

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR

Complaint No. RAJ-RERA-C-2024-6984^{N-}

Purnima Mukherjee ...Complainant

VERSUS

Ravi Surya Affordable Homes Private Limited ...Respondent

Present

Smt. Veenu Gupta, Hon'ble Chairperson

1. Adv Amit Chhangani, on behalf of the complainant
2. Adv Hardik Mishra, on behalf of the respondent

Date of Order: 18.11.2024

ORDER

1. The factual matrix of the case is that the complainant has lodged a complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to the project 'Surya Residency' bearing registration No. RAJ/P/2017/501 in which the complainant booked unit No. A-703 for consideration of Rs. 29,90,000/-, against which an amount Rs. 10,27,812/- had been paid by the complainant. Agreement to sale has been executed between the parties on 05.08.2020. The respondent promised to give possession by 30-11-2023 according to ATS. Thereafter, respondent issued cancellation letter dated 16-05-2022. Complainant then approached Hon'ble RERA to quash and set aside the cancellation letter, then RERA passed an order dated 07-08-2023 for quashing the cancellation. Then also respondent is not able to give possession as the project is incomplete. The complainant prays that his paid amount be refunded along with 24% interest.



2. Reply has been filed by the respondent contending that the complainant has filed a former suit in which the relief sought was of possession and the same was decided earlier, then this complaint is filed for refund of the entire amount deposited along with interest. But according to Order 2 Rule 2 of CPC, 1908 the complainant is not entitled to claim any further relief by filing a separate complaint before Authority. The complaint is also liable to be dismissed on ground that the respondent company was incorporated as partnership firm but complainant has mentioned it as a Pvt. Ltd. Company in form-N of complaint. The complaint miserably failed to pay the remaining amount which is amounting to 20,35,603/- excluding taxes and defaulted in payment. Despite various demand letters and legal notices the complainant defaulted in payment so cancellation letter was issued. All other customers including complainant defaulted in timely payment. The delay was due to conditions which were beyond control of the respondent which are COVID-19, order of Supreme Court restraining the mining of sand/ bajri, notices from Pollution Control Department restraining ongoing construction activities in Delhi, NCR including Rajasthan, demonetization, GST law came in force, RERA came into force. The respondent prays to dismiss the complaint, direct complainant to pay interest on overdue amount as per ATS.



3. Rejoinder has been filed by the complainant stating that the facts, grounds, cause of action as well as relief sought in earlier complaint and present complaint are entirely different, therefore, the principle of *res judicata* does not apply. Timely completion of project and consequently timely delivery of possession is contractual commitment of the promoter but the promoter has failed to fulfill.

4. Counsel for the complainant argued that possession was to be delivered on 30.11.2023. The earlier complaint pertained to setting aside the cancellation letter dated 16.05.2022 and the same was allowed by the Authority vide order dated 07.08.2023. Since the agreed date of possession was 30.11.2023, therefore, the complainant could not claim relief under section 18 of the Act with regard to refund with interest at that point of time. Thus, the only request at that point of time was for setting aside the cancellation. The relief sought in the present complaint is for refund with interest after the due date of completion of the project, i.e., 30.11.2023 has passed.

5. Counsel for the respondent argued that the total consideration of the unit was Rs. 29.00 lakh, out of which, the complainant paid only Rs. 10,27,800/- which is only 35% of the total consideration. Since the complainant failed to pay the remaining amount, the unit



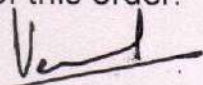
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was cancelled. The project registration has been extended upto 30.11.2024. However, there is no completion certificate as of now.

6. Heard the arguments and perused the record. The current status of the project is that it is still incomplete. Also, the principle of *res judicata* does not apply as the relief sought in the earlier complaint was different. The cause of action, in the earlier complaint, was the cancellation letter issued by the promoter. The relief sought in the present complaint is refund with interest as the promoter has failed to complete the project and handover possession.

7. In view of the above observations, the respondent promoter is directed to refund the deposited amount and delay interest is allowed from the due date of completion, i.e., 30.11.2023 till such time refund is made at the prescribed rate of 9.10% highest MCLR of SBI + 2%, i.e., 11.10% per annum excluding moratorium period, if any. Compliance be made within 45 days of uploading of this order.




(Veenu Gupta)
Chairperson