

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

Complaint No.1141/2018

Date of Hearing: 14.02.2019(2nd hearing)

PARTIES NAME:

Praveen Kumar

.....Complainant

Versus

Housing Board, Haryana

....Respondent

CORAM:

1. Shri Rajan Gupta
2. Shri Anil Kumar Panwar
3. Shri Dilbag Singh Sihag

**Chairman
Member
Member**

APPEARANCE:

1. Shri Ankush Chowdhary
2. Shri Parmod Sharma

Advocate for the complainant
Advocate for the respondent

Order:

1. The complainant's case is that in March 2010 a project was launched by the respondent offering built up modern flats in Jind on hire purchase basis for the persons belonging to economically weaker section of society. He applied for same and an allotment letter dated 01.09.2010 was issued in his favor requesting him to deposit Rs 1,15,000/- on or before 30.09.2010 with a condition that if he fails to do so, the allotment will be cancelled. Accordingly, complainant paid Rs 1,15,000/- on

22.09.2010 and Rs 568/- towards enhanced land compensation on 18.02.2013. The respondent after a period of 5 years sent him a demand letter dated 04.09.2018 of Rs 16,00,081/-. On receiving of said demand letter, the complainant has applied for surrender of flat and to have refund of the paid amount vide an application dated 01.10.2018 as he was not in a position to pay the alleged demand wherein the price asked as per brochure was Rs 7.50 lacs.

2. Learned counsel for complainant submitted that his application for refund has already been accepted by the respondent and is under process but he is before this forum to seek interest on the paid amount, which is being denied to him by the respondent.

3. Per contra, learned counsel for respondent submitted that the present project was planned in such a way that allotment would likely to be available by 31.12.2011 or 31.12.2012 but due to delay caused by contractor the respondent had to re-allot the work in 2015 and finally it got completed in year 2018. Moreover, it is an admitted fact that initially the tentative price of the unit was Rs 7.50 lacs and at time of possession i.e in 2018 Rs 16 lacs was demanded from complainant as total amount. But the complainant chosen to surrender the flat and for same his application is under process. But as per bye laws of housing board the amount will be refunded after deducting 50 % of the paid amount and that too without any interest.

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4. After giving thoughtful consideration to the submissions made by the parties the authority for reasons stated hereinafter finds it to be a fit case for passing an order of refund in request of the amount paid by the complainant.
5. Undesirably, the complainant has applied for allotment of house under a scheme floated by respondent in March 2010. Said scheme was aimed at providing houses to economically weaker section of the society. The price of the house in the advertisement given by the respondent was reflected Rs.7.50 lacs. A person applying under the scheme was required to pay 25% of the total price. The complainant after adjudging his own financial position and capability to purchase house at the quoted price, had applied in response to respondent's advertisement. The respondent within a reasonable time of booking was expected to disclose the exact price of house to the complainant and also to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably or even to demand double the sale price of the house because such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated for weaker section of society. The government provides land for building of houses under such scheme at subsidized rates and also facilitates arrangement of loan on subsidized rate to allottees of such



scheme. The whole idea is to squeeze the sale price of houses to a level within the reach of weaker section of society. How can the respondent then be allowed to render the allottees of such a scheme to face a situation when it becomes practically impossible for them to purchase the house at the rate double than for which they had agreed to purchase it.

6. The respondent in present case has not completed the project within a reasonable time and has disclosed the exact price of the house to the complainant after 8 years of the launching of the project. The respondent has been utilizing the amount of Rs.1,90,568/- lacs already paid by the complainant for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained.

