



Complaint no. 439/19

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 439 OF 2019

Messrs M C Agro Cold Store Pvt. Ltd.COMPLAINANT

VERSUS

Ansar Properties & Infrastructure Ltd.RESPONDENT

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 22.10.19

Hearing: 4th hearing

Present: - Sh. Sandeep Dahiya, Counsel for the complainant

Sh. Sunny Tyagi, Counsel for the respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. The complainant's case is that original allottee Sh. Harichand Gidwani booked a plot no. 4043, measuring 239.20 sq. yards by the respondent in their

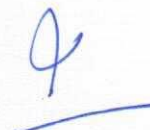
project named "Sushant City", Kundli, Sonapat, Haryana by paying a booking amount of Rs. 5,75,000/- on 22.12.2004. He, further, paid a sum of Rs. 2,13,700/- to the respondent on 25.06.10. Sh. Harichand Gidwani entered into a builder buyer agreement with the respondent on 02.08.10. The plot was later transferred to the complainant and said transfer was endorsed by the respondent on 12.08.10. Thereafter, complainant started making payment to the respondent from time to time and has paid a total sum of Rs. 16,50,938/- against the basic sale price of Rs. 13,14,500/- According to the complainant, there is no "possession clause" in the agreement but when he raised the question with respondent, he verbally assured the complainant that possession will be delivered within a reasonable period of time. But now even after lapse of fifteen years from the date of the booking, the respondent has not offered possession of plot to the complainant. The complainant alleges that respondent has not even bothered to start the construction of the project and the project site is only a barren land. He wrote a letter dated 02.05.17 to respondent requesting them to either give possession of the plot or refund the entire amount, but all in vain. Thereafter, on 29.05.17 complainant and respondent entered into a settlement deed wherein the respondent requested for six months' time for development of the plot failing which he undertook to refund the entire amount along with interest. Till date, respondent has neither given possession of the plot nor refunded the amount to the complainant.



In view of the above, the complainant prays for refund of Rs. 16,50,938/- along with interest, compensation on account of mental agony, and litigation cost.

2. The respondent submitted that since the present complaint, in as much as, it also involves relief of compensation and interest, is only maintainable before the Adjudicating Officer.

The respondent has submitted a copy of their letter dated 22.5.2017 addressed to Director, Town & Country Planning Department, Haryana. In the said letter it has been indicated that initially the license for the land in question was granted to M/S Intime Promoters Pvt. Ltd. Later on, an application was filed by M/S Intime Promoters Pvt. Ltd. to transfer the license in favour of M/S Ansal Properties. In-principle approval in respect of license no.760-765, 769, 776, 778, 780, 781, 783, 788 and 289 of 2006 for land area, measuring 42.10 acres was granted by the department in August, 2007. As the letter shows the transfer process in respect of the entire 42.10 acres could not be completed, however, by April, 2010 transfer of 20.47 acres was completed and another 5.7 acres were transferred in the year 2012. Subsequently zoning plan was also approved in 2014. Somewhere in between due to change of plans by the State Government, the transfer in respect of the remaining land out of the 42 acres was frozen by the department. Thereafter, the respondents stopped development of the project. The respondents have, therefore, pleaded force majeure conditions for not being able to develop the project and offer possession.



2. The Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:

(i) Regarding the plea of lack of jurisdiction of this Authority in dealing with this matter, the same is not admissible in view of the amended Haryana Real Estate (Regulation & Development) amendment Rules, 2019 as notified in the Haryana Government Gazette dated 12.9.2019. Accordingly, this Authority has jurisdiction to deal with this matter.

(ii) Admittedly the booking of the plot was made by respondent company in the year 2004 by obtaining booking amount of Rs.5,75,000/-. Another amount of Rs.2,13,000/- was obtained in June, 2010. Further, admittedly the respondents neither had license for development of the colony nor had the entire piece of land available with them. The process of transfer of license had not been completed, nor zoning plans were approved. More importantly, the process is still under consideration and final plans in respect of 42 acres lands are yet to be approved. The plea of the complainant, therefore, is correct that the respondents have not yet developed the project despite booking of the plots in the year 2004. The respondent company should not have booked the plots without first obtaining all the clearances from the State Government. Without transfer of



license, approval of zoning plans and lay out plan, a real estate project does not come into existence.

(iii) In view of the above, the Authority has no hesitation in allowing refund of the entire money paid by the complainant to the respondent along with interest as prescribed in Rule 15 of the HRERA Rules, 2019. In view of the above, the total amount to be paid to the complainant is given below in the table: -

S. no.	Date of payment	Principal amount	Interest	Total amount
1.	12.08.10	Rs. 7,88,700/-	Rs. 7,58,030/-	Rs. 15,46,730/-
2.	17.08.10	Rs. 2,50,426/-	Rs. 2,40,330/-	Rs. 4,90,756/-
3.	25.07.11	Rs. 6,11,812/-	Rs. 5,28,991/-	Rs. 11,40,803/-
	Total	Rs. 16,50,938/-	Rs. 15,27,351/-	Rs. 31,78,289/-

(iv) The principle amount along with the interest @ 10.45% upto 22.10.19 as calculated in the table shall be paid by the respondent to the complainant within a period of 90 days from uploading of this order on the website of the Authority.



Disposed of. Files be consigned to the record room and order be uploaded on the website of the Authority.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
ANIL KUMAR PANWAR
[MEMBER]



.....
DILBAG SINGH SIHAG
[MEMBER]

