

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. RERA-PKL-116 of 2018

Deepak Vashisht and another.

...Complainants.

Versus

M/s Skyhigh Infraland Pvt. Ltd.

...Respondent.

Date of hearing:- 21.11.2018.

Coram:-

Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance:-

Shri Ashwani Kumar, Advocate for complainant.
None for respondent.

ORDER:-

The complainant booked a flat and respondent allotted him Flat No. 301 in Tower No. P-13 of his project named "Prime Residency" situated in Sector-32, Karnal.

2. The complainant did not have the necessary means to pay the sale consideration and he with the help of the respondent got the flat financed from a financial institution named "Diwan Housing Finance Limited" in short "DHFL". A tripartite agreement was accordingly executed between the



respondent, complainant and DHFL, whereby, the DHFL agreed to pay the future instalments of the flat directly to the respondent and the complainant agreed to repay the loan amount in easy instalments to the DHFL.

3. There were certain obligations to be discharged by the respondent under tripartite agreement, by furnishing necessary documents to DHFL for the purpose of disbursement of loan. The complainant's case is that the respondent committed default towards discharge of such obligations and as a result, DHFL did not disburse the loan. So, the complainant requested the respondent vide letter dated 10.08.2016 (available at Page 31 of the complaint) to cancel the flat and refund the amount which he had already paid. The respondent, however, did not accede to his request despite serving of legal notice upon him. This has necessitated the complainant to file the present complaint.

4. Notice of the complaint was served on the respondent on 07.06.2018 but he has failed to file his reply. Today also, neither the respondent has appeared nor even he has filed his reply. The Authority has, therefore, decided to dispose of the matter after hearing learned counsel for the complainant.

5. After going through the record and hearing the learned counsel for the complainant, the Authority observes, that the tripartite agreement (copy available at Page 23 of the complaint) was executed on the same date on which the respondent had transacted deal and had executed buyer's agreement with the complainant. Said tripartite agreement is duly signed by the respondent and he



was thereunder duty bound to comply with the conditions set out in clauses 8 to 15.

6. The complainant's contention is that DHFL has committed default in disbursement of loan because necessary documents as required under the aforesaid clauses of the tripartite agreement were not supplied by the respondent. Since the respondent has failed to file his reply in the matter, the Authority has no option but to accept the complainant's allegation on the point that the respondent has failed to discharge his obligations necessary for disbursement of the loan under the tripartite agreement. The complainant has further averred that the respondent had allotted the same flat for which he had paid money to Shri Randeep Rana S/o Shri Kadam Singh Rana R/o House No. 158, Sector-7, Karnal. There is an element of truth in this allegation because the complainant had attached with his complaint a copy of allotment letter executed by the respondent in favour of Shri Randeep Rana.

7. Significantly, the letter of allotment in favour of Randeep Rana is prior in point of time as compared to the date on which respondent had allotted flat to the complainant. To be more precise, the respondent issued allotment letter in favour of complainant on 25.11.2015 and in favour of Randeep Rana on 17.10.2015. It is, therefore, even a case in which the respondent having already allotted Flat No. 301 to Shri Randeep Rana, had re-allotted the same to the complainant without cancelling Randeep Rana's allotment. So construed, the



allotment in favour of the present complainant was void abinitio and also an act of fraud on the part of the respondent. Such being the circumstances, the Authority has no hesitation in concluding that the complainant is entitled to the refund of paid amount alongwith interest.

7. Consequently, the complaint is allowed and the respondent is directed to refund the amount already paid to him by the complainant in respect of Flat No. 301, Tower No. P-13 alongwith interest at the rate prescribed in Rule 15 of the Haryana Real Estate Regulatory Authority (HRERA) Rules, 2017.

8. Before parting with the orders, it deserves to be mentioned that a letter dated 03.11.2018 has been received in the office of this Authority revealing that National Company Law Tribunal (NCLT), Chandigarh Bench, Chandigarh is conducting proceedings against the respondent in respect of project subject matter of this complaint and had appointed Shri Jalesh Kumar Grover as Interim Resolution Professional (IRP). So, the complainant for recovery of the refund amount, in case the same is not paid to him, has to approach the Interim Resolution Profession for recovery of the amount. This Authority vide its detailed judgment passed in a lead complaint case No. 383 of 2018 – titled as “Gurbaksh Singh Versus M/s ABW Infrastructure Pvt. Ltd. has held that the amounts received by a promoter of Real Estate Project from the allottees shall be regarded as financial debts and such allottees shall be deemed to be the financial creditors. It was further ruled in the said judgment that the allottees’




claims under the Insolvency and Bankruptcy (Amendment) Ordinance 2018 can be enforced at par with the other financial creditors and rights of the allottees should be treated superior to those of other financial creditors

9. In view of the reasons and views expressed in the above referred judgment, the Authority will hold in this case that the complainant's right for the recovery of the amount will be treated superior to those of other financial creditors.

10. Consequently, the complaint is **disposed of** in the aforesaid terms and file be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman