



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint no. 1422 of 2020

Date of institution: 09.12.2020

Date of Decision: 10.02.2022

Reena Sarkar w/o Vikash Bhola, resident of House no. 741, Sector-16, Panchkula
– 134109

....COMPLAINANT

VERSUS

Ansal properties infrastructure ltd., 115, Ansal Bhawan, 16, Kasturba Gandhi
Marg, New Delhi – 110001, through Managing Director

....RESPONDENT

Hearing: 22nd

Present:- Sh. Shiv Kumar Gupta Advocate, counsel for the complainant
through video conferencing
Ms. Reena Sarkar, complainant through video conferencing
Sh. Ajay Ghangas Advocate, counsel for the respondent through
video conferencing

Reena Gupta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. The complainant Reena Sarkar was lured, convinced and cheated by the respondent company in the month of May-June 2008 predicting the rosy picture of plot in the upcoming well planned residential colony namely Sushant City in twin city of Jagadhri and Yamunanagar. The respondent company had obtained the application from the complainant for plot measuring 359 sq. mtr on 04.06.2008 along with initial adjustable application money of ₹1,90,270/-. The number of residential unit was mentioned as 10. On 10.07.2008, agreement to sell was signed by the respondent and the complainant and possession of plot was to be delivered within reasonable time. Despite full payment made by complainant till June 2013 in the sum of ₹24,47,240/-, no action has been taken by the respondent. It was hidden criminal intention of the respondent. The land of the project in which the said plot was to be given was already encumbered and title of the land was also disputed. Despite various orders in Complaints no. 71 and 1395 of 2018 passed by Hon'ble Authority, no full and final settlement of account has been done by the respondent. In Complaint no. 1395 of 2018 vide order dated 03.09.2020, warrants of arrest were issued against the respondent for recovery of ₹41,41,397/-. Copy of Complaint no. 1149 of 2020 has been allegedly placed on record by learned counsel for the complainant for calculation of compensation for

loss of opportunity, escalation of cost, defective title and mental agony (whereas file shows that only copy of list of dates of Complaint no.1149 of 2020 titled as Reena Sarkar v/s Ansal Properties and Infrastructure Ltd. has been placed on record).

2. Respondent appeared through counsel and filed reply stating that the complaint is not maintainable and this Court has no jurisdiction to entertain the present complaint. The complainant had previously filed Complaint no. 71 of 2018 before Hon'ble Authority on the similar grounds which was decided vide order dated 14.11.2018. Respondents were directed to refund the deposited amount along with interest @ stipulated under Rule 15 of RERA Rules. Thereafter the complainant filed Complaint no.1395 of 2018 for execution of order dated 14.11.2018 in which the respondents had handed over post-dated cheques to the complainant. Before COVID-19, all the cheques were cleared but due to unexpected force majeure conditions of corona pandemic, the respondent had requested the complainant not to present the cheques for some time. Complaint no.1395 of 2018 is still pending before Hon'ble Authority. The dispute between the parties has already been decided by Hon'ble Authority. The order has already been partly complied with. The complainant has not come to the Court with clean hands and has concealed the material facts. There is no loss of opportunity and escalation of cost. The respondent had offered alternate property to the complainant in the same locality at the same price at which the plot was allotted to the complainant but the complainant has refused to accept the offer.

Even during the course of hearing in Complaint no.1395 of 2018 filed by the complainant for compliance of order dated 14.11.2018 passed by Hon'ble Authority, the respondent had offered alternative property but the complainant had refused to accept the offer and insisted for refund of deposited amount. The complainant has no right to raise such false and baseless plea. The title of respondent is not defective. The complainant has miserably failed to make out a case against the respondent. The complaint has not been filed in proper form and as per provision of Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of complaints) Regulation, 2018. All the allegations raised by the complainant have been denied. The issues framed by the complainant are baseless. Since the dispute between the parties has already been resolved, no issue on the same facts can be framed in the present complaint. The complainant has raised false and frivolous dispute in order to unnecessarily harass and pressurize the respondent. The relief sought by the complainant is wrong, misleading and denied. Respondent is not liable to pay any amount to the complainant by way of compensation or penalty. The complaint is liable to be dismissed with cost.

