



Complaint no. 738 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 738 OF 2020

Kusum Sharma

...COMPLAINANT(S)

VERSUS

1. Asian Developers Ltd.
2. Saera Auto India Pvt Ltd
3. Hyatt Associates

....RESPONDENT(S)

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 19.07.2022

Hearing: 11th

Present:-

Mr. Akshat Mittal, Counsel for complainant

None for respondent no. 1

Mr. Pranav Proothi, Counsel for respondent no. 2.

ORDER (RAJAN GUPTA-CHAIRMAN)

This complaint relates to execution of orders dated 27.10.2019 passed by this Authority in complaint no. 1025 of 2018. Said complaint was taken up together with a bunch of other complaints as all complaints pertained to same project of the respondent and grievances of all the complainants were identical, so were the facts and cause of action. Taking Complaint No 513 of 2018 titled "Sunil Yadav and Laxman Yadav Vs Saera Auto India Pvt Ltd" as lead case, Authority vide order dated 29.10.2019 had passed following directions

“7. The Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:-

(i) Admittedly, M/s Saera Auto India Pvt. Ltd. is owner in possession of the plot in question on which a group housing colony was approved to be set up in accordance with the terms & conditions set out by HSIIDC. No documents have been placed before the Authority in this regard,

but from various submissions made it can be safely concluded that apartments in the group housing colony could have been allotted only to industrial workers and were not meant to be sold in the open market for profit. However, for having sold the apartments to the general public, an explanation of the allottee M/s Saera was called by HSIIDC.

(ii) The building plans of the group housing colony was got approved from HSIIDC by the respondent M/s Saera Auto India Pvt. Ltd. Being owners of the plot as well as holder of the approved plans they were fully responsible and answerable for development and allotment of the colony in accordance with the approved plans and other terms and conditions of allotment. It was the duty of the M/s Saera Auto to ensure that the development of the colony took place in accordance with lawful terms & conditions agreed by them with HSIIDC. As the facts reveal, M/s Saera have failed to abide by the terms and conditions of allotment of land.

(iii) A letter dated 13.12.2013 has been place on record by the complainants vide which an explanation of M/s Saera Auto was sought by HSIIDC for unauthorised selling of flats in the said group housing colony by M/s Asian Developers Ltd. As a consequence of

Q

the above notice M/s Saera wrote the letter dated 31.3.2014 seeking explanation from M/s Asian Developers Ltd. Thereafter, they sent a reply to the HSIIDC showing their complete ignorance about the activities of M/s Asian Developers. M/s Saera has also pleaded that since they were basically an auto company had no knowledge regarding construction and allied activities, therefore, for development of the colony they executed the said undertaking and MoU with M/s Asian Developers.

This line of arguments of M/s Saera Auto is totally unacceptable. They are a large auto company. The terms & conditions settled between them and HSIIDC were very clear to them. They could have taken legal advice in the matter from their experts. They kept ignoring activities of M/s Asian Developers of selling the apartments and developing the colony and now they are pleading innocence in the matter which is difficult to accept.

In fact vide their letter dated 7.07.2014 and 6.09.2014, written to HSIIDCM/s Saera has sought to justify the MoU executed by them with M/s Asian vide which all the powers including for sale of apartments had been conferred by them in favour of M/s Asian. After having done so and after signing all the Authorisations, now M/s Saera cannot plead assume that activities of M/s Asian were unauthorised and M/s Saera is not responsible at all for the same. The landowner-licensee is duty bound to ensure that development takes place as per conditions of allotment. The attending facts and circumstances, in fact, clearly proves that all the actions have been taken by M/s Asian with active consent and authorisation of the landowner i.e. M/s Saera.

4

(iv) It is assumed that the respondent No.1 M/s Saera Auto India Pvt. Ltd. is a huge company. They have all kind of staff and managers and legal experts working with them. They initially got the allotment of the plot done in their favour at their own level. After allotment of the plot and after execution of the conveyance deed where was the need for signing the undertaking of the MoU with respondent No.2 vide which extensive powers were conferred upon the respondent No.1. Para No.3 of the MoU clearly confers the rights to sell and allot the flats to the respective buyers. Furthermore, para No.10 of the agreement dated 16.11.2012 facilitate the adjustment of the payments to respondent No.2 from the sale proceeds of the flats and receipts.

The Corporation Bank sanctioned the loan in favour of respondent No.2 on the strength of the legal documents presented to them. Shri Brij Bihari Lal Sharma, Advocate for the Corporation Bank has given a detailed legal opinion regarding the legal title over the land etc. by taking into consideration the documents executed by respondent No.1 singularly or respondent No.1 & 2 together.

(v) Keeping the afore-mentioned facts and circumstances in view the authority rejects the pleas of M/s Saera that they were unaware of the activities of respondent No.2 and that they had never authorised the sale of the apartments in the colony. The facts captured in this order tells a totally different story. M/s Saera has been constantly defending to HSIIDC the signing of MoU with M/s Asian. It is further surprising that even after becoming aware of the facts of sales having been effected by M/s Asian in the year 2013, they merely sought an explanation from

them in February,2014 and never proceeded to terminate their agreement or to file a civil suit or to lodge a criminal complaint against them. They took no action whatsoever to safeguard the interest of the group housing colony or of the allottees of the colony. It was only after when this Authority took recognizance of the matter in September 2018 that they filed a civil suit and a criminal complaint in November,2018.

