



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 418 OF 2022

Rekha Bhardwaj and Ashwani Kumar

....COMPLAINANT

VERSUS

Konark Rajhans Estates Pvt. Ltd.

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 29.11.2022

Hearing: 3rd

Present: -

Mr. Arjun Kundra, Ld. Counsel for the complainant

Ms. Sangeeta, Proxy counsel for Mr. Vineet Sehgal, ld. counsel
for the respondent

ORDER (NADIM AKHTAR-MEMBER)

1. While initiating his pleadings, ld. Counsel for the complainant submitted that:-

- i) That complainant in the year 2017 booked a 2 BHK apartment in the project named 'Asha Panchkula' developed by respondent promoter namely 'Konark Rajhans Estates Pvt. Ltd.' located at Sector 14, Kot Behla, Panchkula. Complainant deposited an amount of Rs. 3,08,000/- as booking amount. Respondent allotted unit bearing no. C-0603, 6th floor

admeasuring 671 sq. ft. carpet area and 138 sq. ft. balcony area in tower C to complainant. Allotment is confirmed by details mentioned in apartment buyers agreement annexed at page 35 of complaint file. Sale price agreed between parties for the 2 BHK apartment was Rs. 27,50,000/-.

ii) Flat buyer agreement was executed on 28.10.2017 wherein as per clause 8.1 it was stipulated that possession will be offered within 36 months from the date of allotment. No date of allotment is mentioned in complaint file, therefore the due date is taken from the date of execution of Flat buyer agreement. Agreement was executed on 28.10.2017, therefore due date of completion works out to be 28.10.2020. Complainant has paid an amount of Rs. 8,58,741/- as is evident from the receipts as annexed by the complainant as Annexure C4 at page 74-75 of the complaint file.

iii) Vide communication dated 01.08.2019 and 09.06.2021 respondent company' informed complainant that Tower C and D could not be constructed as company has failed to reach targeted sales. Vide same email, respondent company gave three options to the complainants, firstly then can choose to shift to Tower A or B, secondly complainant can choose to move into plotted allotment and thirdly complainant can choose to seek refund. In response to this, complainant vide email dated 03.08.2019 asked for refund of paid money along with interest accrued thereon. As complainant refused

the offer of relocation and respondent has not refunded the money therefore complainant has filed this complaint praying for refund of the amount paid.

2. Vide order dated 12.08.2022, one last opportunity to file reply was given to the respondent but till date, no reply has been filed. As respondent failed to submit reply even after multiple opportunities, therefore this matter is hereby proceeded based on the documents submitted by the complainant and the submissions of the counsels for both the parties.

3. Matter was heard on 12.08.2022, and the Authority gave its tentative view that since an alternate unit is not acceptable to the complainant, therefore refund is admissible in this case. Relevant order is reproduced below:

“4. Based on the argument advanced by the counsel for complainant the Authority observes that as the complainants have made their intention clear, the Authority is inclined to allow refund to the complainant. Complainant has paid only 31% of the total consideration they cannot be made to pay the balance 69% if they are not interested in the alternative unit.”


4. During hearing Ld. Counsel for the complainants stated that the tower C is not ready and he is not willing to take possession in tower A or B as offered by the respondent as the same are also far from completion. With regard to tower A and B, the respondent has not received any completion/occupancy certificate. Therefore, again vide email dated 11.06.2021, complainants intimated respondent promoter that they are not interested in moving to any other towers as they booked tower C looking at the location benefits and thus are only interested in seeking refund along with permissible interest.


5. Authority is of the considered view that the matter has been tentatively decided on 12.08.2022, and alternate offer of possession in Tower A or B is not acceptable to the complainant, therefore the view taken by the Authority in its order dated 12.08.2022 stands confirmed. Authority directs the respondent to refund entire amount of Rs. 8,58,741/- paid by the complainant along with interest rate as prescribed under rule Rule 15 of HRERA Rules, 2017, i.e., SBI highest MCLR rate + 2% which is 10.35% p.a. simple interest. Entire payable amount along with interest is tabulated below:

| S.No. | Principal Amount | Date of Payment | Interest @10.35% till 29.11.2022 | Total |
|--------------|-----------------------|-----------------|----------------------------------|------------------------|
| 1 | Rs. 3,08,000/- | 28.09.2017 | Rs. 1,64,980 | Rs. 4,72,980/- |
| 2 | Rs. 5,50,741/- | 27.12.2017 | Rs. 2,80,948/- | Rs. 8,31,689/- |
| TOTAL | Rs. 8,58,741/- | | Rs. 4,45,928/- | Rs. 13,04,669/- |

Respondent is directed to refund above stated amounts along with interest shown in the table above within time period of 90 days prescribed in Rule 16 of the HRERA Rules, 2017.

6. **Disposed of** in above terms. File be consigned to record room.


 DR. GEETA RATHEE SINGH
 [MEMBER]


 NADIM AKHTAR
 [MEMBER]