



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1597 OF 2022

Attar Chand and Ors.

....COMPLAINANTS(S)

VERSUS

Real Heights Developers Pvt. Ltd. and Ors.

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh Member
Nadim Akhtar Member

Date of Hearing: 22.12.2022

Hearing: 4th

Present :

Mr. Ravinder Goel and Pramod Kumar Bhardwaj, Ld.
counsels for the complainant

Mr. R.S. Randhawa, Ld. Counsel for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Case of the complainant(s) is that they, i.e., Attar Chand Mittal, Manish Mittal and Ankur Mittal along with respondents Rajesh Gupta and Sanjay Gupta were the directors, partners and shareholders in the company 'Real Heights Developers Pvt. Ltd.' At the time of incorporation of said company, complainants were having shareholding of around 45% in the company. Complainants were the owner in possession of land admeasuring 50 Bigha 16 Biswa 10 Biswani situated at sector 40, District Panipat. In order to start an Affordable Housing Colony 'Harmony Homes',

1
Geeta Rathee

said land was transferred in favour of the company via sale deeds executed from 2014 to 2017. All the sales deeds are annexed as A3 (Colly) at page 45-77 of the compliant file. Respondent No. 2 and 3 agreed to invest Rs. 8 crore of their share in the said project. Licence no. 34 of 2017 was issued in favour of the company by the office of Director, Town and Country Planning, Haryana on 16.06.2017.

2. The respondent no. 2 and 3 and their partner/shareholder Mr. Naresh Kumar (Respondent No. 4) were desirous to acquire the company by means of purchase of shares of complainant and other family members of complainant. A Memorandum of Understanding (MOU) dated 07.02.2018 was entered between complainants and respondents in this regard. Shareholding of complainants was valued at Rs. 60 Crores. On 07.02.2018 itself, Respondent no. 2 and 3 were given all the operational powers as working directors of the company to manage work of the project As per MOU, respondents issued post dated cheques against the consideration of Rs. 60 Crore and agreed to follow MOU for further instalments.

3. Grievance of the complainants is that respondents have violated the terms of MOU and did not pay instalments as per schedule. Respondents were bound to pay the entire valuation by September 2020, and only thereafter respondent would have been discharged from the terms and conditions of MOU and give possession of flats to allottees on time. Since respondents have yet not been discharged from MOU obligations, therefore the project land is not free from encumbrances, therefore the right to transfer possession of flats is not entrusted in the respondents. Vide this complaint, complainants are praying that respondents be directed to make payment of

entire dues as per MOU dated 07.02.2018 and also respondents be restrained from developing the project until land becomes free from all encumbrances.

4. Respondent filed its reply on 04.10.2022 wherein they submitted as follows:

I. That the present complaint is not maintainable before the Hon'ble Authority as the dispute raised in the present complaint is an inter se dispute between the erstwhile shareholders of M/s Real Heights Developers Pvt. Ltd. with the present working directors and shareholders of the company, only with regard to the payment of certain amounts in lie of surrendering of shares by the complainants, in terms of the MOU dated 07.02.2018, which does not fall within the realm of the jurisdiction of the authority, thus the complaint is liable to be dismissed on this ground.

II. That the complainants have already filed for declaration seeking cancellation of MOU dated 07.02.2018 and later withdrew without seeking liberty of the Court to avail any other alternative remedy and already a Civil Suit for recovery is pending before the Ld. Commercial Court at Panipat vide Civil Suit No. 37 of 2021, thus, the issue agitated before this authority through this instant complaint is already sub-judice before the Commercial Court at Panipat. The complainants have no locus standi to file the present complaint. Furthermore, the answering respondents have also filed a suit for specific performance of the MOU,

which is pending adjudication before the Ld. Commercial Court, Panipat for 27.10.2022.

III. That the project is nearing completion and the same shall be delivered to its allottees before the expiry of the timelines well in advance, the only effort of the complainants is to stall the handing over of the project to the allottees, in order to extort money from the answering respondents by putting undue pressure. The photographs of the project showing its development till date are annexed as Annexure R-1 at page 16 of reply file.

IV. That the MOU dated 07.02.2018 has nothing to do either with the land on which the project is being developed, not with the project which is being developed by the respondent. MOU is simpliciter an agreement of transfer of shares in the company for the sale of shares of the complainants. The only remedy available to the complainants was to file for recovery before the Commercial Court which has already been filed by the complainants, thus, invoking the jurisdiction of this Authority is an abuse of the process of law.

5. During hearing, Id. Counsels for the complainants submitted that till the time payment to the erstwhile director is made as per the MOU dated 07.02.2018, the respondent will not be in legal position to deliver the possession to the allottee of the project as the project land is not free from encumbrances. The respondent will get the

right to subsequently sell the units in plots only when the pending dues of the outgoing/erstwhile director is paid in full as per the MOU entered between them for the purchase of share/control in the company by the existing directors.

6. In response, ld. Counsel for the respondent submitted that this is an inter-se dispute between the directors/shareholders of the company for which necessary civil suit for specific performance of the MOU is pending adjudication before the Ld. Commercial Court, Panipat. Further, there is no question of encumbrance/impediment on the project land as the complainants are solely relying on MOU dated 07.02.2018 which is a separate legal document from the current project in question of the respondent. Hence for these reasons, the present complaint to be dismissed for want of locus standi of complainant under section 31 of Real Estate (Regulation & Development) Act of 2016.

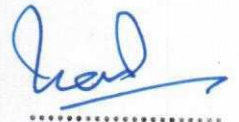
7. After pursuing the pleadings and written submissions of both the parties, the Authority observes that the object of Real Estate (Regulation & Development) Act of 2016 is to regulate and promote real estate sectors and ensure adherence of builders buyers agreements, sale of plots and apartments as the case may be. RERA Act of 2016 is formulated to protect the interest of the allottees in the real estate sector, however the resolution/adjudication of inter se disputes between the shareholders/erstwhile directors with the existing shareholders/directors with regard to transfer of shares are purely within the domain of either the company law board or the commercial courts.

8. This Authority has jurisdiction to resolve the disputes between the allottees, promoter and the real estate agents. If there are disputes pertaining to the subjects beyond the purview of the RERA Act of 2016, those disputes cannot be adjudicated by the Authority for the want of jurisdiction. Interpersonal disputes between the directors will not be subject to the jurisdiction of the RERA Act of 2016 and parties will have recourse to due process of law at the level of appropriate court of forum.

9. For the above mentioned reasons, the Authority observes that there are no contraventions of the provisions of RERA Act of 2016 or the rules and regulations made thereunder, thus subject matter jurisdiction under section 31 of RERA Act of 2016 is not established. The relief claimed by the complainant does not lie with this Authority and therefore the same cannot be adjudicated upon in this forum. Therefore, the present complaint is dismissed. File be consigned to record room after uploading of order.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]