



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Complaint No. RERA-PKL-22 of 2018

Ashok.

...Complainant.

Versus

M/s Prabhu Shanti Real Estate Pvt. Ltd.

...Respondent.

Date of hearing:- 30.01.2019 (9thHearing)

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

Appearance:- Shri Kamal Dahiya, Advocate for complainant.
Shri Pulkit Jain, Resolution Professional for respondent company.

ORDER:-

The complainant herein is seeking refund of Rs. 21,00,426/- which he has paid to the respondent company for purchase of an apartment in the project named "PDM Hi Tech Homes" situated in District Jhajjar. The claim of refund is based on the plea that the respondent has promised him to deliver possession by 28.04.2015 but has failed to do so till date. According to complainant, the project is only 70% complete and there is no likelihood of its completion in the

near future. His prayer is, therefore, for refund of the amount alongwith interest and compensation.

2. The respondent has filed written statement wherein the complainant was resisted on the ground that the National Company Law Tribunal (NCLT), vide its order dated 13.06.2018 had declared moratorium under Section 14 of the Insolvency and Bankruptcy Code 2016 (IBC) and therefore, the project could not be completed. He has further pleaded that the complaint cannot proceed in view of the moratorium declared by NCLT. The respondent however has not refuted the complainant's averments made regarding book of apartment and payment of Rs. 21,00,426/- for the same.

3. Learned counsels for the parties have been heard and record has been perused.

4. In the backdrop of the pleadings of the parties, the first question to be determined is as to whether moratorium order of the NCLT will effect the maintainability of this complaint. Answer to this question lies in Section 89 of the Real Estate Regulatory Authority Act, 2016 (RERA Act), which reads as under:-

“Section 89: Act to have over-riding effect – The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

5. The above quoted section explicitly mandates that the provisions of RERA Act shall have over-riding effect over laws notwithstanding anything contained therein inconsistent with the provisions of RERA Act. Moreover,



Section-19(4) of RERA Act entitles an allottee of the real estate project to seek refund of the money deposited by him in the event of promoter's default to complete the project. Section 18 of RERA Act casts a duty on this Authority to pass an order for refund of allottee's money alongwith interest without prejudice to any other remedy available to him. So, in the face of the provisions of Section 89, the Authority cannot abdicate its duty to refund the amount as and when the allottee approaches it for its refund in the event of default committed by promoter in the completion of project. Thus viewed, there is no scope to hold that present complaint is not maintainable merely because a moratorium order has been passed by NCLT.

6. Going by the pleadings in the complaint, which have not been refuted in the written statement of respondent, the complainant had booked an apartment in the year 2012 and respondent was required to deliver its possession by April, 2015. The complainant has placed on record the receipts proving that he has already paid a sum of Rs. 21,00,426/- to the respondent. It is nowhere plea of the respondent that the project is complete. He has also not averred in the written statement that the possession can be delivered to the complainant in the near future. Almost four years have already lapsed after the promised date agreed by the respondent for delivery of possession. So, the Authority find it to be a fit case for passing an order of refund in favour of the complainant.


7. It needs to be emphasized that this Authority vide a detailed order passed in Complaint No. 381 of 2018 – titled as “Chetan Verma and another Versus

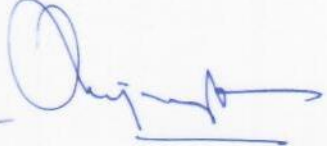


M/s ABW Infrastructure Pvt. Ltd. and others” decided on 30.10.2018 has ruled (i) that the allottees whose claims are not satisfied fully shall be treated creditors of the promoters at par with the other creditors; (ii) that the rights of such allottees have to be treated superior to the rights of other financial creditors; and (iii) that such allottees will be entitled for satisfaction of their claims even from the assets of their promoters other than the assets of the project in question. So, the complainant herein is also held entitled for all such rights, for the purpose of recovery of the amount payable by the respondent in this case.

8. Consequently, the complaint is **disposed of** with the direction that the respondent shall refund the amount of Rs. 21,00,426/- to the complainant alongwith interest envisaged under Rule 15 of the HRERA Rules, 2017 i.e. @ State Bank of India highest marginal cost of landing rate plus 2%. File be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Member