

Harish Minocha

Vs.

Chandigarh Overseas Pvt. Ltd.

RERA Regn .No. PBRERA-SAS81-PM0010

Present: Ms. Baani Chibbar, Advocate for the complainant.
None for the respondent.

The complainant entered into a buyers agreement on 24.12.2007 in respect of purchase super built up area of 125 sq. ft. in Design Studio no. 11, Floor No. 6, Block A1 under the scheme called "Small Investor Scheme" in Industrial Knowledge (Fashion Technology) Park. The total sale consideration for unit was Rs. 5,00,000/- against which an amount of Rs. 4,75,000/- was paid within the stipulated time period. The balance amount of Rs. 25,000/- was to be paid within 10 days of the offer of possession. Further, the possession of the unit was to be handed over to M/s. Greenfield Sites Management Pvt. Ltd. as the same was to be taken over by them on lease. The complainant was assured of rentals from M/s. Greenfield Sites Management Pvt. Ltd. on account of lease agreement and accordingly the same was executed between both the parties on 24th December, 2007. The respondent had promised to hand over possession within 30 months of the start of construction i.e. by the end of June, 2010.

The possession has not been offered by the respondent to the complainant to so far, as a result of which he has suffered both the loss of lease rent from the leasing company as well as loss of interest on the payment retained by the respondent for no justifiable reasons. The respondent in his reply has accepted the fact that the construction of the project could not be carried out on account of series of reasons both legal and financial. In para 6 of the reply the respondent has stated as under:-

"6. Therefore, under the conditions mentioned herein above each of the parties have to bear their own losses. The construction cost since time the agreement was executed between the parties and the force majeure conditions were removed, have gone skyrocketing and it is impossible for the answering opposite parties to have over the possession of the unit being commercial in nature to the complainant or any other similarly situated persons at the same price. The construction material price index from 2010 till now is annexed herewith and marked as Annexure R-4 which would show 100% increase in the cost of construction."

Further, the respondent has mentioned that on account of non-payment of balance amount of Rs.25,000/- the amount of Rs.4,75,000/- paid so far by the complainant has been forfeited due to default on the part of the complainant. Respondent was called for several times but no one came present on behalf of respondent, even after knowing the said date fixed for arguments. This court waited till 4.00 P.M. but none came present. Despite giving repeated opportunities, it appears that respondent is deliberately and wilfully not appearing before the Authority and is delaying the court proceedings too. Accordingly, it was decided to proceed ex-parte and matter be argued in the absence of the respondent.

From the perusal of the reply, it appears that respondent has nothing more to say beyond the written reply filed by him. The same has been examined in detail. Based on the complaint and the reply and also oral and written arguments by the complainant, the following is concluded:-

1. That the respondent has failed to carry out the construction as per the terms and conditions of the agreement to sell.
2. The respondent does not intend to carry out the construction.
3. The respondent has made a wrong submission that a sum of Rs.161250/- has already been returned to the complainant, as this amount was received by the complainant towards the delay charges, already agreed upon between the complainant and the respondent.
4. The respondent has claimed to have confiscated the entire amount of Rs.4,75,000/- which is totally illegal.
5. The complainant is seeking to withdraw from the project on account of contraventions of under section 18(1) by the respondent. He is entitled to the refund of the entire amount paid by him alongwith the interest, as prescribed in the Act and Rules made thereunder, from the date the payments were made by her.

Based on the merits of the case and the facts as discussed above, the following is ordered:-

- i. The respondent shall refund the entire payment of Rs.4,75,000/-, so paid by the complainant, as provided U/s. 18(1) alongwith interest w.e.f. the dates the respective payments were made, as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time, till the date of this order. This amount shall be paid within 60 days of this order.

- ii. In the second part, the respondent shall pay interest to the complainants from the date after the date of this order, till the date of payment, to the complainants as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time.
- iii. The complainant has not made any demand for payment of compensation and has categorically stated that he is not seeking the same as such he is not entitled to any compensation.
- iv. No other relief is made out.

The complaint is accordingly disposed off. File be consigned to record room and copy of order be provided, free of cost, to both the complainants and the respondent.

Chandigarh
Dated: 07.07.2020


(SANJIV GUPTA)
Member
RERA, Punjab

07/07/20