



Complaint no:-617/2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 617 OF 2019

Shashi Bhushan

....COMPLAINANT(S)

VERSUS

Piyush Coloniser Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 18.09.2019

Hearing: 3rd

Present: - Mr. Rajan Hans, Counsel for complainant.

None for respondent.

ORDER (ANIL KUMAR PANWAR-MEMBER)

1. The complainant's case is that he had booked a plot on 23.04.2013 in project named "Piyush City", Sector-9, Palwal by paying a booking amount of Rs.2,30,500/-. The total price of the plot was agreed to be Rs. 25,66,927/- out of which the complainant has paid Rs. 23,90,139/- till date. Allotment letter was issued on 03.12.2012 but the demand letter of Rs. 14,60,960/- was raised even before the issuance of allotment letter. As per the Builder Buyer Agreement clause 26(a) the seller had to complete the demarcation/development of the unit within 24 months from the date of signing of agreement and grace period of 6 months. Hence due date of possession was 02.12.2014, meaning thereby there is delay of more than four year in handing over possession of plot. The grievance of the complainant is that in spite of having paid 95% of the actual amount of the plot and willing to pay the remaining amount, the respondent company has failed to deliver the possession of plot on time and the complainant visited the site also and found that site is nowhere near completion stage.

Under these circumstances, he was compelled to file his complaint seeking the refund of entire amount of Rs. 24,66,927/-.

2. Notice to the respondent was initially issued at the address given in complaint which could not be delivered for want of correct address. The Authority was later informed that the Directors of the company are confined in Neemka Jail, Faridabad and their service was then got effected



through Superintendent of Jail. However, neither the respondent appeared nor filed their reply. So, the Authority has decided to proceed against the respondent Ex-parte.

3. As per the order of the Authority dated 30.07.2019, Local Commissioners were appointed to visit the site and submit their report with regards to the stage of completion of the infrastructure of the project. A report concerning the site visit has already been submitted in the office of Authority. The relevant portion of said report reads as under:

- i. Condition of roads had deteriorated due to lack of maintenance and continuous weathering.
- ii. Sewer and water line were hiding under heavy wild growth and may have got damaged/choked.
- iii. Demarcation of plots was done by erecting demarcation stone but presently only a few such stones were available and most of them had vanished, so practically no demarcation of plots was visible.
- iv. Three storey floors were existing as partly constructed (only brick masonry walls and roof slabs laid).
- v. Whole of the area was covered with heavy wild growth of rainy season.



4. The Authority observes that the complainant has paid Rs. 23,90,139/- for purchase of plot in the project of respondent which payment constitutes about 95% of the total sale consideration. Deemed date for possession delivery was December, 2014 but still the project is far from completion. It is evident from the L.C report that the project is virtually being in abandoned condition and no construction work is going on. The Directors of respondent company are in jail and facing multiple civil and criminal proceedings. In these circumstances, the complainant deserves to be granted relief as provided to them by Section 18 of the RERA Act, 2016.

It is therefore, ordered that the respondent shall refund the entire sum of money paid by the complainant along with interest as prescribed in Rule 15 of RERA Rules, 2017. The respondent shall pay the money within a period of 60 days from the date of passing these orders.

5. The Authority also realizes that in above mentioned circumstances, it may be difficult for the complainant to get the refund orders executed. It may not even be possible to realize the money from the assets of the present project alone. The money may then have to be realized from the other assets of the respondent whenever those are monetized by the appropriate process of law. The Authority while disposing of Complaint no.383 of 2019 and other connected complaints, had ruled that the Allottees of a project should be treated on different footings from rest of the financial or operational creditors. The allottees to the extent of payments which they had already made become owner of the project



and therefore, their rights cannot be adversely affected without their consent. The Authority had further ruled that vis-à-vis the assets of the project of which they are allottees, they shall have a superior right over everyone else. It was further observed that the allottees even in respect of the assets of the company other than the assets of project in question, shall be treated at par with the other financial creditors. The operative part of the order of this Authority in the said complaint is reproduced below:

“ The directions issued in the foregoing Paras are summarized as follows:-

- (i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.
- (ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.
- (iii) ***
- (iv) ***
- (v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.”



7. Consequently, the complainant-allottees are held entitled to the same relief as are allowed by this Authority in complaint case no. 383 of 2018 and the present complaints are disposed of accordingly.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]