of a tentative view that in such circumstances of highly inordinate delay relief of refund could be allowed. However, Mr. Harsh Bungar, arguing counsel for respondent is not present therefore, Authority grants last opportunity to the respondent to argue their case on the next date of hearing.

2. On the request of Mr. Paritosh Vaid, proxy counsel for the respondent the case was adjourned for arguments. The matter was taken up on 05.08.2022 wherein, respondent counsel denied to the oral averments of complainants and submitted in his oral averments that complainant had served the respondent with a notice to cancel his unit. The said contention of the respondent was challenged by the Id. Counsel for complainant and respondent



sought adjournment to place the same on record. Part arguments of respondent counsel was recorded vide order dated 05.08.2022. Relevant part of order is reproduced below;

Ld. counsel for the respondent apprised the Authority that complainant had served the respondent/promoter with a legal notice to cancel their unit. However, on the other hand ld. Counsel for the complainant has denied this contention of the respondent counsel. Respondent counsel has sought adjournment requesting time to place it on record before the Hon'ble Authority. Same is acceded by the Authority.

Last opportunity is granted to the respondent and complainant to place any relevant document on record and argue their case on the next date of hearing. No further opportunity will be given to either party.

3. The case was fixed for the remaining arguments. While initiating his pleadings ld. counsel for the complainant reiterated facts of the case which have already been recorded above vide its order dated 26.04.2022 and pressed for his relief of refund.
4. On the other hand the respondent was directed to prove his contention submitted on the last date of hearing, that complainant through notice requested the respondent to cancel the said unit. In pursuance of the same respondent had submitted his written submissions in the office of Authority dated 10.10.2022. Wherein, respondent submits that complainant had applied for allotment of two



plots dated 24.05.2011 Form AICK 471 dated 07.06.2011 in Phase II of Karnal project. In pursuance of same two plots as plot no. 1428 admeasuring 360 sq.yards, and plot no. 1430 admeasuring 360 sq. yards were allotted to complainant vide Allotment letter dated 27.07.2011. Thereafter, Plot buyer agreement was executed between the parties i.e. for Plot No. 1428 the agreement was executed on 24.11.2011 and for 1430 the agreement was executed on 21.10.20211. Respondent had received approval for service plan and estimate on 13.02.2013 and thereafter the development work had started. Respondent had applied for part completion on 23.01.2014 and the said was received on 19.04.2018 attached as annexure R-4 of reply file. Respondent alleges that compliant is a defaulter in making payments and for the same has annexed copies of demand letters and reminders issued by the respondent as annexure R-5 of reply file. It is further submitted by respondent in his submissions that upon continuous defaults by complainants respondent company issued a final termination notice dated 26.02.2013 and termination letter dated 20.03.2013 and the same was challenged by the complainant by way of fling a case before Civil Judge, Senior Division Karnal bearing No. CS/63301/2013 which was later on disposed of as withdrawn on 24.07.2014. It is further submitted by respondent that complainant citing his financial problems had requested to respondent company cancel his plot no. 1428 and requested to adjust an amount of Rs. 14,74,800/-towards Plot no. 1430, copy of same is annexed by respondent as Annexure C in his written submissions.

Further, respondent accepted the request of complainant and reinstated the allotment of Plot no. 1430 on 31.10.2014. Respondent alleges that respondent had failed to abide by the terms of the agreement and also failed to make balance payments on time. Respondent alleges that complainant is liable to pay outstanding principal amount, delay interest, holding charges and cam charges in accordance with terms of plot buyer agreement dated 21.10.2011. Further, submits that complainant is liable to pay Rs. 25,48,766/- as on 28.09.2022 in terms of above mentioned charges.

5. Authority has gone through oral as well as written submission of both parties and observes that basic facts of the case like details of payment, execution of builder buyer agreement on 21.10.2011 and its delivery time by 22.05.2014 and sale consideration of the unit as Rs. 58,32,000/- against which complainant had claimed to paid an amount of rupees 70,52,651/- are undisputed.

Grievance of complainant is that respondent has failed to abide by terms of the agreement and till date has not been offered possession of said plot. On the other hand, respondent has apprised Authority that complainant originally booked two plots in respondent's project bearing number 1428 and 1430. Further, complainant made a request for cancellation of plot number 1428 and accordingly same was cancelled by respondent through termination letter dated



20.03.2013 and the amount of Rs. 14,74,800/-to be adjusted towards Plot no. 1430.

6. In nutshell, complainant has filed his complaint before the Authority for his plot number 1430 measuring 360 sq. yards and not for plot no. 1428. On further perusal of record of respondent reveals that they are in line to cancellation of plot no. 1428 and not the disputed plot no. 1430. Henceforth, contention of ld. counsel for respondent cannot be accepted that complainant had requested for cancellation of the plot in dispute.

7. Authority has already indicated its mind vide its order dated 26.04.2022 whereby Authority has accepted that this is a case of inordinate delay and therefore complainant is entitled to his sought relief. Operative part of the order is reproduced below for reference;

5. In light of facts put forth by the Ld. counsel for complainant Authority observes that there is an inordinate delay in the offering of possession of the plot and is of a tentative view that in such circumstances of highly inordinate delay relief of refund could be allowed. However, Mr. Harsh Bungar, arguing counsel for respondent is not present therefore, Authority grants last opportunity to the respondent to argue their case on the next date of hearing.

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Authority confirms its tentative view and allows prayer of refund along with permissible interest. Complainant is entitled to refund along with interest as per rule 15 of HRERA Rules 2017 read with provision of section 18 of the Act.

8. Authority observes that complainant paid more than 100% of BSP to respondent in 2014 itself. Thereafter, it was the respondent's responsibility to give a valid offer of possession to the complainant. Respondent has not offered possession even after receiving part completion certificate in 2018. Despite all this respondent has not placed any documents why he has not offered possession since he obtained part completion certificate from concerned Authorities. All these facts prove failure on part of the respondent to fulfil his responsibility as per the BBA. Further by virtue of Section 18 complainant is well within his rights to claim refund of the paid amount in case of inordinate delay by respondent.

9. Complainant in his complaint has claimed to have paid an amount of Rs. 70,52,651/- to the respondent. Perusal of receipts reveals an amount of Rs. 81,75,950/- has been paid. Further perusal of complaint file on page 6 para 5 he has mentioned that an amount of Rs. 11,58,248/- was refunded by respondent to him. After adjusting this amount, total amount paid by complainant works out to Rs. 70,17,702/- and the interest is calculated on the same amount.

10. Principal amount to be refunded is Rs. 70,17,702/-. Authority has taken amount of Rs. 70,17,702/- for calculating interest at SBI MCLR +2% (i.e.,

10%). The same has been calculated by the Accounts branch of the Authority. Amount of interest works out to Rs. 59,69,351/- on principal amount. Respondent is directed to refund total amount of Rs. 1,29,87,053/- to complainant. Further respondent is directed to refund the calculated amount along with interest within a period of 90 days, as per Rule 16 of HRERA Rules 2017.

11. Case is **disposed of**. File be consigned to record room after uploading of this order on website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]