HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1761 OF 2022

Sumit Kanchi ....COMPLAINANT(S)

VERSUS

Harsha Associate Pvt. Ltd. ....RESPONDENT(S)

CORAM: Nadim Akhtar Member

Chander Shekhar Member

Date of Hearing: 22.07.2024

Hearing: 6th

Present: - Adv. Himanshu Malik, counsel for complainant
Adv. Yukta, counsel for respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Relevant part of last order passed by the Authority dated 15.01.2024 is reproduced below:

   1. "As per order dated 02.08.2023, after hearing averments of learned counsel for complainant, Authority granted last *opportunity to both the parties to arrive at an amicable settlement. However, on last date of hearing, i.e., 02.11.2023 none appeared on behalf of both the parties. Therefore, one more opportunity was granted by the Authority to both the parties to fix a date for settlement.*

2. *Today also, none appeared on behalf of both the parties. Given the situation, Authority grants last opportunity to both the parties to place on record the settlement deed, if any, arrived at between the parties at least two weeks before next date of hearing. Further, in case no settlement is arrived at, both the parties are granted last opportunity to pursue their case, failing which matter will be dismissed for non-prosecution".*

2. Today, Adv. Himanshu Malik appeared on behalf of complainant and stated that no settlement has been arrived at between the parties. Further he submitted that parties entered into a builder buyer agreement on 27.02.2019. Complainant has paid an amount of approx ₹30 lacs out of total sale consideration of ₹1,47,56,000/-. Furthermore, he stated that an endorsement letter dated 24.05.2019 was given to the complainant wherein it was mutually agreed between the parties that necessary documents shall be provided by the respondent by 12.07.2019 for sanctioning of the loan, if the complainant provides necessary documents for sale in written from the authorised personnel of the bank by 31.05.2019 for further payments required to be made as per the terms of the agreement. Both the parties also agreed to execute the sale deed. The complainant with the intention to

honour the terms of the agreement and for further payment approached IDBI bank for loan towards the purchase of booked unit. Further, for sanctioning of loan amount, certain documents were required by the bank such as documents relating to the property viz non encumbrance certificate/ NOC from HUDA, clearance certificate/ no dues certificate from the respondent company, bank receipt of clearance of dues from Municipal Corporation. However, despite several requests, respondent has failed to handover these documents till date leading to failure of complainant in applying for loan from the bank.

3. Respondent company also tried to settle the matter with the condition that complainant has to make outstanding payment along with 24% penal interest in order to get possession of the booked unit. In this regard, ld. counsel for complainant avers that complainant is ready to make outstanding payment if documents are supplied by the respondent, but charging extra 24% penal interest is not acceptable by the complainant.

4. On the other hand, ld. counsel for respondent stated that averments of ld. counsel for complainant are not true. Complainant has filed several complaints with regard to the similar subject matter before various forums. First an FIR was lodged before the Police, but the same was dismissed. Then

complaint was filed before the Hon'ble Consumer Forum which was again dismissed. Now the complaint bearing no. 1563 is pending before the Hon'ble District Court, Karnal which was filed in the year 2019. Additionally, she submitted that the project in question is registered, Completion Certificate of the project has already been received from the competent Authority and all the necessary documents are provided to the complainant. The complete fault lies in the hand of complainant as he is not making the balance amount in order to get possession of the unit.

5. Authority enquired from ld. counsel for respondent that is respondent willing to give possession of the booked unit to the complainant? In response to the same, respondent submitted that a letter was issued to the complainant on 13.05.2024 wherein it was mentioned that if complainant is willing to accept the possession of the booked unit, he is bound to make outstanding amount to the respondent. However, no response was received from the complainant.
6. Authority also sought clarification from the respondent that, why required documents were not provided to the complainant, enabling him to avail loan from the bank. To which, ld. counsel for respondent replied that documents have been supplied to the complainant multiple times and even in reply all the documents are annexed by the respondent. Occupation certificate has

been annexed as Annexure -2 and NOC obtained from the bank is also annexed as Annexure-3 on page no. 6 of the reply. Clearance from the Municipal Corporation has also been annexed by the respondent as Annexure 4 of the written submission.

7. Ld. counsel for complainant stated that occupancy certificate has not been obtained by the complainant till date. He further stated that complainant is ready to make balance amount to the respondent.

8. After hearing averments of both the parties, Authority gives following directions

    i. Complainant is directed to prove his willingness to take possession and clearance of outstanding dues by first paying the outstanding principal amount to the respondent.

    ii. Further with regard to complainant's contention that respondent is charging extra 24% of penal interest, Authority deems appropriate to give one opportunity to both the parties to settle component of interest payable/receivable by both the parties. In case, no settlement is arrived at between the parties, Authority will decide the same as per RERA Rules. Authority directs both the parties to meet at Karnal Office of respondent for arriving at amicable settlement of the issues on 29.07.2024 at 11:00 A.M.

9. Case is adjourned to **21.10.2024.**

CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]