

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.596 of 2021

Date of Decision: 09.11.2022

1. Jatinder Kumar son of Sh. Lakhi Ram
2. Sanjeev Kumar son of Sh. Lakhi Ram
3. Satwanti wife of Sh. Mahinder

All residents of near Badi Chopal, VPO Basai (50),
Gurugram-122006 (Haryana).

Appellants

Versus

M/s Jubilant Malls Private Limited,

Corporate Office: 9th Floor, ILD Trade Centre, Sector 47,
Sohna Road, Gurugram-122001 (Haryana)

Other Office: G-100, Kalindi Kunj, Road No.13A, Jasola,
New Delhi-110025.

Respondent

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Ashwani Gaur, Advocate, Id. counsel for
the appellants.

Shri Venket Rao, Advocate, Id. Counsel for the
respondent.

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O R D E R:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 17.09.2021 handed down by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), vide which Complaint No.RERA-GRG-2325-2019, titled as 'Jatinder Kumar and others vs. Jubilant Malls Private Limited' preferred by the appellants seeking direction to the respondent to commit the date of delivery of possession of the project in question was dismissed, they have chosen to prefer the present appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

2. Claiming themselves to be the allottees of the project "Engracia by ILD" owned by the respondent and spread over the land measuring 3.9375 acres comprising in Khasra No.226/2 and Khasra No.227/2 situated within the revenue estate of Village Basai, Sector 37-D, Tehsil and District Gurugram, the appellants in the complaint preferred before the learned Authority, have alleged that in the year of 2018, at the instance of the representative of the respondent, they executed an agreement to sell in respect of three plots bearing nos.A-7, A-8 and A-9, admeasuring total 1176.57 sq. yards

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and also paid an amount of Rs.2.00 crores out of the total sale consideration of Rs.2.64 crores, to the respondent which was duly acknowledged vide receipt dated 30.05.2018. Further, it was alleged that as per order dated 28.08.2014 issued by Additional Chief Secretary to Government of Haryana, Urban Local Bodies Department, Chandigarh, the respondent was required to complete the development works of the project in question within a period of three years from the date of issuance of the order i.e. 28.08.2014. Thus, the date of completion of the project was 28.08.2017, which had already expired. Even, the respondent also failed to seek extension in this regard. Since, the respondent failed to provide the date for the delivery of the possession of the booked plots, and the construction was going on at a very slow pace, so, the appellants preferred the complaint for issuance of direction to the respondent to commit the date of delivery of possession of the project.

3. Upon notice, the respondent resisted the complaint, by filing reply, on the ground of maintainability and suppression of material facts. The respondent has taken the stand that the appellants/complainants are regular investors and had invested money in the plots in question with intention to gain more profits by utilizing these plots and thus they are

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not the allottees and are not covered by the provisions of the Act. In fact, the appellants/complainants expressed their intention to invest money as funding for development of the land and executed an agreement to sell dated 29.05.2018 for three units in lieu of the invested money. Due to unforeseen events beyond the control of the respondent, as the possession of the unit was not possible to be handed over to the appellants/complainants, so, the respondent offered Buy Back Agreement to the complainants and also issued cheques of the equivalent amount paid by the complainants towards the sale consideration of the unit. However, the appellants/complainants with malicious intention of gaining unlawful profits by harassing the respondent neither executed the Buy Back Agreement nor accepted the cheques. Since, the appellants/complainants are not established to be the allottees of the respondent and had only invested as funding for development of the land, so, the dismissal of the complaint was prayed for.

4. After thoroughly going through the pleadings, evidence led by the parties and hearing both the learned counsel for the parties, the learned Authority dismissed the complaint preferred by the appellants with the following relevant observations:-

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“ Arguments heard at length. The counsel for the respondent has stated at bar during argument that the present complaint is non-sustainable as per the provisions of RERA Act on account of inter-se arrangements between both the parties by way of executing Agreements to Sell and simultaneously Buy Back Agreement.

Further, counsel for the respondent has stated that it is not within the domain of RERA Authority to direct them to sign Builder Buyer Agreement at belated stage whereas limitation of time as per Buy Back Agreement has already been expired on 28.05.2021 as mentioned in the Buy Back Agreement dated 29.05.2018. The matter is of a Civil nature and is already going on in the Civil Courts as well as before the Economic Offences Wing.

In the prevailing circumstances, the complaint is not maintainable/sustainable before the Authority and the same is dismissed on account of non-maintainability.

File be consigned to the registry.”

