

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no. HPRERA 2023015/C

IN THE MATTER OF:-

Sushil Kumar Choudhary, Son of Sh. Man Singh, resident of House no.741, Sector 16 D, Chandigarh, 160017 and also resident of House no.1736, Sector 34 D, Chandigarh, 160022

.....Complainant

VERSUS

1. BTM Real Estate Developers Pvt. Ltd. through its authorized representative, SCO no. 148, First Floor, Sector 40-C, Chandigarh, 160036
2. Ashok Kumar Kukreja, Director, BTM Real Estate Developers Pvt., SCO no.148, First Floor, Sector 40-C, Chandigarh, 160016
3. Smt. Meena Kukreja, Director, BTM Real Estate Developers Pvt., SCO No. 148, First Floor, Sector 40-C, Chandigarh, 160016

.....Respondent(s)

Present:- Ms. Mandeep Singh Saini Ld. Counsel for complainant Sh. Sushil Kumar Chaudhary

**Sh. Anish Gautam Ld. Counsel for respondent promoter(s)
BTM Real Estate Developers**

Final date of hearing (through WebEx): 12.07.2023

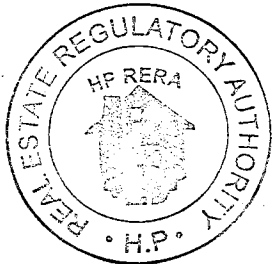
Date of pronouncement of order: 08.08.2023

Order

Coram:- Chairperson and Member

Facts of the Complaint:-

1. This is a complaint filed by Sh. Sushil Kumar Choudhary against BTM Real Estate Developer. The BTM project is registered with HP,RERA with registration number RERAHPSOP07180037. The complainant in

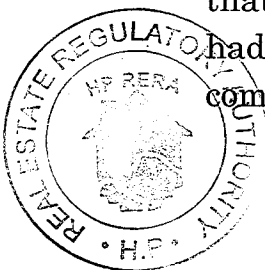


his complaint has stated that he had purchased apartment no. A 102 in Block A, at BTM apartments NH 22 Barog bye pass Kumarhatti, Solan, H.P in the year 2014. The allotment cum possession letter dated 07.07.2014 was issued to the complainant and the said letter is Annexure C-1 with the complaint. It was mentioned in the allotment letter that the full and final payment of the amount of Rs 17 Lakhs in cash was received by the respondents from the complainant qua the said apartment and the possession was given on the same date. It was asserted that the complainant had taken another flat at BTM apartments i.e. Flat no. 311, in the same premises/project from the respondents in 2014 and was in possession of the said flat after paying the full and final amount of Rs. 9 Lakh. However, a letter demanding extra money as the balance of the said flat was sent to the complainant and the electricity and water connections to the said flat were disconnected. It was contended that the complainant filed a consumer complaint against the respondent(s) for the said flat no. 311 which he purchased for himself.

2. It was contended that during the course of events it transpired that Flat no. A 102 was resold by the respondents to some third party without the consent or knowledge of the complainant and this fact came to the knowledge of the complainant in May, 2022 where after a legal notice dated 24/02/2023 was sent to the respondent(s) which is annexed at Annexure C-2 with the complaint. With these pleadings it was contended that the respondent(s) may kindly be directed to return the amount of Rs 17 lakh along with its penal interest as applicable from the date of 07.07.2014 to the complainant in the interest of justice.

3. Reply-

The respondents have filed the reply on 15.05.2023. In that reply they have denied the allegations made in the complaint. The respondents have alleged that the complainant was financier for some part of the project and has illegally retained the photocopy of the document(s) of the property of Apartment No. A 102 in Block-A which was a security document against financing. He has also alleged that a compromise was reached between the complainant and respondent(s) on 24.11.2021 (copy at Annexure R-1 with the reply), in which it was clearly stated that the Rs. 25 Lakh given by the complainant to the Respondent no. 2 had been settled and the Respondent no. 2 owes nothing to the complainant. The respondents have further stressed that the question



of receiving Rs. 17 Lakh separately qua the property in question does not arise.

4. The respondents have also alleged that complainant has misused the property documents retained as security with an ulterior motive to harass the respondents. It was further alleged that the complainant had also misused a cheque in another case for which police case is pending against him in Chandigarh. It was further contended that the complainant is not a bonafide purchaser of the property in question and has misused the document given to him as security for the loan granted by him to the respondents. Therefore, the respondents have prayed for dismissal of the complaint.

