



Complaint No. 724 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No. 724 OF 2021

Raheja Developers

....COMPLAINANT

VERSUS

DMI Finance Pvt Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 06.05.2022

Hearing: 4th

Present: -

Mr. Kamal Dahiya, learned counsel for complainant through video conference

Mr. Chetan Mittal, learned counsel for respondent no. 1-11 through video conference

Mr. Abhinav Sood, learned counsel for respondent no. 14-19 through video conference

ORDER (RAJAN GUPTA-CHAIRMAN)

1. When this matter came up for hearing on 07.04.2022 Authority had passed following orders:

1. Learned counsel for respondent no. 1-11 stated that the present complaint is not maintainable as the relation between the complainant and respondents came into existence based on commercial agreement where the complainant has raised loan under escrow mechanism from respondent for the construction and development of projects which has no relation with provisions of RERA. As per section 31 of the RERA Act, respondent is neither an allottee nor a promoter hence this Authority does not have jurisdiction to entertain this matter.

2. Authority while agreeing with the submission of learned counsel of respondent observes that complainant has prima facie failed to establish a builder buyer relationship in this complaint. However learned counsel for complainant sought some to argue this matter. Accepting the request of learned counsel of complainant, matter is adjourned to 20.04.2022.

2. In brief, case of complainant is that in the year 2016 they had raised a loan of Rs.55 crores from respondent company, out of which Rs.33 crores were disbursed and Rs.22 crores is yet to be disbursed. As a



security for aforesaid loan various assets of the complainant company were offered as collateral to the respondent financier company. Assets of the project Krishna Housing, Sohna, District Mewat were also offered as collateral. Further complainant company agreed to create a lien on RERA account opened in respect of the project in favor of respondent finance company.

Grievance of complainant is that respondent finance company is drawing money out of RERA account for satisfaction of due loan installments. Complainant company alleges that this act of withdrawing money by the respondent company from RERA account is illegal, prohibited by provisions of Act and Rules. Complainant company has sought directions against the respondent company for not withdrawing any amount from RERA account and deposit back 70% of the amount already withdrawn by them.

3. Respondent in their reply has alleged that complainant by filing this complaint are grossly abusing the process of law including deliberate misrepresentations. There is no specific relief sought by complainant against the respondents. Further this complaint has been



filed under Section 31 of RERA Act but complaints under Section 31 of the Real Estate (Regulation & Development) Act, 2016 can only be filed against a promoter, an allottee or a real estate agent for any violation or contravention of the provisions of the RERA Act, 2016. Respondent has pleaded that for this reason alone this complaint is not maintainable. Respondent has further pleaded that complainant has wrongly stated facts before Authority. Complainant has not maintained any RERA account as mentioned in Section 4(2)(1)(D) of the Act. The Escrow account maintained by complainant with respondent No.12 is a standard escrow account and has never been converted into a RERA Account by the complainant. Respondent allege that complaint is trying to mislead this Authority in this regard. Respondent states that on 21.03.2016 a debenture trust deed was executed by Raheja Icon Entertainment Private Limited, a subsidiary of the complainant, for the purpose of raising funds by allotting and issuing secured redeemable non-convertible debentures by way of private placement numbering 680 with face value of Rs.10 lakhs each. While Raheja Icon was issuer of debentures, the complainant company stood in the capacity of Corporate Guarantor to secure repayment of financing extended by respondent No.1. Further Shri



Naveen M. Raheja, Director of complainant company stood as personal Guarantor. The debentures trust deed dated 06.12.2016 was executed at the instance of complainant as complainant was in requirement of funds for development of affordable housing project named Krishna Project. Financing for Krishna Project was raised by issuance of 550 secured redeemable, non-convertible debentures by complainant with face value of Rs.10 lakhs each with aggregate face value of Rs.55 crores in favour of respondent No.1 being the debenture holder. Respondent No.14 has been acting as debenture trustee on behalf of respondent No.1 as per SEBI Regulations, 1993. The respondent No.14 is under statutory obligations to secure interest of debentures holder i.e. respondent No.1 by holding the secured property on behalf of issuer company that is mortgaged in favor of debenture trustee for the benefit of debenture holder. Further said security interest was created by mortgaging right, titles and interests of the complainant in Krishna Project and the Escrow of Krishna Project receivable were made available to secure repayment obligations under said debenture trust. The said security interest was created vide trust deed dated 21.03.2016.



4. Answering respondents has given a long narration of defective performance of complainant in regard to debenture trust deed executed by them. They have even alleged that complainant has been unauthorizedly withdrawing money from Escrow account, some of which from time to time was reverted back.

5. Authority has gone through the facts and circumstances of the case. It is quite clear that complainant company had raised a financing of Rs.55 crores against assets of the project by executing an Escrow mechanism in favour of debenture holders in the year 2016. Further, complainant company never opened any RERA account and did not keep the amounts received from allottees of the project in separate RERA account.

6. Authority observes that firstly this complaint is not maintainable against the respondents under Section 31 of the Act because respondent are neither allottee nor promoter nor agents of project in question. Secondly, complainant company has severely violated the provisions of the RERA by not opening a separate designated RERA account in which all proceeds from sale of plots should have been credited. In fact, they



did not even reveal information to the Authority that all assets, including proceeds from sale of project, have already been hypothecated under debenture trust deed dated 06.12.2016. Complainant Company therefore is not only filing frivolous complaint like this, which surely deserves to be dismissed, but they have also blatantly and grossly violated provision of the RERA Act. They have not disclosed full information before Authority at the time of getting the project Krishna Housing registered with the Authority. They did not open a separate RERA account under mandate of the Act. They continued with the arrangement under debenture trust deed in which trustee could deduct amounts from the Escrow account for repayment of installments.

7. Authority, therefore, summarily dismisses this complaint. Further it decides to send a copy of this order to the project section to issue a sue-moto notice to the complainant company for explaining their conduct of withholding vital information from the Authority to the detriment of allottees of the project. The complainant company shall also submit stage of completion of the project and also a detailed statement of accounts as to how much money has been received from the allottees



and how much has been invested on the project and what amount of money has been transferred by the trustee of the debenture deed.

8. Law Associate concerned will send a copy of this to project section. Learned CTP shall issue a sue-moto notice to Complainant Company enclosing therewith a copy of this order asking them to submit this explanation. A copy of reply submitted by respondents be made part of the file of project section.

9. **Dismissed and disposed off.** Order be uploaded on portal of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]