From 2014 to 2018 M/s Saera was fully aware of the alleged wrongdoings of M/s Asian, but still they did not bother themselves at all to take corrective actions. It clearly proves that all that was done by M/s Asian was with the consent and with the approval of M/s Saera Auto. This Authority also is surprised as to why even HSIIDC failed to follow through the matter after taking recognizance of the violations of the conditions of the allotment letter by the respondent No.1. No correspondence whatsoever between the allottee respondent No.1 and HSIIDC has been brought on record for taking corrective steps. After becoming aware of the fact that respondent No.1 or his delegates were unauthorisedly selling the apartments in the colony, HSIIDC should have taken corrective steps. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent

4

no.2 are answerable and liable towards the complainants jointly and severally.

8. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.”

2. Thereafter on 04.08.2020, complainant, Ms Kusum Sharma, filed this complaint for execution of order dated 29.10.2019 passed in Complaint no. 1025 of 2018(alongwith Complaint no. 513 of 2018) against respondents namely Asian developers Ltd & M/s Saera Auto India Ltd. The execution petition no 738 of 2020 became part of bunch of other execution complaints which were similarly seeking execution of orders dated 29.10.2019 as well.

3. Today, Shri Akshat Mittal, learned counsel for complainant submitted that execution complaint no. 738 of 2020 has been filed for execution of order dated 29.10.2019 passed in Complaint no. 1025 of 2018 whereby Authority had held both respondents i.e Asian developers Ltd & M/s Saera Auto India Ltd as jointly and severally liable towards

the complainant. However, Complaint no. 1025 of 2018 was wrongly clubbed with the bunch of complaints with lead Complaint no. 513 of 2018 as it was filed to seek relief against respondent Asian developers Ltd only and M/s Saera Auto India Pvt Ltd was not a necessary party. Complaint no. 1025 of 2018 pertained to another project being developed by Asian Developers Ltd wherein M/s Saera Auto India Pvt Ltd had no role, whereas in the project being developed by Asian Developers Ltd in Complaint no. 513 of 2018, M/s Saera Auto India Pvt Ltd was the land owner of the plot, thus a necessary party in all those complaints.

Learned counsel further explained that project under question in Complaint no. 513 of 2018 pertained to plot no. GH-16, Sector 2, Bawal Rewari, which was allotted to M/s Saera Auto India Pvt Ltd by HSIIDC whereas the project in Complaint no. 1025 of 2018 pertained to plot no. GH-18, Sector 2, Bawal Rewari, with which M/s Saera Auto India Pvt Ltd had no relationship. Inadvertently, Complaint no. 1025 of 2018 was clubbed with bunch of complaints with lead Complaint no. 513 of 2018 in which M/s Saera Auto India Pvt Ltd was held responsible. As a matter of fact, M/s Saera Auto India Pvt Ltd, was not impleaded as respondent in Complaint no. 1025 of 2018, the complaint was filed to seek relief only against respondent Asian developers Ltd but mistakenly

at the time of filing of execution complaint no. 738 of 2020 M/s Saera Auto India Pvt Ltd was impleaded as respondent when in fact it is not a necessary party. Complainant only wishes to seek relief against respondent no. 1 i.e Asian developers Ltd.

4. Mr. Pranav Proothi, learned counsel for respondent no. 2 submitted that present matter pertains to a separate project and respondent no. 2 i.e M/s Saera Auto India Pvt Ltd is not associated with said project. Complainant is not liable to seek any relief from respondent no.2 as it is a misjoinder to this execution complaint no 738 of 2020. Thus, learned counsel prayed that his name be deleted from array of parties as he is not a necessary party to complaint.

5. In view of above submissions of both parties and perusal of record, Authority observes that in Complaint no. 1025 of 2018, complainant had filed complaint seeking relief against respondent Asian developers Ltd only and M/s Saera Auto India Pvt Ltd was not pleaded as a party to complaint. During proceedings Complaint no. 1025 of 2018 was inadvertently clubbed with a bunch of complaints in which M/s Saera Auto India Pvt Ltd is a necessary party and accordingly a common order was passed in all complaints. Thereafter, at the time of filing of execution, complainant in Complaint no. 1025 of 2018 impleaded both Asian developers Ltd & M/s Saera Auto India Pvt Ltd

4

as a party in execution complaint no. 738 of 2020. However, upon reflection it is found that M/s Saera Auto India Pvt Ltd has no bearing in Complaint no. 1025 of 2018 since the project in question in complaint no. 1025 of 2018 pertains to a plot bearing no. GH-18, situated at Bawal, Rewari whereas the plot allotted to M/s Saera Auto India Pvt Ltd by HSIIDC was GH-16, situated at Bawal, Rewari. Authority after due consideration had held M/s Saera Auto India Pvt Ltd liable jointly and severally alongwith Asian developers Ltd towards allottees of the project which was to be constructed on plot GH-16. Complaint no. 1025 of 2018 had been mistakenly made a part of said group of complaints.

6. In light of this fact, M/s Saera Auto India Pvt Ltd has no role in case of Complaint no. 1025 of 2018. Thus, order dated 29.10.2019 passed in bunch complaints with lead case as Complaint no. 513 of 2018 bears no significance in respect of Complaint no. 1025 of 2018 and therefore, complainant cannot claim any relief from M/s Saera Auto India Pvt Ltd. Therefore, execution complaint no. 738 of 2020 filed for execution of order dated 29.10.2019 passed in Complaint no. 1025 of 2018 becomes infructuous.

In order to seek relief against Asian Developers Ltd , complainant should file a review of order dated 29.10.2019 specifically in respect of Complaint no. 1025 of 2018 and press for a fresh order.

4

7. In view of foregoing observations this execution complaint has been rendered infructuous and is accordingly disposed off with a liberty to complainant to file for a review of order dated 29.10.2019 passed in Complaint no. 1025 of 2018.
8. Disposed off. Files be consigned to record room.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
DILBAG SINGH SIHAG
[MEMBER]

