

**BEFORE SH. AJAY PAL SINGH, MEMBER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB, AT
CHANDIGARH.**

Complaint GC No.1490 of 2019BFTR

Date of Institution: 17.02.2020

Dated of Decision: 22.12.2022

Tarlochan Singh, House No.40, GLEDWA, Chandigarh, Haryana, Pin Code 136128.

2nd address:

House No.40, GLEDWA, Kurukshetra, Haryana, Pin Code 136128.

.....Complainant

Versus

1. M/s Sushma Buildtech Ltd, Unit No.B-107, Business Complex, Elante Mall, Ist Floor, Industrial Area, Phase-1, Chandigarh, Pin Code 160002.
2. Bharat Mittal, House No.233, Sector 7, Panchkula, Haryana, Pin Code 134109.
3. Binder Pal Mittal, Director, House No.233, Sector 7, Panchkula, Haryana, Pin Code 134109.
4. Pardeep Kumar, Director, House No.840/1, Ram Darbar Colony, Industrial Area, Phase 2, Chandigarh, Pin Code 160002.

.....Respondents

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri Iqbal Singh Ratta, Advocate, counsel for the complainant
Shri Sanjeev Sharma, Advocate, counsel for the respondents

ORDER

1. The complaint in this case was filed in the year 2019 in Form-N before the Adjudicating Officer. Subsequently, vide order dated 23.02.2022, the Adjudicating Officer, has transferred the prayer regarding refund and interest to the undersigned keeping in view the decision of the Hon'ble Supreme Court in case of **M/s. Newtech Promoters and Developers Pvt Ltd Vs. State of UP & Ors** –Civil Appeal No.(s) 6745- 6749 of 2021. The prayer with regard to compensation has been retained by the Adjudicating Officer for further proceedings.


2. The main averments in the complaint are that the complainant had booked one flat in the respondent No.1's project by the name of Sushma Chandigarh Grande situated in Zirakpur Tehsil for a consideration of Rs.52,40,000/- by way of buyers agreement, dated 29.04.2017. It has been stated that, in total a sum of Rs.13,89,700/- has been paid by the complainant. However, no further amount was paid as the respondent No.1 did not supply a copy of the buyer's agreement dated 29.04.2017. In the circumstances, the complainant had prayed for refund of Rs.13,89,700/-, alongwith interest.
3. The respondents have filed their reply vide letter dated 28.02.2021. The main submissions in the reply are as follows:-
 - i. That the complainant has concealed the fact that the allotment was cancelled in the year 2019 by way of a cancellation letter and a publication in the newspaper. As this fact has been concealed by the complainant, the complaint deserves to be dismissed..
 - ii. That the complainant had originally booked the apartment by paying a sum of Rs.6,38,700/- and entering into a buyers agreement dated 12.10.2017. As per the buyer's agreement, the complainant was to pay a sum of Rs.55,77,600/- within thirty days of the booking date. However, he failed to do the same inspite of numerous reminders and finally a show cause notice for cancellation was issued on 15.02.2018; as per Annexures R7, R8 and R9. Subsequent to the cancellation notice, a sum of Rs.7,51,000/- was paid by the complainant, out of the total due amount of Rs.66,64,759/-. Ultimately, vide letter dated 06.02.2019, the allotment of the complainant was cancelled. The said cancellation was also advertised by way of newspaper clipping, as per Annexure R13.
4. The complainant filed rejoinder to the reply, wherein, the averments of the complaint were reiterated and those of the reply were denied.



5. I have perused the complaint and the written and oral arguments of both sides. During the course of arguments, the counsel for complainant prayed for refund after deduction of 10% of the amount paid. It was submitted by the complainant that further instalments could not be paid as the respondents failed to provide the complainant with a copy of the agreement to sell due to which he was not able to get the loan sanctioned from the HDFC Ltd for Rs.25,00,000/-. With regard to forfeiture of only 10% of the amount paid, the counsel has relied upon the decision of National Consumer Disputes Redressal Commission in case of **DLF Ltd Vs. Bhagwanti Narula**, bearing *Revision Petition No.3860 of 2014 in FA No.10 of 2014* and also on the decision of Haryana Real Estate Appellate Tribunal in case of **Shakti Singh Vs. M/s Bestech India Ltd** bearing *Appeal No.279 of 2019*.
6. On the other hand, the counsel for the respondents emphasized upon clause 7.4 of the agreement to sell, wherein it has been clearly laid down that if the instalments were not received within 90 days from the due date, the booking was liable to be cancelled and balance amount after deducting the earnest money and outstanding interest for delayed payments was to be refunded to the buyer on resale of the apartment. It was submitted that, as the buyer had failed to pay the instalment of Rs.55,17,600/-, payable within thirty days from the date of application i.e. by 29.05.2017 and after having given several opportunities to the buyer to pay the same, the allotment was finally cancelled on 06.02.2019.
7. I have perused the facts of the matter and have considered the respective submissions made by both the parties. The complainant had applied for one apartment in the respondent No.1's project namely, Sushma Chandigarh Grande, vide application dated 29.04.2017 and paid a sum of Rs.6,11,196/- by way of earnest money. An allotment letter was issued against the said booking, in the name of the complainant, on 12.10.2017 and residential unit No.D701, in Tower-D was allotted to the complainant. Simultaneously, On 12.10.2017 an apartment buyer's agreement was also signed. The total BSP for the apartment was fixed at