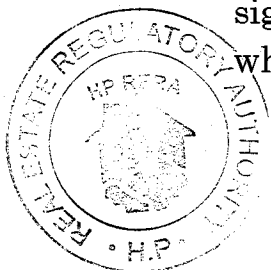
5. **Rejoinder-**

The complainant in his replication has stated that respondents have admitted the allotment cum possession letter at Annexure C-1, which bears the signature of both parties. He has further stated that the respondents are trying to mislead the court with frivolous story that the said allotment cum possession letter was given as security. Further, the compromise note at Annexure R-1 nowhere mentions flat No. A 102 or 311. It was contended that the compromise note at R-1 mentions that complainant has invested Rs. 25 lakh in Flat No. 509, 510 in BTM project at Kumarhatti and respondents in exchange had allotted him space in SCO Sector 14 in Altus Space Builder's. Thus, it was contended that the compromise note R-1 is about other properties and the respondent is unnecessary trying to confuse the Hon'ble Authority by citing R-1, which has nothing to do with the present complaint.

6. The complainant has further pointed out that he has also filed a police complaint against the complainant, which is at Annexure C-5 of the replication. He has also enclosed the complaint filed before the District Consumer Dispute Redressal Commission Chandigarh about flat number 311 which is at Annexure C-4 of the replication.

7. **Arguments by complainant-**

The arguments in this case were heard on 12th July, 2023. Learned Counsel for the complainant argued that the complainant had purchased 3-4 flats in this project for investment purpose. The complainant had purchased apartment no. A 102 by paying 17 Lakh rupees in cash to the respondents, and both the parties had jointly signed the letter of allotment cum possession dated 07th July, 2014, which is at Annexure C-1 with the complaint. Respondents have not



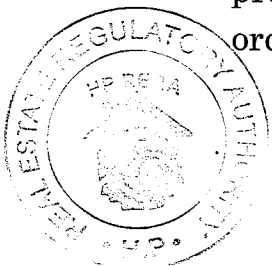
refuted this allotment letter and receipt of money, however, the respondent have tried to mislead and confuse the Hon'ble Authority by placing R-1 with the reply, which pertains to other flats and has nothing to do with apartment no. A 102. The complainant also purchased flat No. 311 in this project, for which he has filed a case in the Consumer Court against the respondents. He further argued that the respondent in his reply is taking undue benefit of his undertaking placed at Annexure C-3, where he stated that he does not have any other document pertaining to transaction of the receipt for purchase of Flat No. A 102, except Annexure C-1. He pointed out that this undertaking was in response to the Authority's inquiry as to whether the complainant has additional evidence to support his case. He further argued that as the Annexure C-1 has been admitted by the respondents, therefore 17 Lakh should be refunded along-with penal interest, as the respondents have already sold this plot to some third party.

8. Arguments by respondents-

The Ld. Counsel for the respondents contested the points raised by the complainant. He contended that the allotment letter was issued in July, 2014 and the complaint has been filed in March, 2023 after a gap of 9 years. The reason behind this inordinate delay is that the allotment letter was actually a security document, against the money taken as loan from the complainant. He then drew the attention of the Authority towards Annexure R-1, according to which a compromise was made between the parties, where complainant was given property in SCO 14 Altus Space Builder Pvt. in lieu of 25 Lakh paid by the complainant as financier. He further stressed that the compromise clearly mentions that after this transaction, nothing is to be paid by Ashok Kumar Kukreja the complainant in this case. He therefore argued that the money transaction has been settled between the parties and nothing is due.

9. Arguments in rebuttal-

In rebuttal, the Learned counsel for the complainant stated that the compromise note at annexure R-1 relates to Flat Nos. 509 and 510 and does not pertain to Flat no. A 102, which is the subject matter of the present complaint. The respondents have attached annexure R-1 in order to mislead and confuse the Authority. Consequently, he reiterated



that the respondents should be ordered to refund the 17 Lakh he paid in lieu of Flat No. A 102, alongwith interest.

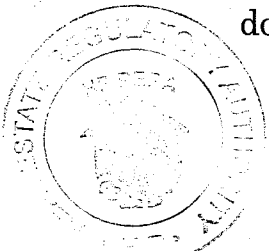
- 10 The Authority asked the Counsel for the complainant to place on record within three days w.e.f. 12.07.2023 any document from the book of accounts or any bank statement to substantiate his contention of making payment of Rs. 17 Lakh to the respondents in terms of the allotment letter Annexure C-1. The counsel for respondents was asked to place on record within three days any loan document executed with the complainant to substantiate his contention.
- 11 No such documents have been placed on record by any of the parties.

12 Findings of the Authority-

The Authority has gone through the record of the case and also have considered the arguments adduced by both the parties. From the pleadings of the parties following issue arises for consideration and needs to be decided-

Whether the complainant is entitled to refund of Rs. 17 Lakh alongwith interest or not?

