



Complaint no. 2501 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2501 OF 2019

Subhash Malik

....COMPLAINANT(S)

VERSUS

Suncity Buildcon Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 08.04.2021

Hearing: 8th

Present:- Mr. Sudeep Singh Gehlawat, Learned counsel for the complainant
Mr. Kamal Dahiya, Learned counsel for the respondent through
video conferencing

ORDER (DILBAG SINGH SIHAG- MEMBER)

While perusing the file record, it is revealed that complainant has sought possession of a property booked in the respondent's project namely 'Suncity Rohtak-1' situated at Sector 36, Rohtak in the year 2005. Allotment agreement was executed between the parties on 27.01.2009. Complainant was allotted plot

no. D-71, Block- D, measuring 401.856 sq. yards. Till date complainant has paid a sum of Rs. 21,01,707/- against basic sale price of Rs. 18,88,723/- . As per allotment agreement, deemed date of possession was in January, 2010. However, respondent sent offer of possession letter dated 01.02.2016 alongwith additional demand for an amount of Rs. 13,87,587/- inclusive of EDC charges, however complainant as per his calculation had paid Rs 5,90,707/- to the respondent on 30.04.2016. Respondent further issued a final notice dated 04.02.2019 demanding a sum of Rs. 17,48,112/- from the complainant, who claimed that he had never been served upon such notice. He alleged that despite paying entire money as per demands raised by the respondent, respondent has cancelled the allotment of the plot allotted to the complainant due to non payment of dues. Besides, respondent has also not returned an amount of Rs. 21,01,707/- already paid by the complainant to the respondent.

Authority after hearing both parties observed vide order dated 28.01.2020 that said cancellation could not be sustained since respondents had retained entire amount paid by the complainant. Therefore, complainant in present case is entitled for possession of the booked property and in pursuance of that Authority had directed respondent to offer a possession letter to the complainant. Relevant part of the said order is reproduced below

“3. The Authority has thoroughly considered the rival contentions. It observes that the complainant has paid an amount of Rs.21,01,707/- against the basic sale price of Rs.18,88,723/-

upto the year 2016. Till 2016 the complainant has been making all due payments in time in accordance with the demands raised by the respondent. In February, 2016, however, the respondent raised a demand of about Rs.13.87 lakhs inclusive of EDC charges. The complainant was not satisfied with such demands but the respondent never justified those demands to the complainants. The respondent in February,2019 simply issued a revised demand notice increasing the demands to about Rs.17.48 lakhs also converted this demand notice into a notice for cancellation of the plot. No further correspondence was made by the respondent with the complainant. The respondent also not returned huge amount already paid by the complainant to the respondent amounting to over Rs.21 lakhs.

The Authority observes that the complainant had paid the booking amount of Rs.5.64 lakhs to the respondent in the year 2005. Most of the money have been paid to the respondent by the year 2010. The respondent has been using the money of the complainant for such a long period of time. As per the allotment agreement the deemed date of possession was in January,2010. Actual offer of possession was made in 2016. Since the demands made by the respondent were not justified to the complainant, the respondents should have held a meeting with the complainants and settled the matter. Instead they started charging additional interest @ 24% per annum and increased their demand to Rs17,48,112/-. No formal cancellation was conveyed to the complainant.

In the light of the above analysis of the facts, the Authority considers that neither the cancellation of the plot is

justified nor a formal cancellation shall be deemed to have been done since the respondents are still retaining the entire amount payable by the complainant. In the light of these facts the cancellation notice served by the respondents upon the complainant is hereby quashed. Now both the parties will submit their receipt claims against each other. The complainant shall give their calculations for payment of compensation by the respondents for delay caused in delivery of the plot. The respondent shall file their claims in respect of the interest payable by the complainant for delayed payments of the justified amount. Both the claims shall be worked out @ MCLR+2%. After receipt of the claims of both the parties the Authority will disposed of the matter after showing the amount payable by each party. In the meantime, the respondent shall offer a possession letter to the complainant. The actual possession, however, shall be handed over after the amounts payable and receivables are settled by this Authority. Both parties shall exchange their claims will before the next date of hearing. "

2. In this background, today, initiating his arguments, learned counsel for the complainant apprised the Authority that no effective measures have been taken by the respondent in compliance of order dated 28.01.2020. Complainant has not been issued any offer of possession nor ~~has~~ any calculation sheet been submitted by learned counsel for the respondent. Learned counsel for the complainant has submitted his calculation sheet. According to the same, amount

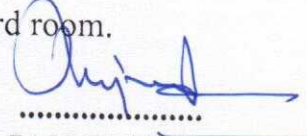
of delay interest payable by the respondent to the complainant till 08.04.2021 works out to be Rs. 17,85,556/- calculated at 9% interest rate.

3. On the other hand , learned counsel for the respondent pleaded that possession was offered to the complainant on 01.02.2016 and on account of complainant default in making outstanding dues, his booked unit stood cancelled. At present, respondent is unable to offer possession to the client, therefore complainant can only claim for refund from the respondent company. For this very reason he refused to file his own calculation sheet and further did not accept the one filed by the complainant.


4. After hearing rival contentions of both the parties, Authority upholds its observations recorded vide order dated 28.01.2020 and directed the respondent to issue offer of possession to the complainant of the allotted plot within 30 days of uploading of this order alongwith delay interest of Rs 17,85,474/- as verified by accounts branch of the Authority. Since learned counsel for the respondent refuses to file his own calculation sheet in compliance of said order, under such circumstances, Authority deems fit to get the calculations submitted by complainant verified from accounts section of this Authority and accordingly awarding an amount of Rs. 17,85,474/- as delay interest to the complainant.



5. Case is accordingly disposed of. Files be consigned to record room.


RAJAN GUPTA
[CHAIRMAN]

Discussed telephonically with Sh. A.K. Panwar, Hon'ble Member-I. Due to Covid-19, he could not sign, however, he consented to the above order.


Executive Director,
HRERA Panchkula
30.04.2021



ANIL KUMAR PANWAR
[MEMBER]


DILBAG SINGH SIHAG
[MEMBER]



सत्यमेव जयते