

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

Complaint No. RERA-PKL-1289 of 2018

Ravinder Singh.

...Complainant

Versus

M/s Ferrous Infrastructure Pvt. Ltd.

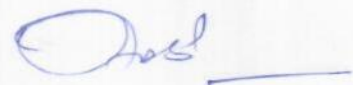
...Respondent.

Date of hearing: 29.03.2019. (4th Hearing).

Present:- Shri Ravinder Singh, Complainant in person.
None for respondent.

ORDER:-

1. Complainant herein booked a residential plot with the respondent in his project situated at Faridabad. He had already paid Rs. 18,12,500/- against the basic sale price of Rs. 54,25,000/-. The respondent had a litigation pending in the Hon'ble Supreme Court regarding the license granted to him by the Town and Country Planning Department for development of the project and he was allegedly not able to complete the project due to pendency of such dispute. So, the complainant, in such



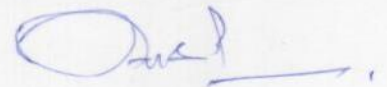
circumstances, felt cheated and filed a complaint against the respondent for criminal breach of trust. Said complaint was however dismissed and he had then filed a revision petition challenging the dismissal order, which is still pending in the court of Additional Sessions Judge, Faridabad.

2. The case set up by the complainant is further to the effect that the respondent had illegally forfeited his paid amount vide letter dated 09.02.2013, and he was, therefore, constrained to approach the District Consumer Disputes Redressal Forum but no relief was granted to him as the learned Forum was of the opinion that it did not have the jurisdiction to deal with his complaint. The complainant then filed an appeal before the Hon'ble State Consumer Disputes Redressal Commission, Panchkula. Before the Hon'ble Commission could have decided the same, the Real Estate Regulatory Authority (Regulations and Development) Act, 2016 (in short RERA Act, 2016) came into force. So, the complainant withdrew the appeal pending before the Hon'ble State Consumer Disputes Redressal Commission, Panchkula and had filed a complaint before the Real Estate Regulatory Authority, Panchkula (in short RERA, Panchkula), which was since established for resolution of the disputes pending between developers and the allottees.



3. The RERA, Panchkula allowed the refund of Rs. 18,12,500/- with interest in favour of the complainant vide its order dated 04.12.2018 but did not adjudicate his claim for compensation and rather granted him liberty to approach the Adjudicating Officer, who by virtue of Section 71(1) of the RERA Act is vested with power for adjudging compensation. Hence, the present complaint for awarding compensations to the complainant on various grounds which will be discussed in detail in the later part of this order.

4. Notice was issued to the respondent who filed an application for dismissal of complaint averring that the complainant had paid money for the purchase of a plot to M/s. Ferrous Township Pvt. Ltd. which is a juristic person different from him and, therefore, the present complaint against him is not maintainable. Relying upon the receipt shown by the complainant issued in his favour by the respondent's company acknowledging payments of various installments, respondent's plea for dismissal of complaint on the said ground was turned down by this Authority because respondent's counsel failed to explain as to why the money was received and acknowledgement receipts were issued by his company if it were not a party to the purchase transaction entered with the complainant. The respondent company was thus directed to file a detailed reply on merit in the matter.



However, the respondent has not filed detailed reply and has in fact stopped appearing before this Authority. So, he is ordered to be proceeded ex-parte.

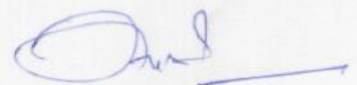
5. This Authority has heard the complainant who is present in person and has also carefully perused the record. Its findings with regard to various claims set up by the complainant are as under:-

Refund

The first claim set up by the complainant is for refund with interest of the money deposited by him with the respondent. Such relief has already been granted to him by RERA, Panchkula vide its order dated 04.12.2018 and in case the respondent company still fails to refund the amount to him, he will be entitled to take out execution for recovery of the amount. So, no order by this Authority is required with regard to the first claim set up by the complainant.

Litigation Expenses

The complainant has prayed for awarding him litigation expenses incurred in approaching various authorities for redressal of his grievances. In the application which the respondent had filed for dismissal of present complaint, it was nowhere averred that he has discharged his duty of either offering possession of the purchased plot or refunding the paid amount to the complainant. So, the complainant was justified in knocking the doors of various authorities. The complainant in his wisdom, as is evident from the



record, has initiated a criminal action against the respondent for mis-appropriating his money without offering him the purchased plot, by filing a Complaint No. 29 dated 14.03.2014 at Police Station Sadar, Ballabgarh and another Complaint Nos. 782 and 787 dated 18.03.2014 with the Economic Wing, Sector-12, Faridabad but the police took no action in the matter. This had necessitated him to approach the Court of law but he did not get any relief from the Court of learned Magistrate. He had then filed a revision petition before the learned Additional Sessions Judge, Faridabad which is still pending.

Besides, initiating criminal action, the complainant had also pursued remedies on civil side by filing an application in the District Consumer Disputes Redressal Forum, Faridabad which had however dismissed his application praying relief of possession or in the alternative refund of the amount, on the ground that it did not have the jurisdiction in the matter. The complainant had to then file an appeal before the State Consumer Disputes Redressal Commission, Panchkula.

Finally, when RERA, Panchkula was established for redressal of disputes between developers and the allottees, the complainant withdrew the appeal pending before the Hon'ble State Consumer Disputes Redressal Commission and filed a complaint before the RERA, Panchkula. It is, therefore, evident that the complainant had knocked the doors of six



authorities/forums for redressal of his grievance and must have, therefore, incurred litigation expenses.

