



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 775 OF 2019

Ajay Sharma

....COMPLAINANT(S)

VERSUS

Idyllic Private Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 20.07.2022

Hearing: 12th

Present: -

Mr. Vivek Suri, learned counsel for the complainant through video conference

Mr. G Gupta, learned counsel for the respondent through video conference

ORDER (RAJAN GUPTA-CHAIRMAN)

Today is 12th hearing of the matter. On each of the previous occasions parties sought seeking adjournment. Further for considerable period

of time this matter remained adjourned for the reason that jurisdiction of Authority to decide the complaint in which relief of refund had been sought remained sub-judice before Hon'ble High Court and Hon'ble Supreme Court.

2. Broad facts averred by complainant are that he had booked a plot measuring 347 sq. yds. in the project 'Panchkula Eco City' of respondent located in Sector-12 Extension-II. Plot No. E-331 was allotted to complainant on 17.7.2012. Total consideration of plot was Rs.77,76,964/-. Between the date of booking and 26.12.2014. Complainant paid an amount of Rs.46,66,177 to respondents. Complainant alleges that booking of plot was done by respondents even without obtaining licence. Further, no builder-buyer agreement has been agreed. Even after receiving such substantial payment, respondents have not completed the colony or made any offer of possession. Now much delay having been caused, complainant is no longer interested in possession of the plot. He seeks refund of money along with interest.

3. Respondents admit payments made by complainant. They allege that it is the complainant who did not sign builder-buyer agreement. Further, this was a construction link plan and complainant was supposed to make all payments at pre-defined intervals. Respondents have completed the colony and had offered possession to large number of plot holders who have even constructed their apartments. As an evidence of having completed the colony, respondents have annexed a letter dated 17.10.2017 addressed by Chief Engineer, HUDA to Director Town & Country Planning Department in which

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it has been specified that all developmental works including roads, water supply, sewerage, storm water, street lights etc. have been constructed at the site. Respondents claim that since the colony was complete, complainant should have paid balance consideration whereafter they would have offered possession.

Respondents further state that complainant has been defaulting in making payment of due instalments. In support of their averments, they have annexed 3 letters, dated 08.08.2014 which is a ninth payment reminder, letter dated 09.09.2014 which is a tenth payment reminder and dated 21.11.2014 which is also a payment reminder. It has been argued that complainant has been severely defaulting in making payments, they having invested of money received from allottees in the project and have fully completed the project, therefore, complainant is not entitled to refund. If complainant pays up remaining overdue amount, they will be ready to offer possession to the complainant. Further arguments of respondents is that colony is already partly occupied and large number of allottees have already taken possession or even constructed their houses/ apartments. On this basis, respondents have sought dismissal of their complaint.

4. Authority has gone through the averments of both parties. There is no dispute in the fact that by December, 2014, complainant had made a payment of about Rs. 46,66,177/- against total consideration of 77,76,964/- .

Thereafter as per construction link plan, respondents have been demanding



further payments which complainant did not make. Adequate reasons have not been cited by complainant for not making such payments.

Further, fact of the matter is that respondents have completed the colony, as has been certified by Chief Engineer, HUDA. There appears no default on the part of respondents. Respondents, however, on account of non-payment by complainant should have issued them a cancellation notice which they failed to do.

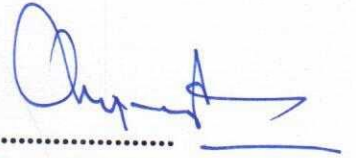
5. On balance, Authority observes that there appears to be default on the part of complainant in not making due payments for no justifiable reason and respondents on the other hand did not issue a cancellation notice and complainant has suffered loss of time value of money paid by him to respondents.

6. Authority considers that in interest of equity and justice, it would be fair that 17.10.2017 shall be considered as the date of completion of colony and equities between the parties will be decided as on that date. The period after 17.10.2017 till now will be considered as zero period. Also, the matter remained sub-judice earlier before Consumer Court and now before RERA during this period. Therefore, period after October, 2017 will be treated as zero period for both the parties.

7. The colony having been completed, prima-facie the refund sought by complainant does not appear to be justified. An offer of possession deserves to be made to complainant by preparing a statement of accounts prepared as in

the month of October, 2017. If complainant had delayed in making payments, respondents would be entitled to charge interest on such delayed payments @ MCLR+2% as is obtained on the date of passing this judgment. Further, complainants will be entitled to delivery of possession within 2 years of making substantial payments, for which due date of delivery of possession needs to be determined. Whatever due date is determined by Authority, delay interest from that date upto the date of receipt of certificate of Chief Engineer, HUDA shall be payable by respondents to complainant.

8. Adjourned to **27.10.2022.** for further arguments.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]