



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 706 OF 2019

Pradeep Kumar Roy

....COMPLAINANT

VERSUS

Tarang Infrastructure Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag**

**Chairman
Member
Member**

Date of Hearing: 05.11.2020

Hearing: 8th

Present: - Mr. Ashok Kumar Garg, Ld. counsel for the complainant
through video conference

None for the respondent

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. Complainant in the present case had booked a 4BHK flat in a project named 'Tarang Orchids' being developed by the respondent and had

paid an amount of ₹22,68,000/- against the basic sale price of ₹1,10,00,000/-.
No demand was ever made by the respondent after 2008. Complainant then sent a letter dated 02.03.2010 to the respondent asking to issue allotment letter or to refund the deposited amount but respondent didn't reply to the same.

In 2013, he came to know that the respondent had already issued allotment letters to other buyers and his name is not in the list of the buyers. Respondent had sold the booked units to some other buyer at premium despite receiving part payments for the same from him. He sent legal notices and reminders to the respondent which are annexed at Annexure -E (Colly) of complaint book seeking refund of deposited amount with interest but in vain. He then filed a case before Permanent Lok Adalat, Faridabad, however, same was dismissed as withdrawn as Hon'ble Lok Adalat opined that it lacked jurisdiction to entertain the same. Hence, present complaint has been filed seeking refund with interest as complainant wishes to withdraw from the project.

2. Respondent in his reply has pleaded in the present complaint that this complaint is falling under the ambit of Res-Judicata as the complainant had filed another complaint before Hon'ble Lok Adalat, Faridabad on same issue. Further, the respondent company has constructed eighty flats in the housing society and all the allottees have got possession of their respective flats. Complainant had paid a sum of ₹11,34,000/- as booking amount and



₹11,34,000/- towards first instalment but he miserably failed to pay second instalment of ₹14,20,500/- which was demanded vide letter dated 15.12.2008. Therefore, on account of his failure to pay his dues, his booking has been cancelled vide letter dated 10.02.2012 and amount deposited by him has been forfeited as per terms and conditions of company.

3. After going through the oral and written submissions of the parties, Authority overrules the contention of the respondent that present complaint is barred by Res-Judicata for the reason that the complaint before Hon'ble Lok Adalat had been dismissed as withdrawn. It is observed that the respondent in the present case has not allotted any flat to the complainant and has rather sold the unit to other buyers. Complainant had paid a sum of ₹22,68,000/- to the respondent and same had been acknowledged by respondent vide receipts dated 10.07.2008 and 15.12.2008. Respondent then cancelled the booking of the complainant on the ground that he failed to pay the overdue despite various reminders.

4. Now the moot question arises as to whether or not the cancellation made by the respondent on 10.02.2012 is valid cancellation. For this, Authority had perused the demand letters and receipts issued by the respondent. It has been revealed from the records that the demand for second instalment was issued on 20.10.2008 and complainant paid another sum of ₹11,34,000/- vide cheques dated 27.11.2008 and 12.12.2008, a month after

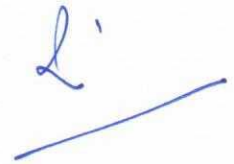
issuance of demand letter, for which receipt was issued on 15.12.2008 meaning thereby that said payment was made with regard to demand for second instalment. Moreover, it has been clearly mentioned on receipt dated 15.12.2008 that a sum of ₹11,34,000/- has been received for second instalment. However, the demand was for a sum of ₹14,20,500/- and the complainant had only deposited a sum of ₹11,34,000/-. For said reason, respondent issued reminder dated 15.12.2008 in which he specifically mentioned that complainant did not make full payment of second instalment and requested him to pay the balance of second instalment as demanded by company on 20.10.2008. Usage of word 'balance' depicts that amount of ₹11,34,000/- deposited by complainant was against the second instalment. So, it can be safely presumed that said amount of ₹11,34,000/- was paid in pursuance of demand letter dated 20.10.2008 against second instalment. Accordingly, respondent's plea that complainant miserably failed to pay second instalment can't be accepted and is over-ruled.

Further, on 10.02.2012, respondent cancelled the unit of complainant for the reason that he failed to pay outstanding balance without specifying the terms based on which the entire amount deposited by the complainant had been forfeited. Although the complainant was obligated to pay another sum of ₹2,86,500/- (₹14,20,500/- - ₹11,34,000/-) as demanded by demand letter but this is not sufficient ground for the respondent to cancel the booking as he had

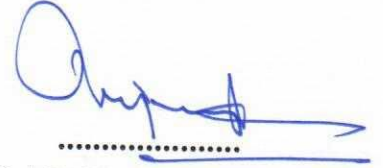
also not issued any reminder after 15.12.2008 and directly cancelled the booking and forfeited the entire amount. Further, forfeiture of a large sum of ₹22,68,000/- by respondent can't be held as justifiable and hence, said cancellation does not hold any merit in the eyes of law and is held as invalid. So, the same is set aside by this Authority.

5. In view of above discussion, the Authority deems it fit to allow refund in favour of the complainant since it has been almost thirteen years from the date of booking and respondent has failed to allot any flat till date. Hence, Authority directs respondent to refund amount of ₹22,68,000/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % from the date amounts were paid till today. Said interest works out to be ₹25,54,140/-. Therefore, respondent is directed to pay a sum of ₹48,22,140/- (principal plus interest accrued on it) to the complainant.

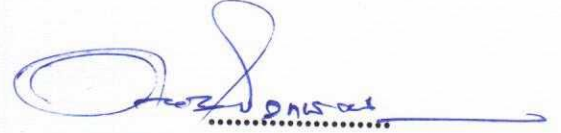
Respondent is further directed that fifty percent of the total sum payable to the complainant shall be paid within 45 days from the date of uploading of this order and the remaining in next 45 days, failing which they will attract further penal interest to be decided by the Authority.



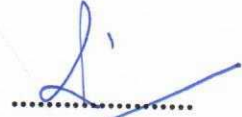
6. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

