

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

Complaint No.: 770 of 2018
Date of hearing: 28.03.2019

PARTIES: -

Pardeep

Versus

..... Complainant

1. M/s Omaxe Pvt Ltd
2. Rohtas Goel, Managing Director,
M/s Omaxe Pvt Ltd

....Respondent no. 1
....Respondent no. 2

CORAM:

1. Shri Anil Kumar Panwar
2. Shri Dilbag Singh Sihag

**Member
Member**

APPEARANCE: -

1. Sh. Ramesh Malik, Counsel for complainant
2. Sh. Sanjeev Sharma, Counsel for respondent

Order:

1. This matter was heard on 20.12.2018 at length wherein it was held that the complainant defaulted on his part by not making further payments as demanded by the respondent vide several reminders duly annexed with postal receipts. Accordingly, the allotment was cancelled by the respondent on 05.09.2017 and Rupees Five Lacs was forfeited as earnest money.
2. In furtherance of the proceedings noted above, respondent's counsel argued that an amount of Rs 5 lacs as earnest money to be forfeited is expressly incorporated in terms and conditions of application form which is annexed as Annexure R-1. Relying on said terms of forfeiture, the complainant in his petition is seeking refund of amount Rs 4,85,013/- whereas the total amount paid by him is Rs 9,85,013/-. Moreover, he also relied upon para 13

and para 14 of the judgement 04.07.2016 in consumer case no. 482 of 2014 titled as Shri Harjinder S. Kang versus M/s Emaar MGF Land Ltd. passed by National Consumer Disputes Redressal Commission, New Delhi, the said paragraphs are reproduced below for ready reference: -

13. the case of the opposite party is that as per clause 2(f) of the buyer's agreement, extracted hereinabove, 15% of the total sale price constitutes the earnest money which they were entitled to forfeit. However, it has been held by this commission in DLF Ltd versus Bhagwanti Narula , Revision Petition no. 3860 of 2014 , decided on 06.01.2015, that an amount exceeding 10% of the total price of the property cannot be forfeited as earnest money unless the opposite party can show that it has suffered loss to the extent of the amount forfeited by it. Applying the principle laid down in the above referred decision of this commission, the opposite party could have forfeited only a sum of Rs 12,77,475/- from the amount paid to it by the complainants. The balance amount of Rs 71,97,275/- (84,74,750-12,77,475/-) was required to be refunded to the complainant, which the opposite party has failed to do.

14. in the event of the failure of the allottee to make the timely payment of the sale consideration, the agreement could be terminated after a delay of more than thirty days from the due date. In the present case, the default on the part of the complainant occurred for the first time on 26.04.2013 since the instalment payable on that date was not paid in full. Therefore, the agreement could have been terminated on 26.05.2013. the opposite party however, failed to do so and continued to utilize the entire amount, which the complainant had paid from time to time. The opposite party, therefore, must compensate the complainant by paying compensation by way of interest on the balance amount of Rs 71,97,275/- with effect from 26.05.2013.

If case is to be examined from above perspective, then the earnest money would have also come to Rs 5,02,000/- as the total sale price of the unit mentioned in allotment letter/ application form is Rs 50,02,000/-. So, the earnest money amounting to Rs 5 lacs has been deducted in a justifiable manner.

3. On the other hand, complainant's counsel submitted that though the said allotment was cancelled but the remaining amount of Rs 4,85,013/- has



not been refunded till date. He prayed to grant refund of remaining amount alongwith 24% interest.

4. After hearing both the parties, and perusing written submissions, it is observed that case of the complainant is confined to refund of remaining amount i.e. Rs 4,85,013/- after deduction of Rupees five lacs as earnest money in terms of application form/allotment letter. The fact remains that cancellation was done on 05.09.2017 and it's been approximately one and half years, the money of the complainant has not been refunded by the respondent. This act of respondent forced the complainant to file this complaint. So, the complainant deserves to be compensated in terms of interest prescribed in rule 15 of HRERA rules, 2017 i.e SBI MCLR rate + 2%. The Authority is directing the respondent to refund amount of Rs 4,85,013/- alongwith above prescribed interest from the date of deposit of amount to the actual date of refund. The amount shall be paid in two instalments within a period of 90 days from the date of uploading of this order, meaning thereby that the first instalment of fifty percent of the amount shall be paid within 45 days and remaining fifty percent of amount shall be paid within next 45 days.

Disposed of. File be consigned to record room.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member