

छत्तीसगढ़ भू-संपदाविनियामकप्राधिकरणरायपुर

आदेश पत्रिका

क्रमांक-04

प्रकरणक्रमांक-M-PRO-2023-01870

आवेदक :-श्रीमती साधना सिंह,पति-श्रीमनीष प्रताप सिंह, निवासी-307, दलजीत अपार्टमेंट, शंकर नगर, रायपुर (छ.ग.) विरुद्ध मेसर्स अग्रवाल कन्स्ट्रक्शन एण्ड कॉन्ट्रेक्टर्स, प्रोपराईटर-श्री आकाश अग्रवाल, निवासी-मकान नं.-196,मेट्रो ग्रीन, ग्राम-सड्डू, रायपुर (छ.ग.)

प्रोजेक्ट-"ओवरसीस पॉल्म रिसोर्ट" ग्राम-सड्डू, रायपुर (छ.ग.)

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06 / 02 / 2023	<p>Complainant through L.C. Shri Surana. Respondent through L.C. Shri Shukla.</p> <p>Today case is fixed for order upon application of complainant U/Sec 36 of RERA Act read with section 37 and 38 of RERA Act application is being disposed of by this order.</p> <p>Brief contentions of applicants are that the agreement for sale dated 07.12.2018 was entered into and executed between the respondent and complainant along with her late husband in the project "Overseas Palm Resort" of respondent and the complainant has agreed to purchase Flat no. Floor in Block A of the project admeasuring 925.25 carpet area and 1470 sq. ft super 03, 6th built-up area and for payment of sale consideration the complainant had obtained a loan of Rs. 34,65,000/- from PNB housing. Complainant further submitted that the respondent had assured the complainant to handover the possession of the booked flat along with completed facilities and amenities of the project on or before 03.12.2020. The payments of the booked unit were to be paid by the complainant to the respondent in instalments after completion of stages of construction as mentioned in the agreement to sale and on the completion of stage the respondent was under legal obligation to issue demand notes and after which only the complaintwere required to make payments. The complainant has paid Rs. 2,100/- in cash to the respondent at time of booking of the flat and further out of the sanctioned limit of loan of Rs. 34,65,000/- the respondent had already obtained sumof Rs. 19,79,560.</p> <p>Complainant further contended that despite of being approached the respondent for completion of the project and unit in question respondent paid no hue to such requests and</p>	

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	<p>even stopped receiving calls of the complainant and forced complainant to run from pillar to post and did not even show the booked unit. After demise of the complainant's husband respondent has been insisting and pressurizing the complainant to cancel her booked unit and subsequently respondent vide legal notice dated 07/01/2023 demanding a consideration of Rs. 58,39,932 (Fifty Eight Lakh Thirty Nine Thousand Nine Hundred Thirty Two Rupees) in total towards the registry of the said flat, failing which the respondent claims to have a right to sell the said flat to the third party. As the respondent has not completely developed the project as per the brochure and the approved layout and no demand note/ demand letter in respect of payment has been raised by the respondent, which prime facie establishes that the respondent has clearly breached the terms of the Agreement of Sale. Complainant has always been ready and willing to pay the remaining consideration of the concerned unit. Respondent, with ulterior motive to gain undue financial advantage, is trying to harass the complainant. Therefore complainant requested to pass and order of stay restraining the Respondent from selling the concerned unit to the third party.</p> <p>Respondent neither replied said application nor filed any document and objected the application during argument on the ground that complainant has failed to make rest the payment, on account of instalment due, despite of repetitive demands by respondent.</p> <p>Perusal of record discloses that it has been agreed between the complainant and respondent, vide Agreement for Sale dated 07-12-2018 in para 1.2 explanation (iii), that "the promoter shall periodically intimate in writing to the Allottee, the amount payable as stated in (i) above and the Allottee shall make payment demanded by the promoter</p>	

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	<p>within the time and in the manner specified therein.”</p> <p>In para 1.4 of Agreement for sale it has been also agreed between the parties that “The Allottee (s) shall make the payment as per the payment plan set out in schedule C (“payment plan”).</p> <p>In para 1.11 of Agreement for Sale, respondent has acknowledged the receipt the payment of 2,100 as booking amount and complainant has agreed to pay the remaining price of the apartment, as prescribed in payment plan(Schedule C) as may be demanded by the promoter with in the time and in manner specified there in.</p> <p>It has been further agreed between the parties in para 1.11 of Agreement for sale that “subject to the terms of the Agreement and the promoter abiding by the construction milestone, the Allottee shall make all payments, on written demand by the promoter, within the stipulated time as mentioned in the payment plan (Schedule C) through A/c payee cheque/demapnd draft/bankers cheque or online payment (as A/c no. 289102000000156, IFSC code. IOBA0002891, Indian overseas Bank. Shankar Nagar, Raipur, Chhattisgarh, payable at Raipur.”</p> <p>It is pertinent to mention here that the both the parties has not denied the execution of said Agreement for Sale and as per terms and condition of Agreement for Sale that the respondent was under legal obligation to issue demand notes and only after which complainant was required to make payment. The respondent Advocate during argument stated that the respondent has issued the demand notice dated 07-01-2023 to complainant. It has been specifically mentioned in said notice that if the complainant failed to make payment of Rs. 39,45,900 along with penalty of Rs. 16,94,032 (Total amount 58,39,932) within 7 days agreement for sale dated</p>	

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	<p>07-12-2018 will be terminated and the apartment in question will be sold to other person.</p> <p>Thus, from the language and content of the notice, send by respondent, it is quite vivid and clear that it is not the demand notice but notice of termination of agreement for sale and as per terms and condition of agreement for sale, executed between the parties, it is mandatory and incumbent for the respondent to raise the demand for payment of instalment. As admitted by respondent during argument that apart from the notice dated 07-01-2023 no other demand notice has been raised by the respondent. Thus,prima facie it appears that respondent has never raised demand in respect of payment of remaining price of the apartment as prescribed in payment plan (Schedule C). Therefore, respondent will not be allowed to take advantage of his own failure. In view of circumstances as narrated above it will be in the fitness of things that interest and rights of complainant be protected and secured. Hence it is order that respondent will not dispose of, alienate, transfer the disputed apartment i.e. 3 BHK flat no. 3, 6th floor block no. A of "Overseas Palm Resort" or will not create any third party interest over said apartment by any mode what soever by himself and any person, agent under his Authority till final disposal of this case.</p> <p>With the above this instant application stand disposed off.</p> <p>Case fixed for submission of written statement.</p> <p>N.F. 27-02-2023</p> <p>Sd/- (Deepa Katare) Adjudating Officer</p>	

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