



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 410 OF 2021

M/s Dee Development Engineers Ltd. .... COMPLAINANTS

Versus

M/s M.B. Malls Pvt. Ltd. .... RESPONDENT

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 27.04.2022**

**Hearing: 5<sup>th</sup>**

**Present through video call: - Sh. Akshat Mittal, Learned counsel for the complainant**

None for the respondent

**ORDER (DILBAG SINGH SIHAG- MEMBER)**

1. Learned counsel for the complainant argued that detailed facts of the present complaint has already been captured vide order dated 08.02.2022, whereby respondent was awarded last opportunity to present their case. Authority had also expressed it tentative view that complainant's case was a fit case for refund.
2. On the other hand, none appeared for the respondent. As per office record, notice was dully served upon respondent on 09.09.2021, thereafter respondent's proxy counsel has appeared on 12.10.2021; 07.12.2021 but no reply has been filed till date even after availing four opportunities.
3. After hearing complainant and going through records, Authority observed that detailed order containing all facts was passed by the Authority on last date of hearing i.e. 08.02.2022 and same is reproduced below for ready reference and adjudication:

1. " Complainant's case is that in year 2012, he booked a unit in project named 'The Business Tower, Faridabad' being developed by the respondent. Flat buyer agreement (FBA) was executed between the parties on 07.05.2012 for SF unit bearing no. 01 having an area of 2694 sq.ft. Complainant had paid Rs. 1,68,39,120/- against the basic sale price of Rs. 1,88,39,120/-. Respondent was required to hand over possession of the booked unit within a reasonable period of time. Nine years have already been passed since the singing of agreement but respondent has neither offered the possession of the booked unit nor refunded the paid amount.





Today, learned counsel for the complainant apprised the Authority that license granted to the respondent company vide memo no. LC-586-JE(S)- 2017/4106 dated 03.03.2017 has been cancelled. To support his contention, he referred to Annexure C-6 at page no. 67 of the complainant book. He also stated that almost nine years have gone by from date of execution of FBA, the project is still incomplete and there is no possibility that it will be completed in near future as license for developing the commercial colony stands cancelled. Therefore he has approached this Authority seeking relief of refund of amount already deposited along with interest and compensation.

2. None present on the behalf of respondent. On the last date of hearing, respondent was directed to file reply but no reply has been filed till date.

3. After going through records, it is observed that as per pleadings and oral submissions of the complainant counsel, complainant has paid to the respondent an amount of ₹ 1,68,39,120/- and statement of accounts issued by the respondent of each payment made is annexed as Annexure C-1 at page no. 24-36, 65 of the complainant book, therefore complainant has already paid almost nighty percent of amount to respondent and respondent despite having received nighty percent amount has failed to deliver possession to the complainant till date.

Further, learned counsel for the complainant stated that project cannot be completed in near future as license for developing the same has been cancelled by the concerned department. So, the Authority for above stated reasons is of the prima facie view that respondent would not be in a position to honor his commitment of deliver the possession of the unit near in



future. So, Authority finds it to be a fit case to allow refund of already paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 %.

4. Case is adjourned to **27.04.2022** with last opportunity given to respondent to rebut contentions of the complainant, failing which the Authority will confirm its tentative view expressed above. Authority will decide the case on next date of hearing by taking into consideration the oral arguments if any and written submissions available in the records. No further opportunity will be granted.”

From perusal of afore said order, it is quite clear that Authority had allowed refund to the complainant along with permissible interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 %, on the ground that Complainant had booked unit in year 2012 and respondent was required to hand over possession of the booked unit to the complainant within a reasonable period of time of three years. Nine years had already been passed since signing of agreement but respondent had neither offered possession of the booked unit nor refunded paid amount.

Further, complainant had also apprised the Authority that project could not be completed in near future as license for developing the same has been cancelled by the competent Authority of concerned department. So, Authority is absolutely convinced that respondent would not be in a position to honor his commitment of delivering



possession of the unit in near future. So, Authority finds it to be a fit case to allow refund of already paid amount along with permissible interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 %.

Today also none appeared for the respondent nor reply has been filed till date, even after availing five opportunities, So, Authority deems it appropriate to struck of defense and proceed exparte.

4. Now, there is a merit that respondents have clearly defaulted in completion of the project and in delivering the possession of the booked unit to the complainant. For all practical purposes, this is a failed project and as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority grants relief of refund to the complainant along with interest as per Rule 15 of HRERA Rules, 2017 from the respective dates of making payment till the actual realization of the amount.

On perusal of the documents placed by the complainant with regard to amounts paid to the respondent, it is observed that he has paid an amount of ₹ 1,68,39,120/- to respondent/ promoter.

Accordingly, Authority directs the respondent to refund the entire principle amount of ₹ 1,68,39,120/- to the complainant. The Authority has got calculated the interest payable to the complainant from its Accounts Branch which works out to ₹ 1,48,98,441/-. This interest has been calculated from the date of making payments to





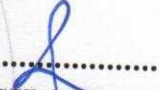
the complainant upto the date of passing this order at the rate applicable MCLR + 2% as provided in Rule 15 of the RERA Rules 2016.

8. Now, respondent has to pay total amount of ₹ 1,68,39,120/- + ₹ 1,48,98,441/- = ₹ 3,17,37,561/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days.

Disposed of. File be consigned to record room after uploading of this order on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