Burden of incurring the amount of litigation expenses had fallen on complainant's shoulders for the reason that the respondent had failed to deliver him possession or in the alternative refund of money. So, the Authority has no hesitation in concluding that the complainant is entitled to be compensated for the amount which he had spent on taking out litigation before different authorities/forums.

The complainant has not produced specific evidence about the actual expenses incurred on litigation. Fact however, cannot be denied that he must have spent on the court fee and also on the professional fee of the advocates engaged by him besides incurring miscellaneous expenses. Considering the standard of professional fees being now charged by the advocates even for prosecuting or defending petty disputes, it can be safely assumed that the expenditure incurred on professional fees of the advocates and their clerks was atleast around Rs. 6,000/- per case. As already mentioned, the complainant had knocked the doors of six authorities/forums. So, the total expenditure towards payment of professional fees comes to Rs. 36,000/- . This amount needs to be further supplemented by the amount spent on court fee and miscellaneous charges. The Authority is of the opinion that a consolidated amount of Rs. 20,000/- will suffice to compensate the complainant in this regard. Thus calculated, the net amount payable to the



complainant towards litigation expenses is assessed as Rs. 56,000/- (Rupees fifty six thousands only).

Transportation Charges

The complainant has further prayed for awarding him compensation for expenses incurred on transportation in the course of taking out litigation. No evidence regarding actual expenses incurred on journeys is placed on record. Even otherwise, it is not feasible for a person to preserve account and maintain details of various journeys performed by him in pursuing legal remedies for redressal of his grievance. So, a reasonable amount needs to be awarded to the complainant on account of transportation expenses. The Authority grants him a compensation of Rs. 20,000/- (Rupees twenty thousand only) for such expenses.

Mental & Physical harassment

Compensation has also been prayed for mental agony and physical harassment caused to the complainant. Such agony and physical harassment was bound to occur when the complainant faced a situation in which the respondent was neither offering him possession of the purchased plot nor was even returning his money. So, the Authority is of the considered opinion that it would serve the ends of justice, if the complainant is awarded a compensation of Rs. 10,000/- for mental agony and Rs. 10,000/- for physical harassment.



Deprivation of prospective earnings

Lastly, the complainant has prayed for compensation on account of deprivation of earnings which would have accrued to him by appreciation in the value of purchased property in line with the appreciation occurred in the properties forming part of projects developed in neighborhood of the project in question. To prove his claim on this point, the complainant has attached a price list of plots located in a neighbouring project named as "Aman Vilas" situated in Sector-89, Faridabad.

The respondent had agreed for sale of a residential plot measuring 250 Sq. yds. situated in sector 70, Faridabad to the complainant for a basic sale price of Rs. 54.25 lacs and he had already received from the complainant a total amount of Rs. 18,12,500/- between the period from 7.2.2012 to 31.12.2012. The per square yard rate of the plot works out to Rs. 21,700/-. The rate list (Annexure C-8) of Aman Vilas' plots, relied by the complainant, indicates that plots in the said project were launched on 23.09.2018 at the rate of Rs.39,995/- per sq. yd. The difference in the price of the plot purchased by the complainant on 07.02.2012 in respondent's project and the plots launched by a promoter of Aman Villas Project on 23.09.2018 comes to Rs.18,295/- per sq. yd. The total difference for the purchased plot measuring 250 sq.yd. comes to Rs. 45,73,750/-



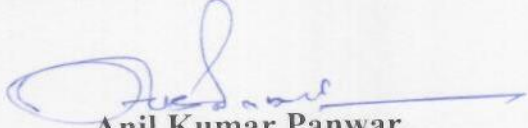
($18295 \times 250 = 45,73,750/-$). Compensation cannot be awarded at this rate because the plot purchased by complainant and the plots launched by the promoter of 'Aman Vilas' project situate in different sectors and thus will not have identical economic potentialities. So, the Authority is of the considered opinion that compensation @ Rs. 18,295/- per sq. yard cannot be awarded to the complainant.

However, fact cannot be denied that the complainant had paid a sum of Rs. 18,12,500/- to the respondent in the year 2012 and the respondent continued to enjoy the said money for his own benefit without giving anything to the complainant in return. In case the complainant had invested his money with some other project of which the promoter had delivered timely possession, the complainant must have earned the fruits of the purchased property and also appreciation in the value of the property. So, it is a case where the complainant deserves to be awarded a reasonable compensation for the loss of the money which he would have earned by way of use and also the appreciation in the value of property he had agreed to purchase from the respondent.

Viewed from above discussed prospective, this Authority is of the considered opinion that it would meet the ends of justice, if the complainant is awarded a compensation of Rs. 50,000/- (Rupees Fifty thousand only) towards loss caused on account of deprivation of prospective earnings.



6. **Disposed of** in view of the above terms by awarding a total compensation of Rs.1,46,000 (Rs. 56,000 for litigation expenses, Rs.20,000 for transportation charges, Rs.10,000 for mental agony, Rs.10,000/- for physical harassment, Rs. 50,000/- for deprivation of prospective earnings) to the complainant. The respondent shall pay the awarded compensation within three months from the date of uploading of this order on the website of the Authority failing which he will be liable to pay interest @ 9% from the date of uploading of this order till realization of the amount. Order be uploaded on the website of the Authority and file be consigned to the record room.


Anil Kumar Panwar
Adjudicating Officer