5. Hence, the present appeal.
6. Initiating the arguments, learned counsel for the appellants, while referring to agreement to sell dated 29.05.2018, has submitted that by dint of this agreement, the appellants had booked plots nos.A-7, A-8 and A-9, in a residential plotted colony being raised by the respondent on

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the land as mentioned in the agreement and against the total sale consideration of Rs.2.64 crores, an amount of Rs.2.00 crores was paid to the respondent and the receipt dated 30.05.2018, regarding the acceptance of that amount of Rs.2.00 crores was duly executed between the parties. Further, it has been submitted that as the development works were going on at a very slow pace in the said project and the respondent had failed to provide the date of delivery of possession of the booked plots in the said agreement dated 29.05.2018, so, the present complaint was preferred.

8. Learned counsel for the appellants has further submitted that the case put up by the respondent regarding the execution of Buy Back Agreement of the said plots of the same date i.e. 29.05.2018, is an afterthought and the said Buy Back Agreement is a forged document.

9. Lastly, it has been submitted that as the agreement to sell dated 29.05.2018 was not in conformity with the Buyer Builder Agreement (for short BBA) under the Act, so, the learned Authority under Section 13 of the Act is empowered to direct the respondent to execute the agreement to sell as per the RERA Rules, but instead of doing so, the learned Authority without any justification dismissed the complaint by observing

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that the matter is of civil nature and thus was not maintainable before the Authority. The said observation of the learned Authority being without any basis cannot be sustained in the eyes of law and the appeal preferred by the appellants deserves to be accepted and the impugned order is liable to be set aside. Reliance has been placed upon the judgments passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal in cases ***PIL Developers Private Limited v. S.R. & Shah Realtors Raj Deep Building, (MREAT)(Mumbai): Law Finder Doc Id # 1541269*** and ***M/s Rising City Ghatkopar Association C/o Mr. Swaminathan V. M/s Rare Townships Pvt. Ltd. (MREAT)(Mumbai): Law Finder Doc Id # 1541217.***

10. Per contra, learned counsel for the respondent has submitted that in fact, the appellants are merely investors who had approached the respondent to make the investment to earn profits and thus an agreement to sell dated 29.05.2018 was entered into between the parties. To secure the investment of Rs.2.00 crores made by the appellants, a Buy Back Agreement of the same date was also executed between the parties and as the appellants were never interested to take the possession of the plots as mentioned in the agreement to sell, so, they cannot be termed as allottees and thus, the appellants were not competent to file the complaint before the

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learned Authority under the Act. Further, it has been submitted that in the reply filed by the respondent, the reference of Buy Back Agreement of the same date i.e. 29.05.2018, was repeatedly pleaded and the appellants, in the rejoinder filed by them have not disputed the execution of Buy Back Agreement dated 29.05.2018.

11. Further, it has been submitted that during the course of arguments, learned counsel for the appellants had admitted that Buy Back Agreement came to the knowledge of the appellants after the impugned order dated 17.09.2021 had been passed by the learned Authority and thereafter the appellants had even sought the report of the Handwriting Expert and in these circumstances, it is unbelievable that how the appellants could have preferred the police complaint against the respondent for forging Buy Back Agreement in the month of December, 2020 i.e. nine months prior to the impugned order. In fact, these facts and circumstances establish that the appellants had executed the Buy Back Agreement dated 29.05.2018 to secure the amount of Rs.2.00 crores paid by them to the respondent and now taking undue advantage of the situation, the appellants by way of filing the present complaint before the learned Authority, intend to

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compel the respondent to give the possession of three plots which the appellants, in fact, never intended.

12. Lastly, it has been submitted that the learned Authority has rightly observed that the matter is of civil nature and in the prevailing circumstances, the complaint preferred by the appellant is not maintainable.

13. We have duly considered the aforesaid submissions made by learned counsel for the parties.

14. The bone contention between the parties to the present lis is that whether the appellants are the allottees in the aforesaid project launched by the respondent or they are investors in the project of the respondent to gain some profits?

15. There is no dispute about the fact that an agreement to sell dated 29.05.2018 was executed between the parties and as per the contents of the same, the appellants had paid an amount of Rs.2.00 crores, out of the total sale consideration of Rs.2.64 Crores, for the purchase of plot nos.A-7, A-8 and A-9. In this agreement, the name of the project has not been mentioned, though, in the complaint filed by the appellants, name of the project is mentioned to be "Engracia by ILD". Further, in this agreement to sell, no date of completion of the project has been mentioned. Here this fact