3. Rejoinder to reply was filed by the complainant stating that Complaint no.1422 of 2020 i.e. the present complaint is absolutely maintainable to claim the deficient amount as compensation which has been calculated as ₹57,60,312/-. Final order in Complaint no. 71 of 2018 passed by Hon'ble Authority is meant for refund of paid amount along with interest. Amount decreed in Complaint no.71 of 2018 and under ongoing execution process in execution Complaint no.

1395 of 2018 is not meeting the current cost of occupying the residential accommodation of same size in HUDA sectors due to hike in construction cost, land/plot cost, different stamp duty on hiked collector rate and also loss of opportunity. Excuse of COVID-19 is not admissible as it came into picture only after February, 2020. The respondent had issued all the cheques only to dilute the order of arrest warrants. The respondent has misrepresented the RERA Authority only to put ongoing process of arrest warrants in doldrums. On account of this, the respondent had not even paid the decretal amount and balance of ₹41,41,397/- which was due to be paid in September, 2020 as per Annexure P4. The respondent has cheated in offering the plot on disputed chunk of land which is still one of the issues in pending registration Application no.896 of 2021 filed by respondent company. Last opportunity has been granted by Hon'ble Authority to submit relevant documentary details. The respondent company has acted and adopted unfair trade practice even with State Authority. Heavy penalty upto 10% of the project cost be imposed upon the respondent. The complainant has prayed for rejection of the plea raised by respondent and awarding compensation in favour of the complainant.

4. Arguments raised by both ld. counsel for parties have been carefully heard along with meticulous examination of records of the case.

5. At the outset, it has been argued by the learned counsel for complainant that the complainant had booked a plot in Sushant City, a project of the respondent twin city of Jagadhri and Yamunanagar. A sum of ₹24,47,240/- was

deposited by the complainant with the respondent. Plot no.10 was allotted to the complainant. Plot buyer agreement was executed between the complainant and respondent on 10 July 2008, copy of which has been placed on the record by learned counsel for the complainant. Possession of the plot was to be delivered within reasonable time after deposit of full sale consideration by the complainant with the respondent. The possession of the plot was not given to the complainant. The complainant had filed Complaint no.71 of 2018. Vide order dated 14.11.2018 Hon'ble Authority had allowed refund of paid amount. Since order dated 14.11.2018 passed by Hon'ble Authority was not complied with, the complainant had filed execution Complaint no. 1395 of 2018 for compliance of the said order. The amount has partly been paid by the respondent. The whole of decretal amount along with interest has not been paid by the respondent. By way of the present complaint, the respondent has sought compensation on the ground of loss of opportunity, mental harassment and agony, cost of litigation, cost of escalation and compensation for misrepresentation by the respondent.

6. To rebut the arguments raised by learned counsel for the complainant, it has been argued by learned counsel for respondent that the present complaint is not maintainable. As the present complaint is neither signed by the complainant herself nor any special power of attorney has been given in favour of Sh. Shiv Kumar Gupta, learned counsel for the complainant. The counsel for the complainant was not having any authority to file complaint on behalf of Ms. Reena Sarkar, complainant as he was not specially authorized through special

power of attorney. This objection was raised at initial stage also at the time of filing reply. Learned counsel for respondent has not disputed filing of Complaint no.71 of 2018 and order dated 14.11.2018 passed by Hon'ble Authority vide which refund of the paid amount was ordered. Learned counsel for respondent has also not disputed execution Complaint no. 1395 of 2018 and has argued that the respondent company has partly complied with order dated 14.11.2018 passed by Hon'ble Authority. It has been argued that prior to outbreak of COVID-19, few cheques were paid to the complainant which were honoured. After COVID-19, due to financial strain, the remaining amount could not be paid. The remaining amount would be paid in due course. Learned counsel for the respondent has prayed for dismissal of the complaint.

