



Complaint no. 1146 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA
Website: www.haryanarera.gov.in

COMPLAINT NO. 1146 OF 2020

Neetu Gupta

....COMPLAINANT(S)

VERSUS

M/s Suncity Projects Ltd.

....RESPONDENT(S)

**CORAM: Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 18.03.2021

Hearing: 3rd

Present through:- Mr. Vaibhav Saxena, Learned counsel for the complainant
Video conferencing Mr. Kamal Dahiya, Learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

Complainant, herein, is seeking possession of plot B 275 measuring 502.32 sq. yds which was allotted to him in 2009 in respondent's project known as "Suncity Rohtak",. As per Clause 15 of the allotment agreement dated 23.09.2009, development of necessary infrastructure of the plot was to be completed within a year. Complainant has paid ₹ 27,98,814/- against

total sale consideration of ₹ 39,99,974/- .But she further alleged that, she has not received possession till date despite repeated requests made to the respondent. Learned counsel for the complainant also submitted that basic sale price of said plot was ₹ 23,10,672/- and complainant despite having paid an amount of ₹ 27,98,814 which is more than basic sale price no possession has been offered to her. On perusal of the file record , no document is available which shows that complainant tried to get possession of the plot from the respondent-promoter in last ten years.

2. On the other hand, learned counsel for the respondent submitted that after development of necessary infrastructure of the plot, respondent company had already offered possession of plots to the complainant on 17.12.2012 along with demand notice of making payment of outstanding amount of ₹ 9,91,077/- . He further submitted that it was the complainant who herself failed to take possession of the plot in question. To prove his averments, he further pleaded that even after issuing several reminders letters dated 04.04.2014 , 17.07.2014, 20.08. 2014, 05.09.2014, 16.10.2014 annexed as annexure R-3 (colly) respondent had issued a final notice dated 07.07.2015 for payment of outstanding amount of ₹ 21,56,110/- on account of remaining balance amount to be paid by the complainant alongwith interest charged as per agreement of the allotment of plot, said allotment stood cancelled in case of default in making

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payments by complainant. Relevant part of final legal notice is reproduced below for record.

“We draw your attention to our numerous demand letters, reminders and final notice cum reminder letters dated 7/17/2014, 8/20/2014, 9/5/2014 and 10/16/2014 where in you have been requested to pay all outstanding dues against the said plot and take over the possession of plot simultaneously with the execution and registration of sale deed by completing requisite documentary formalities in your favour. However, despite various call notices & reminders served upon you, apart from reminders over phone, we are not in receipt of any payment or any communication from you. That goes to show that you are no more interested in holding the said plot. In those letters, it also has been clearly conveyed that in the event of your failure to make the payment due to us against the said plot, we are constrained to cancel the said plot and thereafter you shall be left with no right or claim over the said plot”

He further pleaded that, since the complainant failed to make payments despite repeated reminders, respondent was constrained to cancel the said allotment annexed as annexure R-4 after following due legal procedure. Respondent through courier sent letter dated 02.07.2016 stating that the allotment of the plot stood cancelled and duly annexed a cheque of amount ₹ 27,98,814/- which shows that entire amount paid by the complainant to him has been refunded without charging a single penny as per Allotment Agreement executed between them though he could have forfeited 15 % of basic sale price

as per clause 9(c) of allotment letter . Concluding his arguments he submitted in the last that no compliance remained on part of the respondent and as a goodwill gesture he has refunded full and final amount received from the complainant.

In view of above pleadings and documents placed on record mentioned in para number 2 of this order , present complaint is liable to be dismissed as complainant has failed to place on record any document proving otherwise.

Learned counsel for the complainant here raised his objection with regard to pincode mentioned in address on the courier post which has been wrongly mentioned and therefore, he has not received any of the above mentioned communications and cheque sent by the respondent. However, he has conceded that remaining address mentioned in various notices issued by the promoter is correct for postal services.

4. In view of verbal submissions and perusal of records of the file , Authority prima facie is of the view that complainant in present case had received legal notice and subsequent reminders as mentioned in para number 2 of this order and service of a final notice for payment of outstanding balance failing which his booked plot got cancelled. Therefore, Authority observes that complainant was at fault for non payment of outstanding amount and despite serving of legal notices he least bothered to make payment of outstanding dues.

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Therefore, as per clause 9(c) of the agreement developer-respondent has a right to cancel the allotment. The clause is reproduced below as part of this order

“ . The timely payment as agreed and recorded is the essence of this Agreement. It shall be incumbent on the Allottee (s) to comply with the terms of payment and the other terms and conditions of the Agreement, and the Allottee specifically agrees that upon receipt of demand notice/letter of any amount from the Company or its nominee, the Allottee shall be liable to pay such amount within 30 days f date of issue of such demand letter. Upon failure of the Allottee in payment of such demand within aforesaid 30 days, the Allottee shall be allowed a grace period of further 45 days to pay such amount with an interest @v 24% P.A. for the period of delay failing which the amount of Earnest money out of the sum deposited, shall be forfeited and this agreement shall stand cancelled and the Allottee (s) shall be left with no right, lien and/or charge on the plot or any part of the Township. The amount (s), if any, paid over and above the Earnest Money shall be refunded to the Allottee without any interest on completing the Formalities for refund with the Company. In exceptional circumstances, the Company may in its absolute discretion, but without being obliged to do so, condone the delay in making of payments by charging additional compensation/charges from the Allottee on the outstanding amount and the decision of the Company for the quantum of such additional compensation/charges shall be binding and final.”

5. With regards to complainant counsel's contention that he has not received the cheque sent by the respondent promoter, promoter has submitted relevant documents annexed as annexure R-4 and R-5 showing a copy of letter of refund

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and a copy of cheque issued by Kotak Mahindra Bank dated 23.05.2016 bearing no. " 007931" for an amount of ₹ 27,98,814/- . Also attached as annexure R-6 is a copy of delivery status of the registered post through which both were sent.

Since the cheque was issued on 23.05.2016 by the respondent and there is no report whether that cheque has been debited or not, complainant has denied to cash this cheque therefore, in case said cheque has not been debited then a fresh cheque may be issued to the complainant with payment of an amount of ₹ 27,98,814/- within a week of uploading of this order or respondent-promoter may deposit said amount in the account of complainant allottee in case allottee is ready to share her account number in which this amount is required to be deposited. With these directions, Authority dismisses the complaint without any cost.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]