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deserves special mention that the appellants, in para no.8 of the complaint preferred by them before the learned Authority, had specifically alleged that as per the order dated 28.08.2014 issued by the Additional Chief Secretary to Government of Haryana, Urban Local Bodies Department, Chandigarh, the respondent shall have to complete the development works of the project within a period of three years from the date of issuance of the order dated 28.08.2014 and thus, the date of completion was 28.08.2017, which had already expired. It seems highly improbability that if the date of completion of the project had already expired on 28.08.2017, then the appellants would have paid an amount of Rs.2.00 crores, out of the total sale consideration of Rs.2.64 crores to the respondent for allotment of the plots in the said project, coupled with the fact that the appellants towards the end of para no.8 of the complaint had also alleged that the respondent had also failed to seek extension. Moreover, this Tribunal cannot lose sight of the fact that after the Act had come into force w.e.f. 01.05.2017, the agreement between the allottees and promoters started entering on the basis of Model Agreement in which, name of the project, its registration number, date of completion of the project, mode of payments and penalties for violation by the parties are specifically

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mentioned and spelled out. However in the case in hand, in the agreement to sell dated 29.05.2018, neither the name of the project, nor its registration number nor completion date nor penalty regarding violations by the parties have been mentioned. The respondent got the project “Engracia by ILD” registered with the Authority. The registration certificate bearing registration No.66 of 2017 dated 18.08.2017 valid from 18.08.2017 to 31.08.2019 issued by the Ld. Authority vide memo No.HRERA/Regd./1377(a)2017/337 dated 18.08.2017 is placed at page 95 to 97 of the paper book. Thus, the respondent is the promoter of the said project and, therefore, the respondent is required to comply with the provisions of the Act and Rules made thereunder. As per Section 13 of the Act, it is obligatory on the part of the respondent/promoter to execute the agreement for sale of the plots in its project as per the provisions of the Act and Rules. The respondent in complete violation of the Act and Rules, as per its own pleadings, went on to execute buy-back agreement on the same date 29.05.2018. By this buy-back agreement, the appellants do not gain anything at any point of time during currency of the buy-back agreement or even after that as the appellant are to compulsory surrender all the 3 nos. plots for the same amount of Rs.2.0 crores after a period of

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three years of contract. The appellants do not get any interest or gain for their investment of Rs.2.0 crores for a period of three years. The appellants denied having signed the buy-back agreement dated 29.5.2018 and have contended that the buy-back agreement has been forged by the respondent.

16. Regarding the execution of Buy Back Agreement of the same date i.e. 29.05.2018, both the parties to the present lis have taken the divergent stand. As per the case set up by the respondent in its reply, in para no.4, 11 and 12, it has been specifically pleaded by the respondent that it had offered cheques equivalent to the amount of investment made as agreed under Buy Back Agreement. Learned counsel for the appellant has submitted that since the respondent towards the end of para no.7 of the reply has specifically pleaded that the appellants neither executed the Buy Back Agreement nor accepted the cheques, so, the Buy Back Agreement was never executed between the parties. To repel the said contention, learned counsel for the respondent while referring to para no.4, 11 and 12 of the reply has submitted that sub and substance of the reply is to be gathered from the entire pleadings taken by the respondent in its reply and merely on account of aforesaid one sentence in the reply it cannot be held that Buy Back Agreement was never executed between

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the parties. A thorough perusal of the pleadings of paragraphs 4, 11 and 12 of the reply shows that the respondent has repeatedly made the reference of Buy Back Agreement of the same date i.e. 29.05.2018 as well as also of offering the cheques to the appellants to secure the refund of the money.

17. Here, it is pertinent to mention that to ascertain the authenticity of the signatures of the appellants on this Buy Back Agreement dated 29.05.2018, the appellants have placed on file report dated 20.10.2021, of Shri Naresh Kataria, Handwriting and Finger Prints Expert. Though, in the said report, the said Handwriting Expert has opined that the alleged signatures of the appellants on Buy Back Agreement dated 29.05.2018 do not tally with their standard signatures, but, no legal credence can be attached to this report because first of all this report dated 20.10.2021 has been placed on the record after handing down of the impugned order dated 17.09.2021 and secondly, the copy of the said report was never supplied by the appellants to the respondent to rebut the same. During the course of arguments, learned counsel for the appellants has admitted that Buy Back Agreement came to the knowledge of the appellants after the impugned order dated 17.09.2021 and in these circumstances, the report dated 20.10.2021 of the Handwriting Expert was sought. If

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the factum of alleged execution of Buy Back Agreement dated 29.05.2018 had come to the knowledge of the appellants after handing down of the impugned order dated 17.09.2021, then, there is absolutely no explanation on the file on behalf of the appellants that how they could have moved a complaint dated 15.12.2020 before Commissioner of Police, Economic Offences Wing, Gurugram, for initiation of action against the respondent alleging the Buy Back Agreement dated 29.05.2018 to be forged one. In the absence of any plausible explanation in this regard by the appellants, the inevitable conclusion is that the appellants were in the knowledge of this Buy Back Agreement dated 29.05.2018 during the pendency of the complaint before the learned Authority and if at all this Buy Back Agreement dated 29.05.2018 was forged, then the appellants should have sought the opinion of the Handwriting Expert during the pendency of the complaint before the learned Authority. However, as referred above, the appellants have resorted to seek the opinion of the Handwriting Expert after the final impugned order had been handed down by the learned Authority.