7. By way of present complaint, the complainant has sought compensation on the ground that possession of plot no.10, Sushant City, project of respondent in twin city of Jagadhri and Yamunanagar, has not been handed over to the complainant, which was to be handed over to the complainant within reasonable time after entering into plot buyer agreement dated 10.07.2008. Though date or month or year in which the possession was to be handed over has not been specifically mentioned in plot buyer agreement, yet reasonable time has to be taken as 3 years from the date of execution of plot buyer agreement. In the year 2018 the complainant had filed complaint no.71 seeking refund of the paid amount, which was allowed vide order dated 14.11.2018 passed by Hon'ble Authority. For execution of said order, the complainant had filed execution

complaint no.1395 of 2018 which is still pending before Hon'ble Authority. Learned counsel for the respondent has stated that order dated 14.11.2018 has been partly complied with. By way of present complaint, the complainant has sought compensation on account of loss of opportunity, mental harassment and agony, cost of escalation and cost of litigation.

8. Before deciding the complaint on merits, the maintainability of the complaint has also to be seen. Objection was raised by learned counsel for the respondent that Vakalatnama/power of attorney was not bearing original signatures and there was no special power of attorney authorizing Sh. Shiv Kumar Gupta Advocate, counsel for complainant to file complaint on behalf of Ms. Reena Sarkar complainant. When the case was fixed for final arguments, this issue was raised by learned counsel for respondent which was dealt with vide order dated 05.01.2022 passed by this Court. When objection was raised by learned counsel for respondent, the complainant had sent mail showing copy of Authority letter cum special power of attorney. Vide order dated 05.01.2022 passed by this Court, it was observed that the special power of attorney given by the complainant via mail was not relating to the present complaint. Rather special power of attorney was given by the complainant to her counsel to file criminal complaint under Section 138 Negotiable Instruments Act. It was observed that special power of attorney given to an Advocate to file one particular complaint does not specially authorise him to file another complaint under another Act. It was also observed that the copy of that Authority letter cum power of attorney

does not serve the purpose. Learned counsel for complainant was given opportunity to explain under what circumstances the complaint was not signed by the complainant and particularly no special power of attorney was given in favour of learned counsel for complainant. The present complaint was filed on 09.12.2020 and application was filed by Sh. Shiv Kumar Gupta, Advocate for placing on record application dated 16.01.2022 signed by Ms. Reena Sarkar complainant. Though the copy of application, power of attorney signed by complainant and authority letter were allowed to be placed on record but counsel for the complainant has failed to show as to how this application, power of attorney/Vakalatnama were having retrospective application. The complaint has to be signed in original by the complainant herself. Affidavit of the complainant was required to be filed, in her place affidavit of Sh. Shiv Kumar Gupta, Advocate counsel for the complainant has been filed. There is no provision in law or CPC or any other Code or Act which authorizes the counsel to file complaint on behalf of the complainant without having special power of attorney. There is difference between Vakalatnama and special power of attorney to file a particular complaint. Neither learned counsel for complainant can file complaint on behalf of complainant nor he is authorized to file affidavit on behalf of complainant. Despite taking objections in reply filed by respondent, no attempt was made by the counsel for complainant to file the complaint after taking Vakalatnama in original and after taking special power of attorney from the complainant. The documents sent during the Court proceedings have no retrospective application.

Since learned counsel for the complainant was not authorized to file complaint on behalf of complainant, it can be said to be not maintainable.

9. The present complaint is being dismissed on the ground of non-maintainability. However, the complainant is at liberty to file fresh complaint on the same cause of action in accordance with law and subject to all just exceptions.

10. In these terms, the present complaint stands **disposed of**. After uploading the judgement on website of the Authority, file be consigned to record room.

10.02.2022

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 10 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER