



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 786 OF 2021

Rohan Malik

....COMPLAINANTS(S)

VERSUS

Countrywide Promoters Private Limited and others

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 03.03.2022**

**Hearing: 6<sup>th</sup>**

**Present:** Shri Shobhit Phutela, Counsel for the complainant through video-Conferencing and Mr. Rohan Malik, Complainant in person.  
Shri Hemant Saini and Himanshu Monga, Counsel for the Respondent.

### **ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. In this complaint, complainant was allotted a plot bearing No. D-15 measuring 171.92 sq. yards in Block-C of respondent's project named BPTP District-1, Sector-81, Faridabad on 30.01.2021. Builder-Buyer agreement was

4

executed on 22.6.2021. Clause 10 of the BBA provides that possession of the plot will be handed over on or before 30.6.2024. Further, it has been stipulated in the same clause that the promoter will endeavor to deliver the possession of plot on or before 31.10.2021.

Total agreed consideration for the plot was Rs.1,06,38,656.10. Complainant has made payment of Rs.29,01,734.60 in three instalments, one on 30.1.2021 and two on 30.3.2021. Complainant has cited the cheque numbers etc. of payment made in his complaint and also has annexed the proof as annexure C-4.

2. Respondent, however, offered possession of plot to the complainant even before executing the BBA. The possession was offered on 17.4.2021 along with demand of Rs.81,36,190.040. The said demand has been annexed as Annexure C-5 of the complaint. In the offer letter it was stated by respondent that development of site has been completed and the plot is ready for possession.

Further, case of complainant is that he wanted to raise money for making payment to the respondent by way of loan raised from bank. The complainant states that he sent three messages on what's App to the respondent in the months of April, May and June requesting for execution of BBA to be able to get the loan sanctioned. Respondent replied to the complainant by e-mail dated





15<sup>th</sup> June, 2021 that the process of execution of agreement will be initiated after generation of unique property Id and asked complainant to wait till the next communication. Finally, BBA was executed on 22.6.2021.

3. Respondent sent another demand notice dated 3.7.2021 to the complainant asking them to pay Rs.74,13,190.40. Respondents 10 days thereafter cancelled the allotment of complainant's vide cancellation letter dated 13.7.2021 annexed as Annexure C-11 with the complaint.

After completing loan formalities, loan was sanctioned by the bank in favour of complainant on 14.7.2021 i.e., one day after respondent cancelled the allotment and eleven days after the respondent had sent a demand notice to the complainant.

4. Shri Shobhit Phutela, counsel for complainant argued that complainant was serious in making payments. He had to avail loan from the bank. It was necessary to execute BBA before loan to be sanctioned. It is because of the respondent that sanction of the loan was delayed. There has been no fault at all on the part of complainant.

Learned counsel further argued stated that respondent has violated the provisions of Section 13 of RERA Act. They could not have demanded and received 30% payment from the complainant without executing BBA. As per law,

amount of more than 10% of the cost of plot could not be demanded without executing the BBA. Further, respondent had offered possession of plot in 17.4.2021 without obtaining completion certificate. Learned counsel argued that complainant is ready to make payment of balance amount to the respondent and take possession of the booked plot. He argued that there has been no default on the part of the complainant but he has been unnecessarily made to suffer by way of making illegal cancellation. Learned counsel further argued that it is the respondent who has been at fault firstly by way of demanding 30% money without execution of the BBA and secondly by delaying the execution of agreement, as a result of which sanction of the loan got delayed and thirdly cancelling the allotment barely 11 days after raising the demand for payment. Such action on the part of the respondent is totally illegal and unjustified. Respondent has breached their promise with pre-meditated mind. The complainant also prayed for quashing the cancellation letter dated 13.7.2021 and also appropriate action against respondent for violation of provision of Section 13 of the Act.

5. Last date for filing reply was 23.08.2021. Respondent had filed reply on 23.12.2021. In said reply respondent has denied the allegations and stated that the project in question is a registered project bearing registration no. 160 of 2019 dated 24.09.2019 which is valid till 18.08.2024. Complainant had voluntarily agreed to take over the possession on or before 31.10.2021. Respondent has



denied that possession was offered in the middle of second wave. It is stated that possession was offered after completing the construction and necessary formalities. Timely payment was the essence and complainant failed to make the payment in time. Complainant has not made payment of Rs. 83,31,888.40/ till date. Reminders dated 13.05.2021 and 03.07.2021 were sent to the complainant for payment of demands and unit was terminated on 13.07.2021 when complainant violated section 19(6) and 19(7) of the Act.

