



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2582 OF 2022

Usha Saluja

.....COMPLAINANT

Versus

1. CMD Built Tech Pvt. Ltd.
2. Pardesi Developers Pvt. Ltd

.....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 05.12.2023

Hearing: 5th

Present: - Mr. Rahul Bhardwaj, learned counsel for the complainant.

Mr. Sushant Dahiya, learned counsel for the respondent 2 through
VC.

None for the respondent no.1.

ORDER (NADIM AKHTAR- MEMBER)

1. As per last order dated 20.09.2023, Authority directed the complainant to prove what steps complainant took from cancellation of unit till filing of complaint as no documents on record have been placed. Further, complainant was directed to place on record bank statement of payments made to respondent. Further, respondent no. 2 was directed to place on record communications that had been made with complainant before cancelling of unit.
2. Ld counsel for complainant stated that:
 - a. In compliance of last order dated 20.09.2023, complainant had submitted an application dated 01.12.2023. Annexure-1 of this application is whatsapp communications with the respondent no.1 CMD Buildtech Pvt. Ltd; Bank account statement exhibiting the transaction of Rs. 15 lakh to the respondent no.2 is annexed as Annexure 2. The death certificate of the complainant husband who before his death was making all the communications with the respondent is annexed as Annexure 3. Annexure 4 is a copy of email of respondent vide which arbitrarily flat no. 1002 of the complainant was changed to 1003.
 - b. He also referred to definition of promoter under the Act, i.e., section 2(zk). In terms of the said definition, as respondent No.2



has taken over all the liabilities and duties of respondent no.1 after the settlement between respondents, therefore respondent no.2 steps into shoes of promoter.

- c. He invited the attention of Authority to para 5 at page 6 of reply which clearly exhibit that respondent No.2 is under an obligation to hand over flat. He also referred to point 4 of Pag 31 of orders of Hon'ble Delhi High Court dated 29.09.2006 which mentions that a joint venture agreement was entered between non-applicant no. 1, Pardesi Developers & Infrastructure Pvt Ltd and respondent no.2 CMD Buildtech Pvt. Ltd to develop and construct real estate project namely 'Ushay Towers' in Kundli. It clearly establishes that whole liability is of respondent no.2 to hand over possession to the allottee complainant . Though occupation certificate was received by the respondent in year in 2018, but no possession has been offered to the complainant.
- d. He referred to annexure A1 at page 18 which mentions about allotment letter dated 06.01.2011 for allotment of flat no.1002. The receipt placed at Annexure A3 shows that amount of ₹15 lakh is full and final payment against the flat in question. Further there may settlement between the parties i.e. complainant and respondent no.1 CMD Buildtech Pvt. Ltd against the payment which satisfied the amount against the total sale price of the flat. Counsel for



complainant states that whole idea to attach the agreement is to show the time period for calculating the delay possession charges. In absence of BBA, the allotment letter be considered as a full and final agreement between the parties.

e. Also, counsel for complainant requested for offer of possession of same unit or different unit of same area.

3. Ld counsel for respondent stated that:

- a. Application dated 01.12.2023 filed by the complainant has not been received by him.
- b. In compliance of order dated 20.09.2023, he stated no communication was made by the respondent no.2 before cancellation of flat .
- c. Further, refer to page 11 of reply, which clearly mentions that complainant was aware about the change of unit. He further argued that complainant had made all the payments to respondent no.1 CMD Buildtech Pvt Ltd. When complainant approached the respondent no.1 for allotment of a flat, at that time no construction was going on at the site and possession could not have been offered by the respondent no.1 at that time. Thus there is no question of making full and final payment to the respondent no.1.



- d. He submitted that the total sale consideration of unit is ₹47,43,375/- , whereas complainant has made payment of only ₹15 lakh and that too to the respondent no.1.
 - e. He also, stated that the receipt attached by complainant is forged and fabricated.
 - f. Respondent referred to email dated 27.07.2022 at page 38 of reply which shows that complainant had consented to take the possession of flat no.1003. However, as complainant did not make timely payment of balance amount, respondent cancelled the flat of complainant
4. Authority put specific question to complainant counsel that how the complainant is in custody of builder buyer agreement? To this counsel for complainant stated that this agreement may have served to complainant for execution. However, later on there may have been understanding between the complainant and respondent no.1 that there is no requirement of signing the same and receipt attached may be considered as full and final payment.
5. Authority ask the respondent about availability status of flat no.1003. Regarding the same, Ld counsel for respondent stated that he will seek instructions from his client.
6. Authority observes that email dated 27.07.2022 as attached by the respondent no.2 in reply, is a typed document and not a print out of

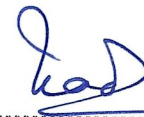


actual email. Authority directs respondent no.2 to submit copy of original email or screenshot of this referred email to prove that this email has been sent by the complainant. The respondent no.2 was further asked to clarify to the respondent whether respondent has sent details of amount due to the complainant and proof thereof. What further steps respondent took after complainant agreed for change of unit and to the pay the balance amount. To this counsel for respondent no.2 stated that he will seek the instructions from the respondent.

7. Case is adjourned to 13.03.2024. A last opportunity is granted to respondent No.2 to file reply of queries of the Authority and documents in support of his claim. Also, respondent No.2 is directed not to create any third party rights against flat no.1003 of the complainant. In case third party rights are already created, one unit of similar size and similarly situated may be reserved for the complainant till the disposal of this matter. Details regarding the same be also filed before the next date of hearing.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]