

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR**

Comp. No. RAJ-RERA-C-N-2023-6631

Ashiana Housing Limited

.... Complainant

VERSUS

Dinesh Kumar Upadhyay

.... Non complainant

Present

Hon'ble Shri Salvinder Singh Sohata, Member

1. Ms. Abhilasha Sharma, Advocate present on behalf complainant-promoter
2. None present on behalf of respondent-allottee

Date of Order: 09.11.2023

ORDER

The brief facts of the case are that allottee respondent booked a unit and an agreement for sale was executed on 27.09.2022 with regard to unit No. M-1320 in the project "Ashiana Amantran Phase-III" bearing registration No. RAJ/P/2021/1778. The complainant promoter has cancelled the booking and forfeited the deposited amount by the allottee complainant due to non-payment of the specified instalments through the agreement for



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sale. A relief is sought by the promoter that a direction to the concerned Sub-Registrar-IV, Jaipur be issued for cancellation of the agreement for sale and allottee-respondent shall hand over the original documents to the complainant-promoter. A litigation cost is also prayed for Rs. 50,000/-.

Despite, issuance of notices to the allottee-respondent through e-mail, none appeared on behalf of respondent and no reply is made available, therefore, in absence of the respondent-allottee, the complainant-promoter was heard ex-parte and record was examined.

Learned counsel on behalf of the promoter-complainant submits that on the basis of the ledger, allottee paid Rs. 1 lac and after deduction of taxation against the instalment/booking amount of Rs. 9,52,380/- was only deposited, whereas, the consideration of the unit is Rs. 39,51,630/-. Despite various reminders from May 2022 to February, 2023 were issued but allottee respondent has not paid any heed to pay the instalments according to the terms and conditions of the agreement. Therefore, due to non-payment, on 07.03.2023 booking/allotment with regard to the impugned unit M-1320 was terminated/cancelled and the deposited funds were



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forfeited which were likely to be made available according to the terms and conditions of the agreement. In this regard, the complainant-promoter invited the attention of the Authority towards the resolution passed by the Authority at agenda No. 13.7F in the meeting held on 17.04.2023. The Authority has resolved that the act of the promoter be affirmed by the Authority in case the promoter has cancelled the booking/allotment exercising the powers conferred under section 11 (5) of the Act with regard to cancellation of the allotment by the promoter.



It is imperative to mention here that the allottee has never paid any instalments subsequent to deposit of aforementioned amount. The deposited amount is less than 10% of the unit cost/consideration. In the case in hand an agreement for sale was executed. Therefore, the promoter is competent enough to cancel the unit and verify the amount deposited by the allottee upto the deduction under the Scheme of the Act/under the terms and conditions of the agreement. Therefore, we find it appropriate to affirm the action taken by the promoter-complainant in view of the resolution passed by the Authority on 17.04.2023.

In the light of aforesaid observations, the action taken by the promoter-complainant stands affirmed. A direction to the concerned Sub-Registrar be issued to record a note for cancellation of the agreement for sale executed between the parties with regard to impugned unit. The complaint stands disposed of accordingly.



(SALVINDER SINGH SOHATA)
MEMBER