



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1168 OF 2020

ANIT KUMAR GUPTA

....COMPLAINANTS

VERSUS

M/s ANSAL CROWN INFRABUILD PVT. LTD.

....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 14.10.2022

Hearing: 7th

Present through video call: - Sh. Yogesh Goyal, Learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While perusing case file, it is observed that in the last date of hearing dated 07.07.2022, detailed facts of this case were recorded. Said order is being reproduced for ready reference:

1. " While initiating his arguments, learned counsel for the complainant submitted that he booked a shop/unit in a project named 'Ansal Highway Plaza, Sonipat' being developed by the respondent-promoter. Allotment letter was executed between the parties on 13.01.2005, for a shop bearing no. 115 situated on the Ground Floor, admeasuring 527 sq.ft. Later on, respondent has changed the shop from GF-115 to Shop No. 127 C. Accordingly; a new Allotment letter was executed between parties on 26.03.2010. Complainant had paid Rs. 23,05,764.86/- till February 2013 against basic sale price of Rs. 23,02,800/- to the respondent. Respondent was required to hand over possession of the booked unit within 33 months from date of booking of unit that comes to 27.12.2012. The period for delivery of possession had already been expired but he did not get offer of possession or refund of paid amount.

Today, learned counsel for the complainant appraised the Authority that complainant has paid full payment of the shop in question in the year of 2012 itself. To support his contention of amount paid, he referred to Annexure P-5, annexed with complaint book, which clearly shows that complainant has paid an amount of ₹ 23,05,764.86/- to the respondent-promoter. Even after receiving full payment from complainant, respondent has failed to deliver possession of booked unit to the complainant till date. He further alleged that the project is still incomplete even after twelve years have gone by the date of execution of allotment letter. There is no possibility that it will be completed in near future. Therefore he has approached this Authority seeking relief refund of paid amount already deposited along with permissible interest and compensation. Besides, complainant has requested this Authority to transfer this case to Adjudicating Officer after disposal.

2. On the other hand, learned counsel for the respondent sought time to file reply and argue this matter on merits.

3. After going through records, it is observed that complainant has paid to the respondent an amount of ₹ 23,05,764.86/- and statement of accounts issued by the respondent of each payment made is annexed as Annexure P-5 of the complainant book, therefore complainant has already paid full amount to the respondent. Respondent despite having received full amount, has failed to deliver possession to the complainant till date. Complainant neither mentioned any fact nor placed on record any documents showing the current stage of the project in question.

4. On request of learned counsel for respondent, case is adjourned to 22.09.2022 while granting last opportunity to the respondent to file reply and supply its advance copy to complainant, failing which Authority will decide this matter on the basis of available facts. Further complainant is also directed to file current status of the project to ascertain whether project can be completed or not in foreseeable future. Authority will dispose of 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."

2. On the other hand, respondent has filed his reply today in the Court, whereby in para 12 of the reply he has submitted that Occupation Certificate for the project in question has already been received by the respondent from competent department on 31.01.2009. However, copy attached with the reply shows that on 31.01.2009, application for Occupation Certificate was applied by the respondent. Moreover, when original allotted unit of the complainant was reallocated in the month of March 2010, complainant was well aware of the fact that Occupation Certificate to the project had already been granted. Therefore, fresh offer of possession was not required to be made. Besides two reminders were issued to the complainant to pay outstanding amount but complainant never turned up to pay his outstanding dues.

3. After hearing both parties and going through records, Authority observes that admittedly complainant had paid an amount of Rs. 23,05,764.86/- to the respondent in the year 2013 as proved by complainant in above reproduced order. Further, Authority take note of the contention of the respondent promoter that Occupation Certificate has been received in the year 2009, however, it is pertinent to mention that respondent in his reply has nowhere stated the reasons for not offering possession till today to the complainant since its Occupation Certificate has been received in the year 2009 as contended by the respondent. Further, on perusal of reply, it has come to the knowledge of Authority that respondent has attached copy of application applied by them for grant of Occupation Certificate. Respondent has failed to place on record copy of actual received Occupation Certificate from concerned department if any. Moreover, respondent has also failed to show any correspondence or communication held between him and complainant whereby, he had offered possession of allotted unit to the complainant or initiated action for refund of the paid amount. Mere stating that Occupation Certificate has been received will not suffice the reason for not giving either possession or refund to the complainant for almost ten years from execution of the agreement. As far as contention of the respondent regarding default in making payments is concerned, admittedly complainant had made more payment than basic sale price in the year 2013 as per details given in para 3 of the



order dated 07.07.2022. Therefore, this plea of the respondent does not hold any merit.

4. In view of above facts, Authority is of the considered view that complainant is entitled to refund on the ground that inordinate delay of ten years has already been occurred and respondent has not proved his contentions as no documents has been produced before the Authority which shows that offer of possession was made to the complainant within time and occupation certificate has been granted by the department as he claimed in para 12 of the reply. Therefore, Authority directs the respondent to refund entire principal amount of ₹ 23,05,764.86/- to the complainant. Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 10%, which comes to Rs. 34,84,066/-. Now, respondent has to pay total amount of ₹ 57,89,830.86/-(23,05,764.86/- + ₹ 34,84,066/-) to the complainant within a period of 90 days as prescribed under Rule 16 of HRERA Rules 2017.

Further, complainant has prayed for transfer of the case to Adjudicating Officer for adjudicating his relief in respect of compensation after deciding the matter on its merits. 1. In regard to this prayer of the complainant reference is made to sub rule (e) of Rule 28 of RERA Rules, 2019. The sub rule provides that if in a complaint compensation has been sought, the complaint for adjudging quantum of compensation as contained in Section 12, 14, 18 and 19, shall be referred to Adjudicating Officer by Authority and Adjudging Officer shall

conduct an inquiry to adjudge quantum of compensation as per provisions of Sub Section 3 of Section 71 by taking into consideration the factors mentioned in Section 72 of RERA Act 2016.

5. Authority observes that to enable the Adjudicating Officer to adjudge quantum of compensation, details of the claim duly supported with evidence will have to be placed by the claimant before the Adjudicating Officer. For this purpose Form-CAO has been prescribed in the HRER Rules, 2017. The information as is required to be submitted in form-CAO is not before this Authority, therefore, for addressing the issue of claim compensation, complainant/claimant has to submit an application before learned Adjudicating Officer alongwith information in proforma-CAO. Other information of relevant evidence in support of the claim also has to be submitted by claimant-complainant before learned Adjudicating Officer.

6. Complainant herein may follow the procedure prescribed for claiming compensation by filing an application on proforma-CAO. For the purpose of 'reference' to be made in accordance with sub rule (e) of Rule 28, Authority will send a copy of this order to learned Adjudicating Officer to take into consideration findings of the Authority, while taking decision on the application for compensation filed by the complainant.



7. Disposed of in above terms. File be consigned to record room after compliance.



DR. GEETA RATHEE SINGH
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