18. To establish the act and conduct of the appellants, the respondent along with written submissions on 28.10.2022 has placed on file the photo copy of the agreement dated

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13.06.2017 executed between the appellants Jatinder Kumar, Sanjeev Kumar and Satwanti, on one hand and respondent M/s Jubilant Malls Private Limited, on the other hand, by dint of which the appellants had given an amount of Rs.3.00 crores to the respondent as loan on interest @ 1.5% per month with the stipulation that the respondent would return the said amount within a period of two years and the respondent had also handed over three post dated cheques i.e. cheque no.718711 for an amount of Rs.1,50,00,000/- ; cheque no.718709 and cheque no.718710 for Rs.75,00,000/- each in favour of the appellants. The respondent has also placed on file three receipts dated 11.04.2018 vide which the appellant Jatinder Kumar and Sanjeev Kumar have received Rs.75,00,000/- each from the respondent, whereas, appellant Satwanti has received an amount of Rs.1,50,00,000/- and these three amounts have been received by the appellants vide RTGS.

19. A perusal of the signatures of the appellants on this agreement dated 13.06.2017 and the receipts dated 11.04.2018, shows that the same are identical to the admitted signatures of the appellants on agreement to sell dated 29.05.2018. Thus, in view of these facts and circumstances, it is established that earlier the appellants have been giving loan

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to the respondent which later on they received back on 11.04.2018 and again executed an agreement to sell dated 29.05.2018 with the respondent and paid an amount of Rs.2.00 crores to the respondent. Since, on the same date, the appellants had also executed Buy Back Agreement dated 29.05.2018, so the inevitable conclusion is that it was a simple commercial transaction between the appellants and the respondent regarding investment of the money and the appellants by no stretch of imagination can be construed to be the allottees, coupled with the fact that as referred earlier, the appellants have themselves pleaded that the date of completion of the project had already expired on 28.08.2017, the extension of the project had not been sought by the respondent, and as observed above, the agreement to sell dated 29.05.2018 is not on the basis of Model Agreement mentioning the name of the project, its registration number, the date of completion of the project, mode of payments and penalties for violations.

20. The citation ***PIL Developers Private Limited's*** case (Supra) is not applicable to the facts and circumstances of the present case because in the said case there was no pleading regarding Buy Back Agreement and the relationship of allottee and developer was admitted. The other citation of ***M/s Rising***

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City Ghatkopar Association's case (Supra) is also of no help to the case of the appellants because as per the facts and circumstances of that citation, the learned Authority without going into the merits of the case had decided the same and the Hon'ble Maharashtra Real Estate Appellate Tribunal, had remanded the matter back to the authority for consideration and adjudication of all the issues in their entirety afresh in accordance with law.

21. Thus, as a consequence to the aforesaid discussion, we are of the considered view that since the appellants are not proved to be the allottees of the project "Engracia by ILD" owned by the respondent, so, the complaint preferred by the appellants before the learned Authority is not maintainable under the Act and the appellants may resort to the legal remedies to recover the amount of Rs.2.00 crores by approaching the Civil Court, and thus, there is no illegality and irregularity in the impugned order handed down by the learned Authority.

22. Before parting with this order, this fact deserves special mention that at para No.20 of the application (page No.119 of the paper book) preferred by the respondent for bringing on record the additional facts with respect to the

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project in question, which is available on the record, the respondent has specifically mentioned and pleaded that it is always ready and undertake to return the amount invested by the appellants along with prescribed rate of interest and, as well as, during the course of arguments, learned counsel for the respondent, as per the instructions of the respondent, has stated at bar that the respondent is ready to pay the amount of Rs.2.00 crores to the appellants with prescribed interest. In view of this offer made by the respondent, the respondent is directed to pay an amount of Rs.2.00 crores to the appellants along with interest at the prescribed rate (SBI highest+MCLR+2%) i.e. 10.25% per annum from the date of receipt of the amount till realisation. The respondent is directed to pay the amount within a period of 30 days from the date of handing down of this order. However, the appellants are at liberty to challenge the forgery, if any, of buy-back agreement dated 29.05.2018 in the competent Court and to seek compensation for loss due to non-possession of the plots along with compensation for harassment, mental agony and legal expenses by approaching competent Court/Adjudicating Officer.

23. With these observations, the appeal preferred by the appellants is hereby accordingly disposed of. The interim

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direction issued by this Tribunal vide order dated 15.03.2022 stands vacated.

24. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

25. File be consigned to the record.

Announced:
November 09, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

CL