

RAJNI SIHAG & ANR. V. GREATER MOHALI AREA DEVELOPMENT AUTHORITY

1. RAJNI SIHAG & ANR.

D/O MOHINDER SINGH R/O 951 A, SECTOR-7-B,
CHANDIGARH

2. MS RINA

D/O MOHINDER SINGH R/O 951 A, SECTOR7-B,
CHANDIGARH

.....Complainant(s)

Versus

1. GREATER MOHALI AREA DEVELOPMENT AUTHORITY

(GMADA)

THROUGH CHIEF ADMINISTRATOR PUDA BHAWAN,
SECTOR 62,
S.A.S. NAGAR
PUNJAB

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2320 OF 2017

Date of Judgement: 13 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Ms. Anubha Aggarwal, Advocate

For the Opp.Party : Appearance not marked

Facts:

Complainants booked a flat in OP's (GMADA) housing project "Purab Premium Apartments" and paid Rs. 76,34,250/- against tentative price of Rs. 69 lakhs. As per Letter of Intent dated 22.05.2012, possession was to be delivered within 36 months i.e. by 22.05.2015. OP failed to issue allotment letter/offer possession by due date of 22.05.2015. Complainants sent notice on 30.12.2016 for refund of money. OP replied on 07.02.2017 stating allotment letter and possession offer was issued on 30.06.2016. Complainants disputed receipt of 30.06.2016 letter and filed consumer complaint seeking refund with interest.

Court's Opinions:

Burden was on OP to prove allotment letter was correctly addressed and dispatched to complainants. OP failed to provide any documentary proof like dispatch register, original envelopes etc to establish this. In absence of such proof, complainant's version is accepted and OP failed to discharge its burden. As per Letter of Intent, OP is bound to refund amount paid along with 8% p.a. compounded interest.

Arguments:

Complainants:

Never received any allotment letter or possession offer from OP. Entitled to refund as per Letter of Intent.

OP:

Allotment letter and possession offer was issued on 30.06.2016 but returned undelivered. Thereafter uploaded on website. Complainants not entitled for refund.

Referred Sections: None

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Court

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Full Text of Judgment:

1. Heard counsel for the parties.
2. Rajni Sihag and another have filed above complaint for

directing the Greater Mohali Area Development Authority (the opposite party) to refund the amount deposited by them along with interest @18% p.a.; to pay Rs.500000/- as compensation for harassment; to pay Rs.500000/- as compensation for mental agony; to pay Rs.500000/- as compensation for deficiency in service and to pay cost of litigation or any other relief which is deemed fit and proper in the facts and circumstance of the case.

3. The complainants stated that the Greater Mohali Area Development Authority is a statutory body, constituted under Punjab Urban Planning and Development Act. The opposite party launched a scheme of group housing project in the name of "Purab Premium Apartments" in the year 2012. The complainants applied for allotment of a flat and deposited the application money on 17.04.2012. Thereafter, by way of lottery, the complainants were allotted a flat and as per Letter of Intent for Allotment dated 12.05.2012, the complainants had deposited the instalment on due dates and upto 18.05.2015, total amount of Rs.7634250/- has been deposited as against tentative price of Rs.69/- lacs. As per Clause 3 of the Letter of Intent for Allotment, the possession has to be delivered within 36 months' from the date of issue of letter of intent. The Letter of Intent for Allotment was issued on 22.05.2012 and due date for possession was 22.05.2015, but the opposite party did not issue allotment letter/offer of possession. Thereafter, the complainants gave notice dated 30.12.2016 giving their option to refund of the money in terms of letter of intent. The notice dated 30.12.2016 has been replied by the opposite party vide letter dated 07.02.2017 in which the opposite party has stated that the Letter of Allotment and offer of possession was issued on 30.06.2016. On the allegation that this letter was never served upon the complainants, the complainants again wrote a letter dated 01.03.2017 to the opposite party for refund of the money and thereafter this complaint has been filed.

4. The opposite party has filed its written reply in which the opposite party has taken plea that Letter of Allotment and

offer of possession was issued on 30.06.2016 on the address as supplied by the complainants along with application form. The letter was returned back with an endorsement "door locked". Thereafter, the letter was again dispatched on the same address for a second time and it was also received back with endorsement "addressee left". Thereafter, letter was uploaded on the website for public notice. In spite of public notice, the complainants did not come forward for taking up the possession. Although there was small delay in issue of letter of allotment/offer of possession, but before the right for cancellation being exercised by the complainants, it was issued to them. Therefore, the complainants are not entitled for refund of money.

5. The complainants filed rejoinder reply in which the issue of letter of allotment as well as/offer of possession has been disputed. The complainants filed Affidavit of Evidence of Rajni Sihag. The opposite party has filed Affidavit of Evidence of Mr.Mahesh Bansal, Estate Officer (Housing). Both the parties have filed their written synopsis of arguments.

6. We have considered the arguments of counsel for the parties and examined the record. From very beginning, the complainants are denying service of letter of allotment /offer of possession, alleged to have been issued on 30.06.2016, but the opposite party has failed to file any written proof in this respect. The allegation of issue of letter of allotment being rebutted, burden lies on the opposite party to prove the fact that the letter of allotment was dispatched on correct address of the complainant and it was later on uploaded on website, but neither the date of dispatch nor the date of uploading the letter on website has been mentioned in the affidavit of evidence filed by the opposite party. The opposite party did not file any documentary proof although they could have filed original envelop containing endorsement and copy of dispatch register. The opposite party could not discharge its burden, as such, the allegation of complainants is accepted. In the terms of letter of intent, the opposite party is bound to return the money along with interest @8% p.a. compounded

yearly.

ORDER

In the result, complaint is partly allowed. The opposite party is directed to pay entire amount deposited by the complainants with interest @8% p.a. compounded yearly from the date of respective deposits till the date of payment, within two months from today.