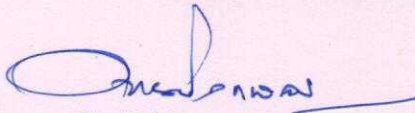
7. No doubt that there are bye laws of the respondent board which provides for deduction of 50% of the amount in case an allottee wants to withdraw from the project, but the principle so enshrined in bye laws, in considered opinion of the Authority, will be applicable only in those cases where there is no default on part of respondent board in discharging its obligation towards allottees. The respondent Board cannot be allowed to take shelter of such bye laws for deduction of 50% of paid amount in case of an allottee for whom the respondent himself has created circumstances rendering him practically unable to bear the cost of the house. The present case falls in this category because the respondent due to his own

negligent act has created such circumstances. So, the Authority finds it a fit case for refund of paid amount without any deduction.

8. Accordingly, the complaint is allowed and respondent is directed to refund the paid amount of Rs.1,90,568/- lacs alongwith interest in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR + 2% from the date of payment made to the actual date of refund within a period of 60 days. The amount shall be paid in two instalments meaning thereby first instalment of 50% shall be paid within 30 days of uploading of this order and remaining amount to be paid as second instalment within next 30 days.

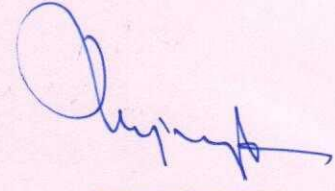
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Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member

Rajan Gupta
Chairman

My separate Judgement is
appended.


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I have perused the judgement authored by my learned colleagues Hon'ble Members of the Authority. I have also examined all the facts and circumstances of the matter I observe and order as follows:-

- (i) I agree with the judgement passed by my learned friends to the extent that after enhancement of the basic sale price from Rs.7.50 lakhs to Rs.16,00,081/-, the complainant will have the option of either continuing with the scheme or asking for the withdrawal and also demand refund of the advance paid by him. Accordingly, I agree with the orders to the extent that the advance amount of Rs.1,90,568/- should be refunded within a period of 60 days by the respondent.
- (ii) The Housing Board, Haryana is an organisation engaged in building low cost affordable houses for the weaker segments of society. They are a fully state owned organisation meant for welfare of the public. They get their re-finance from various institutions of the Government of India as well as from the State Government at a concessional rate of interest. They are also allotted lands at minimum cost by the land allotment agencies like HUDA. All these policies are aimed at keeping the cost of the houses low for the weaker sections.




The Housing Board is regulated by the laws framed by the State and the bye-laws framed by itself. The bye-laws are known to every one who decides to become a member for allotment of a low cost house. Housing Board does not operate for earning private profit.

- (iii) For the fore-going reasons to allow refund of the money along with interest at the rate prescribed in rule 15 of the HRERA Rules would amount to treating the Housing Board at par with the private builders who run their business for profit.

Increase in prices by Housing Board, is also provided for in the bye-laws. The decisions regarding actual pricing of the houses is taken by the Board which has representatives of the State Government and financial institutions. The Housing Board does not price the houses for accumulating profit.

Usually the housing schemes are launched in anticipation of the availability of land and finances. After launching of the schemes the price of the land and the cost of the finances are determined in accordance with the prevailing circumstances. The cost of construction is also determined in accordance with the available circumstances at a given point of time. In such circumstances it is not possible for the bodies like Housing Board,

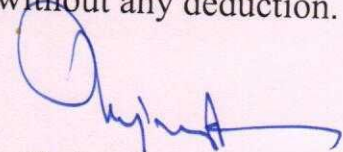
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Haryana to be able to reasonably determine the actual cost of construction and allotment at the time of launching of the schemes.

- (iv) Keeping in view the nature of functioning of the Housing Board, it cannot be treated at par with the private builders and imposition of obligation of Rule 15 of HRERA on Housing Board will be incorrect and un-reasonable. Accordingly, the Board may not pay interest to the complainant while refunding his deposit.

At the same time however, since the allotment price has been increased substantially which the complainant is unable to bear, it will not be appropriate for the Board to refund the money after deducting 50% of it. In the circumstances it will be fair and just if entire amount of Rs.1,90,568/- deposited by the complainant is refunded to him within a period of 60 days without any deduction.

I order accordingly.



(Rajan Gupta)
Chairman
