

**BEFORE THE ADJUDICATING OFFICER, REAL ESTATE
REGULATORY AUTHORITY, PANCHKULA (HARYANA).**

Complaint No. RERA-PKL-1149 of 2019

Col. Surinder Kumar.

...Complainant.

Versus

M/s Samar Estates Private Limited.

...Respondent.

Date of hearing: 21.06.2019. (1st Hearing).

Present:- Shri Vishal Madaan, Counsel for the complainant.
Shri Tarun Gupta, Counsel for the respondent.

ORDER:-

1. The complainant herein was allotted a flat bearing No. H-101 by the respondent in his project named "Ess Vee Apartments" Sector-20, Panchkula. It has been averred that the complainant has already paid a sum of Rs. 56,75,063/- to the respondent against the basic sale price of Rs. 67,70,000/- as per demands raised. Flat Buyers Agreement was executed on 12.05.2011 and the respondent in terms of the said agreement was obliged to offer possession to the complainant within 36 months from the date of commencement of the construction. The complainant's grievance is that the respondent has neither completed the construction nor has given the possession of the purchased flat



even after a lapse of 8 years of booking. When the complainant visited the office of respondent on 18.05.2017, Shri Vinod Bagai, Managing Director of the respondent company assured that possession of the flat will be delivered to him upto 31.12.2017 and also agreed that the complainant under the buy back scheme may avail the option of having the deposited amount with interest @ 12% per annum at the time of possession or on 31.12.2017 whichever is earlier by making an endorsement in writing on the buyer's agreement to this effect. The respondent, however, failed to deliver the possession even on 31.12.2017. So, the complainant has prayed for refund of the amount which he has already paid and for awarding him interest @ 12% per annum besides a sum of Rs. 5.00 lacs on account of deficiency of services on the part of the respondent in completing the project and handing over the possession. In addition to these reliefs, the complainant has further prayed for revocation of the registration, if any, already granted by the Real Estate Regulatory Authority (For short RERA) to the project of the respondent and for penalizing the respondent in terms of the provisions of Sections 58(1), 60, 61 and 59(2) of the Real Estate (Regulations and Development) Act, 2016 (For short RERA Act).

2. The respondent in his reply has admitted the receipt of amount of Rs. 56,75,063/- but resisted the prayer of refund. His plea is that the complainant was allotted Flat No. H-101 in Tower-H and the complainant vide letter dated 26.02.2014 was informed that casting of top floor slab of said tower and brick work of the booked flat had been completed. The complainant thereafter had



voluntarily deposited a sum of Rs. 70,000/- on 16.07.2016. Such conduct of the complainant, pleaded the respondent, has the effect of condoning delay in completion of the project. The respondent has further averred that he would make endeavour to deliver the possession of the booked flat to the complainant by 30.09.2019. The respondent has accordingly made a prayer for dismissal of the complaint.

3. Learned counsels of the parties have been heard and record has been perused.

4. At the outset, it deserves to be mentioned that the revocation of registration, if any, granted to the respondent's project and imposing penalty under the various provisions of the RERA Act are the matters for which cognizance and necessary action can be taken only by the RERA. The complainant cannot seek this relief from this Authority and he is, therefore, directed to pursue the remedy of claiming these reliefs by filing a complaint before the RERA, Panchkula.

5. The Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in a recent judgment delivered on 02.05.2019 in a bunch of cases under lead Appeal Case No. 6 of 2018 titled as "Sameer Mahwar Versus M.G. Housing Pvt. Ltd. has ruled that the Adjudicating Officer has the jurisdiction to grant relief of the refund. So, this Authority will scrutinize the complainant's prayer for refund.

6. Pertinently, the respondent in his reply has nowhere pleaded that the project in question is complete and he is in a position to handover the



possession to the complainant. Rather, his plea is that he will make an endeavour to deliver the possession to the complainant by 30.09.2019. This would imply that the respondent presently is not in a position to deliver the possession to the complainant.

7. The respondent has not disputed that the buyer's agreement was entered between the parties. A copy of the said agreement was annexed by the complainant with the complaint as Annexure C-4. In terms of the said agreement, the respondent was obliged to handover the possession within 36 months plus a further grace period of 6 months. The said period has already lapsed in the year 2014. The complainant has categorically averred that he visited the respondent on 18.05.2017 and Shri Vinod Bagai, Managing Director of the respondent company had assured him to deliver the possession by 31.12.2017 and made an endorsement in writing in the buyer's agreement that he would, under a buy back scheme, allow him an option to receive the deposited amount alongwith interest @ 12% per annum at the time possession or on 31.12.2017 whichever is earlier. Said averment of the complainant was not denied in the corresponding paras of the reply filed by the respondent. Not only this, the buyer's agreement (Annexure C-4) bears the above said endorsement made in the hands of Shri Vinod Bagai, whereby, the complainant was afforded a right to receive the deposited amount alongwith interest @ 12% per annum under a buy back scheme either at the time of offer of possession or on 31.12.2017 whichever is earlier. The signatures of Shri Vinod Bagai



appearing under such endorsement is identical with his signatures appearing on the reply filed to the present complaint. So, this Authority has no hesitation in concluding that the respondent is bound by terms of the endorsement and thereunder he is duty bound to refund the deposited amount to the complainant alongwith interest @ 12% per annum.

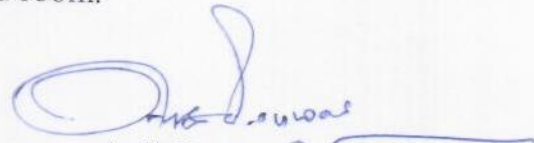
8. The issue concerning compensation on account of deficiency of services was not pressed during arguments. Even otherwise, there is no material available on record to substantiate the claimant's averments that there was deficiency in services on the part of the respondent. As a matter of fact, the compensation on account of deficiency of services will be permissible only if the possession is offered to the allottee and there is deficiency of services in the units so offered for possession. That stage has not yet arrived in the present case for the reason that the respondent has neither completed the project nor has offered possession of the purchased flat to the complainant. So, no compensation is permissible to the complainant on account of deficiency of services.

9. For the reasons recorded above, respondent is directed to refund the amount of Rs. 56,75,063/- to the complainant alongwith interest @ 12% per annum chargeable from 31.12.2017 i.e. the date from which the respondent agreed to allow the complainant to have the deposited amount in terms of the endorsement dated 18.05.2017 made on the buyer's agreement till the date the amount is actually refunded to the complainant. The respondent shall pay the



amount of refund and interest in two instalments. 50% of the amount shall be paid within 45 days starting from the date of uploading of this order on the website of the Authority and the remaining 50% including interest by the next 45 days.

10. Case is **disposed of** accordingly. Order be upload on the website of the Authority and file be consigned to the record room.



Anil Kumar Panwar
Adjudicating Officer