



Complaint no. 1127 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1127 OF 2020

Sudhir Kumar

....COMPLAINANT(S)

VERSUS

M/s Omaxe Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 25.08.2021

Hearing: 7th

Present:- Mr. Sudeep Gahlawat, Learned counsel for the complainant
Mr. Arjun Sharma, learned counsel for the respondent through video conferencing

ORDER (ANIL KUMAR PANWAR-MEMBER)

1. Complainant Sudhir Kumar booked a plot bearing No. REP/B-133, Block-B in respondent's project named "Omaxe Rohtak City Extn., Phase-I" situated in Sector-22D, Rohtak and allotment letter in his favour was issued on 16.10.2017. Complainant has already paid Rs. 3,40,000/- to the respondent against total sale consideration of Rs. 10,76,077/-.

2. Complainant's grievance is that the respondent has neither executed Builder Buyer Agreement (BBA) nor has delivered possession of the said plot to him till date and has rather arbitrarily cancelled the allotment on 03.05.2018.

So, he has filed the present complaint for quashing the cancellation and to issue directions to the respondent to execute the BBA and deliver possession to him.

3. Respondent did not dispute the factum of allotment of plot but has resisted the complaint averring that he had sent two sets of BBA to the complainant and the latter had not returned the same after signing it. It was further pleaded that the complainant in response to a demand of Rs. 2,16,823/- had remitted only an amount of Rs. 1,20,000/- on 27.11.2017 and despite issuance of various reminders dated 23.02.2018, 08.03.2018 and 02.04.2018 had failed to pay the outstanding dues. So, the respondent was left with no other choice but to cancel the allotment, which was so cancelled on 03.05.2018. The respondent further pleaded that the plot after cancellation of complainant's allotment has been allotted to another person.

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

5. It is borne out from the bunch of documents attached as Annexure P- 6 that the complainant had been requesting the respondent to grant him a No Objection Certificate(NOC) for enabling him to obtain loan from the bank as also for obtaining subsidy under Pradhan Mantri Awas Yojna . It was specifically averred in Para-6 of the complaint that the requests for granting NOC were sent on respondent's email and the respondent did not respond to the said e-mails or even the reminders sent thereafter. The respondent in

corresponding paragraph of his reply has nowhere pleaded that the e-mail id mentioned on documents Annexure P-6 does not belong to him or that the said e-mails were not received by him. The plea raised in Para-6 of the reply was that the complainant had not visited the office of respondent for obtaining NOC and therefore, the NOC could not be issued. Such plea of the respondent would have served some meaningful purpose if it were the case of the respondent that he had ever requested the complainant to physically appear in his office for obtaining NOC. The fact that the respondent did not respond to the emails sent by the complainant for issuance of NOC will imply that the respondent was reluctant and not willing to grant NOC. The Authority will, therefore accept the complainant's plea that he could not meet out the demands due to respondent's failure to issue NOC.

6. Be that as it may, the fact remains that the complainant had already paid Rs. 3,40,000/- to the respondent against total sale consideration of Rs. 10,76,077/-. So, the respondent at the time of cancelling the allotment was entitled to deduct and retain only the earnest money, which legitimately in no case be more than 10% of the total sale consideration of the plot. Such amount on total sale consideration of Rs. 10,76,077/- works out to Rs. 1,07,607/- but the respondent continued to retain the balance amount of Rs.2,32,393/- (Rs. 3,40,000-1,07,607) as well and did not return it to the complainant after cancellation of the allotment. Said amount of Rs.2,32,393/- payable to the

complainant is not refunded till date and therefore, the alleged cancellation of the allotment is bad in the eyes of law and is as such liable to be quashed. The Authority accordingly declares the alleged cancellation of the allotment as illegal and not binding on the rights of the complainant.

7. As regards the execution of BBA, respondent's plea is that two sets of agreements were sent to the complainant who was supposed to send them back after putting his signatures thereon but he had not returned the same. Needless to mention that BBA is a document which the parties need to jointly execute in the presence of each other for finalising the terms and conditions of such document. So, the respondent merely by projecting that he had sent the two copies of agreement to the complainant and the complainant had not returned the same cannot avoid his responsibility to execute BBA. The respondent has not averred that the sets of agreement sent to the complainant were bearing the signatures of some authorized person of the respondent company and therefore, blank unsigned document/agreement sent to the complainant had no significance at all. In these circumstances, the Authority will hold that the complainant is entitled to have BBA executed in his favour and his prayer in this regard deserves to be allowed.

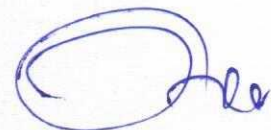
7. The respondent has pleaded that the plot allotted to the complainant after its cancellation had been re-allotted to Shri Mahender Singh and Ms Sushma Rani . If so, the respondent for the reasons that the Authority has declared the



cancellation as illegal, is liable to allot an alternative plot to the complainant. The Authority, accordingly, directs the respondent to allot an alternative plot to the complainant on payment of all the outstanding dues.

8. The total sale consideration of the plot was Rs. 10,76,077/-. The earnest money being ten percent would therefore work out to Rs. 1,07,607/- and the same per receipts Annexure P1 and P2 was paid on 28.07.2017. The respondent after receiving earnest money and making allotment of the plot to the complainant in his project, was supposed to complete the construction works within a reasonable time. A period of three years can be considered a reasonable time for completion of a plotted colony and the Authority will, therefore, observe that the deemed date of delivery of possession to the complainant can be safely reckoned as be three years from the date of allotment, which would work out to 16.10.2020. So, the respondent is liable to pay interest to the complainant on the already paid amount of Rs. 3,40,000/- on account of delay in delivery of possession w.e.f. 16.10.2020 to the date on which the possession will be actually offered to the complainant.

9. Likewise, the complainant will also be liable to pay interest on the amounts which were demanded by the respondent at different points of time vide letters Annexures R-7 to R-9 but were not paid on time. Liability of paying interest by the complainant as well as by the respondent shall be calculated at



the rate of 9% per annum which in the considered opinion of this Authority will be a reasonable rate of interest.

10. In view of above discussions, the Authority allows the complaint and directs the respondent (i) to execute the Builder Buyer Agreement in complainant's favour, (ii) to allot an alternative plot to the complainant in his project and (iii) to supply the complainant a detailed statement of all receivable and payable amounts. The amount of interest chargeable from the complainant on the delayed outstanding dues as also the interest payable to the complainant on account of delay in delivery of possession shall be explicitly indicated in the said statement of receivable/payable amounts. The respondent is allowed 90 days time from uploading of this order on the website of the Authority for compliance of the earlier indicated directions.

9. Case is disposed of accordingly and file be sent to record room after uploading of the order on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SHAG
[MEMBER]