

**THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY, JAIPUR**

COMPLAINT NO.RAJ-RERA-C-2017-2057

Amit Kukreti - Complainant (applicant)

Versus

Sarvawas Housing Bhiwadi Pvt. Ltd. – Non applicant

**PRESENT**

**Shri Nihal Chand Goel - Hon'ble Chairman**

**Shri Rakesh Jain - Hon'ble Member**

- (1) Shri Mitesh Rathore – Chartered Accountant – representative for the applicant
- (2) Shri Ashish Ghiya – Chartered Accountant representative for the non applicant

**Date of order : 3.4.2019**

**ORDER**

Shri Amit Kukreti has filed a complaint before the Authority on 11.11.2017 to which the non applicant company has submitted its reply on 2.5.2018.

Shri Mitesh Rathore appearing for the applicant reiterates the pleas mentioned in the application and insists that serious action may be taken against the non applicant company. He also pressed for refund of the deposited amount along with interest.

Shri Ashish Ghiya, authorized representative of the non applicant has submitted written application stating that they want to withdraw from the case since the non applicant company is not providing them any details to defend their case. He has nothing further to say.

Based on the pleadings before the Authority, it is admitted position of both the parties that Shri Amit Kukreti had booked a dwelling unit in the Bhiwadi project (Aravali





Gardens)of the non applicant company and that a total amount of Rs.4,67,255/- has been paid by the applicant to the non applicant company as an earnest money/instalment deposit for the said dwelling unit. It is also admitted position of the parties that they had entered into a written allotment agreement dated 15.4.2014 wherein obligations of the parties were detailed out. As per the said allotment agreement the non applicant company was to deliver the possession of the dwelling unit within a period of twenty four months (with a grace period of further six months) subject to payment by the applicant as per the schedule of payment given in the agreement.

The applicant has stated in the application that the non applicant company has delayed the project very badly. While the dwelling unit was to be handed over within two years, no construction has even been started within that period. The non applicant company has made no comments about the stage of construction in its reply, to controvert the statement of the applicant. The non applicant company has in its reply stated that the applicant has not completed the payment as per schedule and has not paid other instalments despite a number of written reminders. But the non applicant company has not filed copy of demand letters in support of their contention. Shri Mitesh Rathore, Authorized Representative of the applicant has confirmed that no demand note or reminders for payment were received from the company and there was no occasion for dishonoring the schedule of payment. The contention of the non applicant company that payment was not made as per schedule, is not found acceptable as having regard to the progress (or lack of it) of construction, no further instalments had fallen due.

The non applicant company has also stated in the reply that the applicant had asked for refund of the booking amount but did not complete the requirements for cancellation of the booking. This position of the non applicant company is also not acceptable as there was no progress in the construction of project and refund was being asked for the default of the non applicant company. Shri Mitesh Rathore, Authorized Representative of the applicant confirms that no case is pending in any court of law.

The Registrar of the Authority, who was asked to submit registration status of the project, has appeared with the project registration file and brought to the notice of the



Authority that the said project is named "Arawali Gardens". It was registered by the Authority and the registration of the project was issued by the Authority on 23.10.2017 with the completion date being shown as 25.10.2020.

But in the present case, there was a written agreement between the parties that the possession of the flat will be delivered within two or two and a half years which period has already elapsed before the registration of the project. Therefore, notwithstanding the date of completion of the project shown in the registration, in the present case it is well established that the non applicant company has failed to deliver the possession as per the terms of the agreement for their own default and would, therefore, attract the provisions of Section 18 of the Real Estate (Regulations and Development) Act, 2016 for the return of the amount along with interest if the allottee wishes to withdraw from the project in case the promoter fails to complete or is unable to give possession of the apartment.

In the light of above discussions and findings, it is hereby ordered that non applicant company shall refund the full amount of Rs.4,67,255/- to the applicant along with interest at the rate of SBI Highest MCLR + 2%, i.e.,  $8.75+2 = 10.75$  per cent as provided in the Rajasthan Real Estate (Regulations and Development) Rules, 2017, i.e., from the date of each deposit. The refund will be made by the non applicant within 45 days from today.



(RAKESH JAIN)

Member



(NIHAL CHAND GOEL)

Chairman