



Complaint no. 1386 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1386 OF 2019

Ashok Kumar

....COMPLAINANT(S)

VERSUS

One City Infrastructure Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 15.02.2022

Hearing: 16th

Present:-

Mr. Sudeep Singh Gehlawat, Learned Counsel for
the complainant

Mr. Rahul Garg, Learned counsel for the respondent
(through video conferencing)

ORDER (RAJAN GUPTA-CHAIRMAN)

Complainant in present complaint had agreed to purchase a plot in project of the respondent named "One City, Sector-37, Rohtak. He has already paid Rs. 25,91,100/- against basic sale price of Rs. 16,29,550/- for the plot bearing No. Gama 181, measuring 300 Sq. Yds. which was allotted to him vide letter dated 16.06.2010. An offer of possession was made to the complainant on 18.02.2013. However, even at the time of offering possession the construction work at site was not complete. Respondent had rather cancelled the allotment of said plot on 31.01.2018. It is further submitted by complainant that on 18.02.2019 respondent had deposited amount of Rs 20,41,100/- by way of

RTGS in account of complainant without providing any justification for the same. Feeling aggrieved, complainant has filed the present complaint for quashing the cancellation and to issue directions to the respondent to deliver the plot after receiving back the amount of Rs 20,41,100.

2. Today, Mr Sudeep Singh Gehlawat appeared on behalf of complainant submitting that he has recently been engaged and filed his vakaltanama before court. He submitted that the Authority vide orders dated 27.01.2021 had heard both parties at length and had observed that respondent in this case had no right to effect cancellation of allotment without returning entire amount and had therefore, quashed said cancellation. Relevant part of said order is reproduced below:

“ 3. The Authority after hearing the parties and going through the record observes that the respondent in the present case has cancelled the allotment after recovering from the complainant a total amount of Rs. 25,91,100/- against basic sale price of Rs. 16,29,550/- and at the time of such cancellation had not refunded the amount which it should have after deducting the earnest money. Subsequently after a gap of more than a year the respondent remitted an amount of Rs. 20,41,000/- to the bank account of complainant through RTGS. The Authority is of the considered opinion that payment made after a gap of more than one year cannot cure the defect existing in the erstwhile cancellation. The complainant had already paid Rs. 25,91,100/- against basic sale price of Rs. 16,29,550/- So, in a case of present kind where the



respondent after collecting entire basic sale price had himself not completed the project, the Authority is of the opinion that the respondent is guilty of not performing his obligation towards delivery of possession. In such circumstances, the respondent had no right to effect cancellation and at the most was entitled to charge interest on the defaulted amount, if any outstanding against the complainant. Said interest too was permissible only to an extent as it was payable by respondent to the government. Construed in this perspective, the Authority has no hesitation in concluding that alleged cancellation is unsustainable and therefore, quashed. ”

3. Learned counsel for the complainant further submitted that as per pleadings total amount paid by the complainant is shown as Rs 25,41,100/- against basic sale price of Rs 16,29,550/- however, actual amount paid by complainant to respondent is Rs 20,41,100/- against basic sale price of Rs 16,29,550/- not Rs 25,41,100/-. This was an unintentional clerical error which occurred at the time of filing present complaint. As soon as this mistake was noticed by the complainant, he by way of application for clarification dated 06.09.2021 had prayed for indulgence of this Authority to rectify the same.

However, in view of the fact that at the time of cancellation of unit respondent had returned Rs 20,41,100/- which was the entire amount paid by complainant to respondent and further that said amount was returned back even before filing of this complaint Authority vide orders dated 16.12.2021 had observed it as necessary to first adjudicate upon the application for clarification



filed by complainant before reaching a final decision, as entire premise of order dated 27.01.2021, whereby said cancellation was quashed, was that respondent had not returned full amount paid by the complainant. Therefore, case was adjourned for today for arguments. Relevant part of orders dated 16.12.2021 passed by the Authority is reproduced below:

“ 3. Considering the averments put forth by ld. Counsel for respondent, Authority observes that complainant had submitted before the Authority that the amount paid by him for said plot is Rs 25,41,100/-. Authority had heard this matter and recorded observations based on the information filed by complainant in the order dated 27.01.2021, whereby said cancellation was quashed. However, in light of application dated 06.09.2021 filed by the complainant wherein the total paid amount has been rectified to be Rs 20,41,100/- towards the disputed amount has crucial bearing upon this case because said cancellation was quashed solely on the basis assertion of having paid full amount by complainant and the amount returned/refunded to him by the respondent after cancellation was much less. As of today, as per factual position it is apparent that entire paid amount of Rs 20,41,100/- stands refunded to complainant before filing of this complaint. In view of these new facts, Authority finds it appropriate to finally adjudicate this matter after duly considering the application for clarification filed by complainant. ”

