



Complaint No. 1322 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1322 OF 2018

Richa Nagi

....COMPLAINANT

VERSUS

M/s Dhingra Jardine Infrastructure Pvt. Ltd.

....RESPONDENTS

& M/s B. V. M. Projects Pvt. Ltd.

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 01.10.2019

Hearing: : 5th

Present: - Mr. Rajan Kumar Hans, Counsel for Complainants

None on behalf of respondents.

ORDER (RAJAN GUPTA- CHAIRMAN)

1. This is fifth hearing of the matter. The complainant has raised objection against further adjournment of the complaint and has requested the Authority to decide the complaint on merits without any further delay since the matter has been adjourned several times on account of non-appearance of the respondents. Despite issuance of several notices and a publication dated 28.08.2019 issued in newspapers, none has appeared on behalf of respondents till date. Therefore, the matter is being finally heard and disposed of.

2. The case of the complainant is that she booked a flat in the project "Tower-Gloria" California Country, sector-80, Faridabad on 19.06.2010 on payment of booking amount of Rs.2,00,000/-. Flat no. 306, Tower- Gloria, 3rd Floor, measuring 850 sq. fts. was allotted to her. Flat Buyer's Agreement (herein after referred to as FBA) was executed between the parties on 09.12.2010. Payments were made under Construction linked Plan. Complainant has paid Rs. 23,45,333/- till date against the total consideration of Rs.24,18,000/-. Basic sale Price of the unit was Rs. 18,70,000/-.



The complainant is aggrieved on the grounds that as per clause 3.1 of FBA, the delivery of the Flat was to be made within thirty months from the date of sanction of building plans or from the date of start of construction whichever was later. Since the third installment which was payable at start of construction as per the payment plan, was paid in April, 2011, thus the date of delivery of flat became due in April, 2014, after taking into consideration the additional grace period of 180 days as per the FBA. The respondent have failed to deliver the unit even after lapse of more than five years. So, it has been proved that, the respondent has miserably failed in his contractual obligation to deliver the possession of flat within the stipulated time.

The complainant alleges that the respondent has never shared any information regarding status of construction of the flat with him. Now, the complainant has filed the present complaint before this Authority seeking refund of Rs. 23,45,333/- along with eighteen percent interest. The complainant is also seeking compensation for mental & physical harassment and cost of litigation.

3. Notice issued to the respondent no. 1 was received back with the report "Receiver Refused Delivery". Such deliberate refusal on part of the respondent amounts to valid service. Whereas notice issued to the respondent no. 2 was served successfully on 11.02.2019 as per courier report. However, none of the respondents appeared nor they have filed their replies till date.



Keeping in view the conduct of respondent, the Authority has decided to proceed ex-parte against the respondents.

4. After hearing the complainant, the Authority observes that this is the fifth hearing of the case and despite successful delivery of the notice to the respondents, they have neither appeared nor have filed their replies. The deemed date of delivery was in April, 2014 but since the construction of the project is stalled, flat is incomplete, therefore, possession of the flat has not been handed over till date.

The Authority in its order dated 01.10.2019 in Complaint No. 582 of 2019 titled Hemant Narula & Anr. vs Dhingra Jardine Infrastructure Pvt. Ltd. & Ors. along with other matters in bunch has discussed in detail about the dispute involved in the project and their possible ways of resolution, current status of the project and suggested future course of action. The facts, logic and reasoning given in Complaint No. 582 of 2019 titled Hemant Narula & Anr. vs Dhingra Jardine Infrastructure Pvt. Ltd. & Ors. are also applicable in the present complainant and all orders of this afore mentioned case be read as part and parcel of this complaint. The Authority as per discussion in the bunch matter is of the opinion that since the construction in this project has been stalled and the nature of disputes herein are of complicated nature which involves inter-se disputes between promoters of the project and the handover of the units is long overdue. Therefore, the complainants who wish to withdraw from the project and are seeking relief of refund of the amount



already deposited by them are legally entitled to do so and it would not be just and proper to ask them to continue with the project. The refund of their money is further justified since at present no legally constituted management/ Board of Directors exists and the project is in doldrums.

In view of the above stated facts, the Authority is of the considered opinion that in the present complaint, the deemed date of delivery was April, 2014 but the unit/project is far from completion, therefore, the complainant cannot be expected to wait further to get the possession of his flat. In these circumstances, the complainant deserves to be granted the relief of refund along with interest as prayed by her. Therefore, the Authority directs the respondent to refund Rs. 23,45,333/- along with interest in accordance with Rule 15 of RERA Rules, 2017 within a period of 90 days.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SHAG
[MEMBER]