6. This matter had come up for hearing before Authority on 26.8.2021 when the termination letter dated 13.7.2021 was stayed. Operative part of the said order is reproduced below:

*“Authority observes that prima facie, case appears to be made out and the Authority agrees with the fact that complainant may suffer an irreparable loss if any third-party rights are allowed to be created by the respondent against the plot in question. Therefore, Authority decides to stay the operation of the cancellation letter issued by the respondent dated 13.07.2021. Even in case any third-party rights are created by the respondent or re- allotment of said plot the same is also stayed till further orders of this Authority.”*

7. Learned counsel Shri Hemant Saini for the respondent reiterated his submissions and had nothing more to add but what had already been stated.



8. The Authority has gone through the rival contentions. It observes and orders as follows:

(i) The complainant was allotted plot in question on 30.01.2021 for which an allotment letter was issued. The allotment letter has been annexed by the complainant as Annexure C-2 page-37 of the complaint. Payment plan annexed with the allotment letter states that 10% of the price shall be paid at the time of booking. However, complainant paid an amount of Rs. 29,01,734.60/- towards the price which has been duly acknowledged by the respondents vide their receipt dated 30.01.2021 and 30.03.2021. Complainant had made payment for 30% of the consideration at the time of allotment.

(ii) Complainant requested the respondent for execution of builder buyer agreement for getting his loan sanctioned but instead of executing builder buyer agreement, respondent sent an offer of possession dated 17.04.2021 along with demand of Rs. 81,36,190.040/-. Admittedly builder buyer agreement was executed after the offer of possession that is on 22.06.2021 and within a few days thereafter respondent sent a demand letter dated 03.07.2021 for Rs. 74,13,190.40 (Annexure C-10). Respondent terminated complainant's plot on 13.07.2021 on account of non-payment. Complainant's loan was approved by M/s HDFC Ltd. on 14.07.2021 that is just a day after his allotment was cancelled.





(iii) It is understood that no loan is finally sanctioned and disbursed by banks without execution of Builder-Buyer-Agreement. Complainant made repeated efforts by way of personal visits and written messages and email for getting the Builder-Buyer Agreement executed. The respondents, instead of executing BBA collected Rs. 29,01,734.60 (approx. 30% of consideration amount) and offered possession dated 17.04.2021 along with demand of Rs. 81,36,190.40/-. First of all, respondents have committed violation of Section 13 of the RERA Act by demanding more than 10% of the money without execution of BBA. Secondly rather than facilitating sanction of loan by early execution of the BBA. They hurriedly made demands along with offer of possession dated 17.4.2021 being fully aware that the BBA was yet to be executed and the complainant was yet to have his loan sanctioned based on the said BBA.

Further, because of not executing the Builder-Buyer Agreement complainant could not obtain loan from M/s HDFC Ltd. M/s HDFC could not have sanctioned the loan without the Builder-Buyer Agreement. Banks and financial institutions demand submission of the original documents especially the BBA and other titled documents before loan is sanctioned. Accordingly, it is because of a clear default on the part of the respondent that the complainant could not get loan for payment to the respondent.

4

(iv) Despite offering possession dated 17.04.2021 along with demand of Rs. 81,36,190.040/- and further sending demand letter dated 03.07.2021 thereby raising demand of Rs. 74,13,190.40 illegally and despite not fulfilling their obligation of executing the BBA, the respondent went on further and illegally terminated the allotment in favour of the complainant vide termination letter dated 13.07.2021. Such an act on the part of the respondent is not only illegal, violative of the provisions of RERA but is also unethical business practice. The complainant has been pursuing his case repeatedly with the respondent but respondent made no effort to let the complainant get his loan sanctioned for making payment to them.

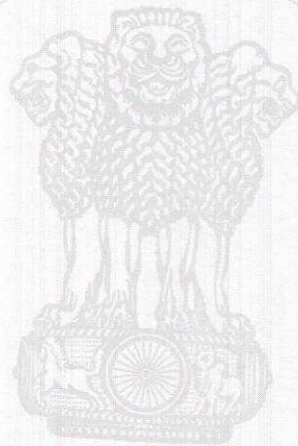
(v) The allegations made by the complainant are duly supported by documentary evidence. It leaves no doubt in the mind of the Authority that the act of termination of the allotment made in favour of the complainant was completely illegal. Accordingly, Authority is of the considered vide that the relief claimed by complainant deserves to be granted. Accordingly, the termination letter dated 13.07.2021 is hereby quashed. Respondent is directed to restore the plot of the complainant and give time period of 90 days for payment of the remaining consideration. Respondent will not charge any interest from the complainant for the entire period.





(vi) Authority observes that approx. 30 % amount has been collected by the respondent without execution of the builder buyer agreement. They have thus made themselves liable for action under section 13 and section 61 of the Act, A Suo-moto complaint be registered against respondent as to why penalty u/s 13 and section 61 be not imposed upon them.

7. Case is **disposed of** in above terms. Order be uploaded on website of the Authority and file be consigned to the record room.



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RAJAN GUPTA  
(CHAIRMAN)

DILBAG SINGH SHAG  
(MEMBER)