- 13 The case of the complainant is that he had paid Rs 17 Lakh in cash to the respondents to purchase apartment no. 102 in Block A in the BTM Real Estate Project at Kumarhatti, Solan. The complainant has annexed C-1, which is a letter for allotment cum possession dated 07th July, 2014 in support of his contention, which was signed by both the parties. The contention of the respondents is that the complainant has already been given SCO i.e. shop cum office in Sector 14, Altus Space Builders Mohali, in lieu of Rs. 25 Lakh invested by the complainant in this project. From the perusal of annexure R-1, it appears that a compromise was executed between both the parties. The compromise note at R-1 states that Mr. Sushil Kumar Choudhary (the complainant) paid Rs. 25 Lakh to Mr. Ashok Kumar Kukreja between 2008 and 2010 for the purchase of Flat Nos. 509 and 510 in the present project. In exchange, the complainant was given SCO (Shop cum Office) in Sector 14 Mohali. From the reading of R-1, it is absolutely clear that Flat no. A 102 subject matter of the present dispute is not at all mentioned in the aforesaid document. Therefore, this defense of the respondents cannot be accepted.
- 14 Secondly, the Authority had asked the respondents to supply any document to substantiate the averment that they got Rs. 25 Lakh, as

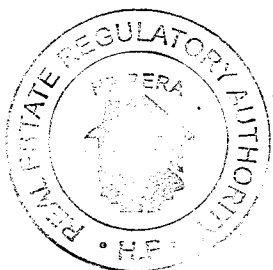


loan and gave the allotment letter for Flat no. A 102, as security. However, respondents have failed to supply any such document to the Authority. Therefore also this defense of the respondents is hereby rejected

15 Now, we come to the case of complainant, in which he has asked for refund of Rs. 17 Lakh alongwith interest, as the respondent has resold the Flat no. A 102 to some third party. The complainant in his support has submitted only one document that is C-1, which is a letter of allotment cum possession of apartment no. A 102. From the perusal of the said letter it states that '*full and final payment has been received in cash of Rs. 17,00,000/- (Rs Seventeen Lakhs Only) has been received and possession is given today*'. Since the huge amount of Rs 17 Lakh has been paid through cash therefore the Authority had asked the complainant during the course of arguments to supply any supporting document from the book of accounts or any other supporting document like bank statement to substantiate his claim of making payment of Rs. 17 Lakh to the respondents through cash. The Authority has not received any such document from the complainant in support of payment of Rs. 17 Lakh in cash within the time granted. This is case where full payment in lieu of allotment of flat no. A 102 has been made in cash by the complainant. Payment of such a big amount through cash prima facie creates doubt about the legality of the transaction. Further, the complainant has not submitted any document to prove that this payment has been entered in his books of accounts or in his income tax statements.

16 After hearing the arguments and examining the documents, the Authority feels that none of the parties involved had acted with clean hands. The huge cash payments between the parties raises a suspicion against the sanctity and genuineness of the transaction. The complainant failed to explain why such a huge amount of Rs. 17 Lakh was paid in cash, without corroborating document of drawl of such money from the Bank. As per Section 101 of the Indian Evidence Act 1872 which defines 'burden of proof' says that :—

Section 101 of the Indian Evidence Act 1872- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the



existence of any fact, it is said that the burden of proof lies on that person.

Further **Section 102** of the Indian Evidence Act 1872 which talks about on whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

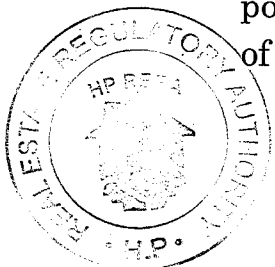
Further **Section 103** of the Indian Evidence Act 1872. Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Further **Section 104** of the Indian Evidence Act 1872. Burden of proving fact to be proved to make evidence admissible. — The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Therefore to conclude the burden of proof in terms of Section 101 to 104 of the Indian Evidence Act, 1872 is on the complainant to prove the issue mentioned in the aforesaid para. The complainant has not submitted any bank statement or copy of his accounts to prove this cash transaction. Further, the complainant has not submitted any agreement for sale executed between the parties to substantiate his claim that he was allotted flat number A 102.

17 In conclusion, the complaint filed by the complainant seeking a refund of the payment of cash of Rs 17 Lakh is liable to be dismissed as the complainant has failed to provide sufficient and conclusive evidence of his cash payment coupled with the fact that no further document has been brought on record in the shape of agreement for sale to substantiate the genuineness of the transaction of purchase of Flat no A 102.

18 Furthermore, the complainant asserts that he took possession of this flat in 2014. The complainant has not provided any documentation, such as a paid electricity bill or maintenance fees, to support his claim of possession of this flat. The complainant has not submitted any evidence to support the cash transaction of Rs. 17 Lakh or his possession of A-102 for the past nine years. Therefore, the Authority is of the considered view that the complainant has not placed on record



legally admissible substantive and conclusive evidence in support of his case and therefore his case is liable to be dismissed for want of sufficient evidence.

19 Relief

- a. The complaint is dismissed for want substantive and conclusive evidence to corroborate the cash transaction of Rs. 17 Lakh, purported to be paid by the complainant to the respondents for purchase of Flat No. A 102.
- b. All pending applications if any are disposed of in the aforesaid terms.

B. C. Badalia
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MEMBER

SKB
Dr. Shrikant Baldi
CHAIRPERSON

