



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1373 OF 2020

Manoj Singhal

COMPLAINANTS

Vs

Gnex Realtech Pvt. Ltd.

RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 17.01.2023

Hearing: 5th

Present through video call: - None for the complainant

Ms. Sangeeta, proxy counsel for the
respondent

G. Rathee

ORDER (DR. GEETA RATHEE SINGH -MEMBER)

1. On perusal of file, it is revealed that present complaint was heard at length on 26.07.2022. Said order is reproduced below for the ready references:

“ 1. While initiating his pleading, learned counsel for the complainant has submitted that complainant had booked a plot measuring 60 sq.yrds in respondent's project “ASHA”, Bahadurgarh in the year of 2018 by paying a booking amount of ₹ 1,68,000/-. Total sale consideration of the plot was Rs. 16,80,000/-. Complainant alleged that respondent-promoter had assured him that only 10 percent of total cost of booked plot was required to be paid by him. Remaining 90% of cost of booked plot would be financed by the respondent through PNB housing. Accordingly, Complainant has paid an amount of Rs. 1,68,000/- which is ten percent of the total cost of the plot in the year 2018. As evidence of said paid amount, receipt issued by respondent-promoter has been placed on record as annexure C-2 by the complainant.

Learned counsel for complainant averred that vide letter dated 03.07.2018 a plot bearing no. B063 was allotted to him. As per Plot buyer agreement executed on 16.10.2018 between parties, respondent was under an obligation to hand over possession of booked plot by 17.12.2019. Complainant further alleged that after receiving ten percent of cost of booked flat i.e. Rs. 1,68,000/-, respondent had failed to get the loan sanctioned for remaining cost of 90 percent of booked plot. Complainant argued that since October 2018 till march 2020, he had visited the office of respondent - company couple of times to inquire about loan status of the plot but each time false assurances were given to him by the respondent.

He further submitted that on 31.08.2020, a final demand letter of ₹ 10,92,000/- was issued by the respondent, whereby it was informed that loan applied

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for booked plot was approved in the year 2019 but no amount was disbursed in account of the respondent-promoter. Thereafter, another letter dated 22.09.2020 was received by the complainant, whereby it was informed that 10 percent deposited amount for booked plot was forfeited as considered to be earnest money.

Complainant has filed present complainant challenging illegal action taken by respondent for forfeiting his deposited money without answering any of his queries for two years after depositing money in the year 2018 with regard to approval of loan and handing over possession of booked plot. Complainant has sought relief of refund of paid amount along with permissible interest.

2. On the other hand, respondent neither appeared nor filed reply even after lapse of two opportunities given to him.

2. After perusal of file, it is observed that captioned case was earlier listed for hearing on 24.02.2021 and 15.03.2022. Each time respondent was given opportunity to file reply but he failed to do so. Therefore, Authority was constraint to strike off respondent's defense and proceed exparte.

3. During hearing Authority asked the complainant to support his contentions with a specific document showing that complainant had communicated with the respondent and enquired with respect to allotted plot after making booking payment in the year 2018 and even after cancellation in 2020. Complainant has sought time to place on record necessary documents."

2. In view of above order, complainant was directed to place on record documents showing communication between the complainant and the respondent-promoter after making booking in the year 2018 and after cancellation of the same in the year 2020. Accordingly, complainant has filed additional document as proof of communication between the respondent and complainant on 30.11.2022 in the registry of the Authority.

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Whereby, minutes of meeting dated 03.07.2021 are placed on record along with list of allottees who were present there in the meeting. Complainant's name is on serial no.30 in the said list and context of document shows that complainant was concerned about the non-delivery of possession of booked unit on the promised date. Therefore, it could be concluded that complainant is aggrieved by the delay caused in handing over of possession of the booked unit by the respondent-promoter and relief prayed by the complainant for refund become admissible.

3. On the other hand, Ms. Sangeeta proxy counsel for respondent has sought adjournment on the ground that main arguing counsel is in some medical emergency therefore, matter could not be argued on merits. However, order reproduced above in para 2 of this order clearly shows that even after availing ample opportunities, respondent has failed to file his reply, so, his defence was already struck off. Today, also neither respondent filed his reply nor has argued the matter. Authority decides to hear this matter ex-parte.

4. In view of above and after going through records, Authority observes that initially this complaint was received on 02.12.2020 and then was listed for hearing on 24.02.2021, 15.03.2022, 26.07.2022 and 29.11.2022. Each time respondent was given opportunity to file reply but he has failed to do so

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till date. Now, no further opportunity can be granted and matter is being decided ex-parte.

Complainant has paid to the respondent a total amount of ₹ 1,68,000/- , as stated in para 1 of this order. In support of the assertion that this amount has been paid, complainant has annexed receipt issued by respondents at Annexure C-2 of complaint. Accordingly, it is concluded that complainant had paid an amount of ₹ 1,68,000/- to the respondent and respondent despite having received said amount against the booking of the unit has failed to deliver possession to the complainant till date.

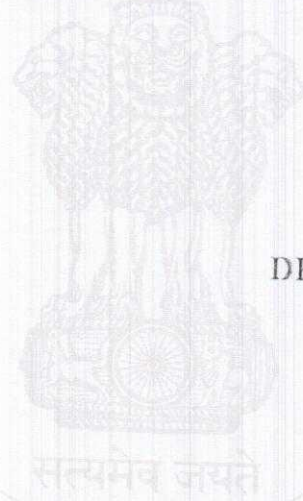
Whereas respondent as per terms of builder buyer agreement dated 16.10.2018 was under an obligation to handover possession by 17.12.2019 but he has miserably failed to do so till date. Rather handing over of possession, respondent has cancelled the allotment of complainant and without any justification has forfeited the paid amount of complainant. This unjust act of respondent is not acceptable. Since complainant has proved his claim by placing all relevant documents on record in para 1 and 2 of this order and delay of more than two years have been caused on the part of respondent. Authority decides to allow the relief of refund prayed by the complainant.

5. Respondent are directed to refund the amount of ₹ 1,68,000/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payment till passing of this

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order. Authority has got the interest calculated, which works out to ₹ 81,673/-. This interest has been calculated from the date of making payment by the complainant upto the date of passing of this order i.e. 17.01.2023 at the rate of 10.6%. Respondent shall pay ₹ 2,49,673/- (1,68,000/-+ ₹81673/-) to the complainant within the period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.

Disposed of. File be consigned to record room after uploading of this order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]