4. Shri Gehlawat, learned counsel for complainant submitted that complainant had booked the plot in question in the year 2010. By the year 2012



complainant had paid an amount of Rs 19,41,100/- to the respondent. Respondent vide letter dated 18.02.2013 had offered possession of said plot alongwith a demand of Rs 7,87,838- of which Rs 3,51,290/- was charged as interest for delayed payment. Even at the time of offering possession the development works at site were incomplete and further possession was offered to complainant without obtaining completion certificate. Complainant had then made a further payment of Rs 1,00,000/- to the respondent on 20.12.2014. Complainant had refrained from making more payments because of the lack of development works at site. By 2012, complainant had paid more than the basic sale price of said plot. Even if after 2012, complainant had in any case defaulted in making payments respondent had no right to retain such huge amount for more than 5 years and then cancel allotment of booked plot in the year 2018. At the most respondent could have charged interest from complainant on delayed payments and offered him possession.

He conceded to the fact that entire amount paid by complainant to respondent has been wrongly mentioned in complaint as Rs 25,41,100/- instead of Rs 20,41,100/- and said amount has been returned back to complainant before filing of this present complaint. However, he prayed to the Authority that respondent has unfairly retained the amount paid by complainant since 2012 and even though respondent has returned the same but complainant is entitled to interest on said amount in terms of Rule 15 of HRERA Rules 2017.



5. On the other hand, respondent in his reply submitted that complainant herein had booked a plot in the project of respondent in the year 2010. Allotment letter was issued on 16.06.2010. Total sale price of said plot was Rs 23,77,648/- against which complainant has paid an amount of Rs 20,41,100/-. It is denied that complainant had made a payment of Rs 25,41,100/- in lieu of said unit. Instead it is submitted that respondent has received only an amount of Rs 20,41,100/- from the complainant against plot in question. By the year 2012 complainant had made payment of Rs 19,41,100/- to the respondent and on 20.12.2014 made further payment of Rs 1,00,000/-. It is further submitted that the project in which plot of complainant is situated was ready for possession by the year 2013 and accordingly an offer of possession was made on 18.02.2013 alongwith demand letter for payment of Rs 7,87,838/- which was supposed to be honoured upto/by 30.04.2013. Complainant was given many opportunities to pay outstanding dues and take possession. When even after issuance of several reminder letters annexed as Annexure R-8 (colly) complainant failed to pay outstanding dues, respondent was constrained to issue final demand notice dated 03.01.2018, annexed as Annexure R-11, for cancellation of plot due to non-payments of dues. After said cancellation respondent refunded the entire amount of Rs 20,41,100/- paid by complainant for said plot into his account by way of RTGS on 18.02.2019 without deducting any earnest money out of goodwill. Proof of said payment has been attached as annexure R-12.

6. Learned counsel for the respondent submitted that vide orders dated 27.01.2021 Authority had quashed cancellation of allotment dated 03.01.2018 based on the assertion that complainant has paid an amount of Rs 25,91,100/- against total sale consideration of plot, and respondent a year after said cancellation, returned only an amount of Rs 20,41,100/- and retained an amount of about Rs 5 Lakhs. However, the fact of matter is that respondent company had returned back the entire amount paid by the complainant i.e Rs 20,41,100/- without deducting any earnest money.

He submitted that complainant vide application dated 06.09.2021 filed before the Authority has himself admitted to this fact that the total amount paid by complainant is Rs 20,41,100/- and not Rs 25,91,100/- against basic sale price of Rs 16,29,550/- on the date of cancellation of plot.

7. Learned counsel for respondent further submitted that this complaint was filed before the Authority on 12.06.2019 and respondent company had refunded the entire amount paid by complainant on 18.02.2019 i.e before filing of this complaint. Thus, at the time when complainant had approached the Authority all contractual obligations had ended between both the parties. Further, respondent company had returned back the entire amount without deducting any earnest money. Since the impugned cancellation had been effected on account of default in making payments on the part of complainant, it is the complainant who is at fault. Respondent company has not



retained any money paid by complainant and thus complainant is not entitled to any relief with regard to interest on amount paid by him to respondent.

