



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	2905 of 2022
Date of filing:	04.11.2022
First date of hearing:	17.01.2023
Date of decision:	10.02.2025

Ms. Ramnita W/o Sh. Tilak Raj,
HNO. 304/9, Saidan Mohalla,
Shahabad, Distt. Kurukshetra,
Haryana-136135

....COMPLAINANT No.1

Mr. Tilak Raj S/o Vidya Sagar,
HNO. 304/9, saidan Mohalla,
Shahabad, Distt. Kurukshetra,
Haryana-136135

....COMPLAINANT No. 2

VERSUS

M/s Landmark Infonet Pvt. Ltd.
Through its Managing Director/Director/Authorised Signatory

Corporate Office:

Landmark House, Plot No. 65,
Industrial Area, Sector 44,
Gurugram, Haryana-122003

Registered Office:

A-11, C.R. Park, New Delhi

...RESPONDENT

CORAM:

Nadim Akhtar
Chander Shekhar

Member
Member

Present: Mr. Tarun Singhal, Id. counsel for the complainant.

Mr. Shubhnit Hans, Id. counsel for the respondent through VC.

ORDER(NADIM AKHTAR - MEMBER)

1. The brief facts of the present case are that the complainants booked a plot for their personal and family needs on 15.11.2019, by depositing a sum of ₹21,000/- . The receipt of which is annexed as Annexure C-1. That the complainants paid another demanded amount of ₹4,46,638/- to the respondent company on 27.11.2019 which made it 25% of the total amount paid, a copy of receipt is annexed as Annexure C-2. That the respondent company allotted plot no. A-3237 admeasuring 108.236 sq. mtrs to the complainants on 02.12.2019 in Landmark City, Sector-9, Shahabad(M), District-Kurukshetra. A copy of allotment letter dated 02.12.2019 is annexed as Annexure C-3. The respondent promised the complainants that possession will be given within 6 months of the agreement. The agreement for sale between the parties was executed on 06.12.2019. A copy of which is annexed as Annexure C-4. That after the execution of agreement there was no response from the respondent company regarding the offer of possession. That the other similar allottees who have paid the full plot amount did not get possession of plot till date. The complainants got sanction of loan from the bank for purchasing the plot but when there was no response from



the respondent, it was difficult for complainants to take loan at high rate of interest. The complainants have already made payment of 25% of the total amount of the plot, but respondent has not given any specific date of offering possession and registration. That the complainants requested the respondent several times through telephonic messages, reminders and by sending a personal messenger to the respondent's workplace for the possession of the said plot. The complainants have done everything in their capacity to get the legal possession of the plot. That having no other option, complainants through their legal representative sent a legal notice on 16.08.2022 to the respondent company for refund the paid amount with interest, but till date, no reply has been given to the complainants. A copy of legal notice dated 16.08.2022 is annexed as Annexure C-5.

2. The respondent filed a detailed reply on 17.04.2023 and argued that present complaint is not maintainable before this Ld. Authority and is liable to be dismissed. That the complainants have been sleeping over their rights and obligations to pay the outstanding amounts to the Respondent Company. Despite repeated reminders given by the Respondent Company to the Complainants, there has always been a delay on part of the Complainants in clearing the outstanding dues. Copy of reminder/demand letters sent by the Respondent Company are annexed as ANNEXURE R-3 (Colly.). Subsequently, allotment of the complainants were cancelled by the Respondent Company vide letter dated



02.09.2022 for the reason that the complainants at their own free will stopped making payments to the Respondent Company and did not bother to clear their pending dues despite numerous reminder letters issued by the Respondent Company in this regard. It is stated that the said fact has been very conveniently concealed by the Complainants in order to mislead the Ld. Authority and gain undue monetary advantage from the Respondent Company. Copy of Cancellation letter dated 02.09.2022 is annexed as ANNEXURE R-4. Further, the Respondent Company also requested the complainants to visit the office and complete the cancellation formalities so that refund can be initiated in terms of the Agreement for Sale dated 06.12.2019. However, the complainants never came forward to accept the same. Therefore, the Respondent Company, pursuant to the cancellation letter dated 02.09.2022, sent a letter dated 06.12.2022 enclosing the demand drafts against the unit of the complainants bearing No. 739710 amounting to Rs. 93,528/- dated 05.12.2022 and demand draft bearing No. 739169 amounting to Rs. 93,528/- dated 05.12.2022 in favour of the complainant and her husband Tilak Raj respectively. Copy of letter dated 06.12.2022 is annexed as ANNEXURE R-5.

3. Considering the circumstances, the Authority observes that the complainants are seeking relief of refund of an amount of ₹4,67,638/- along with delay interest @ 18% from the date of execution of Plot Buyer Agreement.



4. Learned counsel for complainants has reiterated the facts in arguments as mentioned in the complaint. Ld. counsel for respondent, during arguments stated that as per clause 9.3 (b) of Flat Buyer Agreement, if an allottee deliberately stop making payments to the respondent then promoter has a rights to forfeit 15 % of total amount paid by the complaint. Further respondent stated that he cancelled the said unit by giving proper reminders to the complainants for making their payments.
5. The complainants have made their last payment of ₹4,46,638/- on 27.11.2019. As per averments of complainants, they stopped making further payments receiving no response from the respondent for the offer of possession/handing over the possession of plot. However, in the reply filed by the respondent, many reminders have been attached with postal proof, sent to the complainant on 07.01.2020, 03.02.2020, 17.03.2020, 10.02.2022. After that final reminder was sent to the complainants dated 18.05.2022 but no response was received from the complainants. Then respondent has sent cancellation letter against the booked unit to the complainants on 22.09.2022. In pursuance to these reminders and cancellation letter no facts was disclosed by the complainants in their complaint. Ld. respondent counsel submitted that it means complainants deliberately stopped making further payments by concealing these facts. The complainants in their pleading have also mentioned that they had requested the respondent several times through telephonic messages, reminders and by



sending personal messenger to the respondent's workplace for the possession of the said plot but no documentary evidences in support of these statements have been attached to the complaint file.

6. After considering the above facts, Authority is of the view that there is a clear case of concealment of facts by the complainants as the respondent had sent reminders, cancellation letter and even the demand drafts against the cancellation but the complainants failed to place them record or even failed to mention them in their pleading. Complainants contention does not substantiate their claim as the person, "who seeks equity must come with clean hands". The Hon'ble Apex court in its recent criminal Appeal no. 303 of 2024 title as Kusha Duruka Vs. States of Orissa has upheld their previous judgment operative part of which is as under :-

In K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481, it was observed by this Court: If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

In Moti Lal Songara Vs. Prem Prakash @ Pappu and another (2013) 9 SCC 199 , this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where



children come to play", Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and 4 (2013) 9 SCC 199 6 the maxim suppressio veri, expressio falsi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts;

In Saumya Chaurasia v. Directorate of Enforcement 2023 INSC 1073 as under: It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasized that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated Senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practicing in the High Courts and the District Courts.

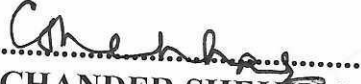
7. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have



suffered due to the dominant position of the promoter. Therefore, the relief sought is not maintainable under HRERA Act, 2016.

8. Thus, Authority decides to dispose of the captioned **complaint as dismissed**.

The complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