Rs.66,00,000/- and the payment plan was given at clause 3 of the agreement. As per the payment plan, a sum of Rs.52,80,000/- was payable within thirty days of the application i.e. by 29.05.2017. In the reply filed by the respondents, it has been stated that the agreement to sell was not registered as the complainant did not come forward to register the same. The respondents have apparently not rebutted the main allegation of the complainant that the copy of the agreement was never supplied to them i.e. both the copies were retained by the respondents. Be that it may, it cannot be denied that the complainant was liable to pay Rs.52,80,000/- within thirty days of the date of application for booking and this fact has also been mentioned in the allotment letter dated 12.10.2017. Needless to say that, after several reminders and show cause notices to cancel the allotment, the complainant finally paid an additional amount of Rs.7,51,000/-, in the year 2018. Subsequently, further show cause notices were issued by respondent No.1, as per Annexures R10 and R11 of the reply, asking the complainant to pay the balance amount, failing which the allotment will be cancelled. Finally after having received no reply, the allotment was cancelled vide letter dated 06.02.2019 (Annexure R12 of the reply). Para 4 of said letter reads as under:-

"Despite of various demand, reminder, reminder-1, Termination we are left with no option to cancel the allotment of the Unit No.D-701 on 7th Floor, and the earnest money, administrative charges, interest and any other will be forfeited and the balance amount will be refunded without any interest on the resale of the unit. In view of the cancellation of the allotment of the Unit NO.D-701 on 7th Floor, the company will be entitled to sell the same to any other person and you will not have any kind of right, title or interest of any kind on the unit No.D-701 on 7th floor, therefore, you are requested to return the original papers of the unit o the company alongwith duly sworn affidavit from the executive magistrate to the effect that you have not mortgaged, alienated or created any charge of any type on the unit in question."

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8. No correspondence has been submitted by the complainant in either his complaint or in his rejoinder to show that he had ever challenged the cancellation show cause notices before the said cancellation. A legal notice was issued by the complainant to the respondent on

23.09.2019 and finally a complaint was filed to this Authority on 17.02.2020. Clause 7.4(b) of the agreement to sell reads as follows:-

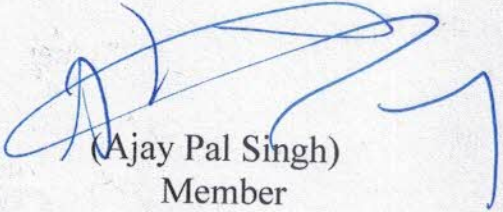
"If there is delay or default in making payment of the instalments by the buyer, then the buyer shall pay to the developer interest which shall be charged @ 24% per annum from the due date of payment of instalment on monthly compounded basis. In addition to the buyer's liability to pay interest as mentioned hereinabove, the buyer shall also be liable to pay and reimburse to the developer, all the costs, charges and expenses whatsoever, which are borne, paid and/or incurred by the developer for the purpose of enforcing payment of and recovering from the buyer any amounts or dues whatsoever payable by the buyer under this agreement. However, if the instalments/payments are not received within ninety (90) days from the due date or in the event of breach of any of the terms and conditions of this agreement and/or conveyance deed by the buyer(s), the booking will be cancelled at the sole discretion of the developer and earnest money paid to the developer by the buyer shall stand forfeited and the buyer shall be left with no right or lien on the said unit. The balance amount (after deducting the earnest money and outstanding interest for delay payments, if any, and other charges as mentioned herein) shall be refunded to the buyer on resale of the apartment. The dispatch of said cheque by registered post/speed-post to the last available address with the developer as filled up in the application form (as applicable) shall be full and final discharge of all the obligation on the part of the developer or its employees and the buyer will not be entitled to raise any objection or claim on the developer in this regard."

9. It is not clear how much has been forfeited by respondent NO.1, in terms of the above clause of the agreement to sell. In case of **DLF Ltd, cited supra**, it has been held that an amount exceeding 10% of the total price cannot be forfeited by the seller since forfeiture beyond 10% of the sale price would be unreasonable. This view has been reiterated by the Haryana Real Estate Appellate Tribunal in case of **Shakti Singh, cited supra**. In the circumstances, it is held that even though no fault can be found in the cancellation of the allotment on account of the failure of complainant to pay the due instalments, nevertheless, a forfeiture of more than 10% of the sale price of Rs.66,00,000/- would not be reasonable. Hence, a refund of Rs.7,29,700/- (Rs.13,89,700/- minus Rs.6,60,000/-) would be due to the complainant alongwith interest as per State Bank of India's

highest marginal cost of lending rate under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules 2017 from 06.02.2019 till the refund is given.

10. In view of above discussions and observations, it is ordered that the respondent No.1 and 3 shall refund the amount of Rs.7,29,700/- to the complainant along with interest as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% in view of the provisions of Rule 16 of the Rules w.e.f. 06.02.2019 till the date of refund. This amount be refunded to the complainant within two months of this order.
11. In the result, the complaint is partly accepted in the above terms. File be consigned to record room and copy of the order be provided to both the parties free of costs.

Dated:22.12.2022



(Ajay Pal Singh)
Member
Real Estate Regulatory Authority