8. Authority after hearing both parties and going through the record observes that a plot had been booked by complainant in the project of the respondent in the year 2010. Plot no. Gama 181 measuring 300 sq. yd had been allotted to complainant vide letter dated 16.06.2010 for a basic sale price of Rs 16,29,550. An offer of possession was made to complainant vide letter dated 18.02.2013 alongwith a demand of Rs 7,87,838/- . Said offer was not acceptable to complainant as allegedly construction works at site was incomplete. By the year 2012 complainant had made payment of Rs 19,41,100/- to the respondent and further on account of demand of Rs 7,87,838/- raised alongwith offer of possession complainant made a further payment of of Rs 1,00,000/- on 20.12.2014 . Thus by the year 2014, complainant has paid an amount of Rs 20,41,100/- to respondent against said plot. However, complainant ceased to make further payments to respondent as development works had not been completed by respondent and also project had not received completion certificate. Thereafter, respondent issued various demand and reminder letters against the complainant for making balance payment and in view of non payments of dues ultimately issued letter dated 03.01.2018 for cancellation of allotment. Subsequently on 18.02.2019 respondent returned the entire amount paid by complainant into his account by way of RTGS.

It is true that in present case complainant defaulted in making further payments and accordingly respondent was entitled to cancel the allotment made in favour of complainant. However, said cancellation should have been immediately effected once the complainant had defaulted in making payments and the amount paid by the complainant should have been returned after deducting earnest money. In this case the demand of Rs 7,87,838/- raised alongwith offer of possession was to be paid/ honoured by 30.04.2013. However, complainant failed to deposit the requisite amount. As per clause 14 of the allotment letter, in case allottee fails to pay the outstanding demand within three months from due date, respondent can cancel the allotment made in favour of allottee. When complainant failed to make outstanding payments respondent should have promptly issued a notice for cancellation after waiting for requisite period i.e after three months of raising the demand. However, respondent did not issue any notice with regard to cancellation and rather later on after more than a year of raising said demand i.e on 20.12.2014 respondent accepted a further payment of Rs 1,00,000/- . Thus, respondent retained the amount of Rs 20,41,100/- for more than four years which is wrongful gain on the part of respondent and wrongful loss to the complainant. Therefore, complainant was entitled to refund of said amount alongwith interest from deemed date of possession i.e the time when complainant first defaulted in making payment till the date the amount was returned back to complainant.



9. At the time of filing of present complaint, complainant in his written pleadings had wrongly mentioned that the total amount paid by him to respondent is Rs 25,91,100/- instead of Rs 20,41,100/-. In view of this fact, during the course of hearing held on 27.01.2021 Authority had quashed the cancellation of allotment on the premise that respondent had not refunded the entire amount paid by complainant. However, the application for clarification dated 06.09.2021 filed by complainant itself changes the very nature of the complaint to refund of paid amount which has already been made before filing of this complaint.

10. However, Authority observes that the said refund should have been offered to complainant after duly incorporating interest accrued on it for the period said amount had been wrongfully retained by respondent. Respondent returned only the paid amount without the interest accrued. The averment of respondent that he has not deducted earnest money at the time of returning the amount is not binding on the complainant. Therefore, respondent is directed to pay to the complainant interest accrued on the amount of Rs 20,41,100/- retained by respondent from 18.02.2013 to 18.02.2019 in terms of Rule 15 HRERA Rules 2017 after deducting earnest money.

11. As per clause 13 of allotment letter earnest money is 25 % of the Basic Sale Price and preferential location charges. 25% earnest money is too high and authority would consider it unconscionable and unreasonable. RERA




provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. Therefore, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant.

12. Basic sale price of the unit Rs 16,29,550/-. Thus, the amount of earnest money works out to Rs 1,62,955/- Further, the amount of interest payable to the complainant on the retained amount for said period has been calculated at the rate of 9.30% i.e SBI MCLR+ 2% and same works out to Rs 11,22,327/-. After deducting earnest money of Rs 1,62,955/- from the amount of interest payable to complainant i. e Rs 11,22,327/-, respondent shall now pay an amount of Rs 9,59,372/- to the complainant.

13. With above directions, case is disposed of. Order be uploaded on the website of Authority and file be consigned to record room.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]