

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 2832 of 2021

Date of decision : 02.05.2023

Rajat Agarwal
ADDRESS: 3183, Sector-23
Village Bajghera, Gurgaon

Complainant

Versus

M/S. Sector-113, Gatevida Developers Pvt. Ltd.
ADDRESS: Naurang House, 21, Kasturba Gandhi
Marg, New Delhi-110001

Respondent

APPEARANCE:

For Complainant:
For Respondent:

Complainant in Person
Mr. Ashish Advocate

ORDER

1. This is a complaint filed by Rajat Agarwal under section 31 read with section 35,36,37 and 38 of The Real Estate

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(Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.

2. According to complainant, he looked an apartment in the project developed by the respondent namely La Vida situated at sector 113, Gurgaon. Vide allotment dated 17.04.2017, respondent allotted him a unit bearing no. 902 admeasuring 1276 sq. ft. for a total sale consideration of Rs. 1,18,39,812/-.
3. That on 05.08.2017, he (complainant) paid an amount of Rs. 18,62,021/- towards the allotted unit, without signing the agreement which is more than 10% of the total sale consideration. In November 2017, a request was made by him, to change the floor of the apartment from 10th floor to 9th floor. Thereafter, on 10.08.2018 a fresh allotment was made in favour of another unit bearing no. 502 admeasuring 1276 sq. ft. for a total sale consideration of Rs. 1,06,42,924/-.
4. That the respondent from period 08.08.2018 to 08.10.2018 withdrew a sum of Rs. 13,28,326/- from the advance of Rs. 17,75,970/- for apartment no. 502 without the consent or knowledge of the complainant. On 03.09.2018 vide an email, he requested the respondent, to return excess amount, which was more than 10% of the total sale consideration. On 04.09.2018 an agreement for sale was sent to him (complainant). On perusal of the said agreement, he (complainant) found that the said agreement was not according to the RERA Act, 2016.
5. On 22.10.2018, he filed a complaint in the Haryana Real Estate Regulatory Authority, Gurugram, and vide order dated 30.01.2019, Ld.' Authority declared the terms of the



agreement of sale as invalid and directed the respondent to issue a fresh agreement for sale. Despite returning the amount and issuing the fresh agreement to sale, the respondent kept deriving financial benefit out of the money given by him (complainant).

6. On 12.08.2019, vide an email he (complainant) expressed his wish to withdraw from the project and sought refund of the amount, paid by him. Being aggrieved by the respondent for not returning the amount paid by him, he again approached the authority by filing a complaint no. 4205/19, with prayer for an order, directing respondent to return his money.
7. In March 2020, a demand letter dated 09.03.2020 was sent by respondent, while ignoring the email dated 12.08.2019 sent by him seeking refund. Various e-mails like dated 30.03.2020, 08.04.2020 and 24.06.2020 were sent by him to the respondent again, seeking refund of his amount. After number of requests, he was left with no option but to approach the authority by filing a complaint in hands.
8. The complainant has prayed for following reliefs:
 - a. An order compelling the respondent to restore to the complainant the economic value & benefit obtained by it in the sum & amount of Rs. 27,39,630/-, as claimed by the complainant & calculated in TABLE B of complaint, on the ground of disproportionate gains made by the respondent while acting unfairly being in position of unfair advantage.
 - b. To award compensation in the sum & amount of Rs. 17,75,970/- since 29.08.2019 along with the punitive



rate of interest for keeping sum of Rs. 17,75,970/- arising out of the failure of the respondent to sign the agreement for sale for the apartment unit no. 502, thereby, causing loss to the complainant in sum of said amount of Rs. 17,75,970/-.

- c. To award Compensation in the sum & amount of Rs. 86,051/- along with the punitive rate of interest since 03.08.2018 on the ground of the illegal & unlawfully retaining a sum of Rs. 86,051/- shown charged in the receipts and demands for the apartment unit no. 902 as the service tax paid to the government.
 - d. To order compensation for the injury caused to the complainant by the unlawful & illegal acts of the respondent and contravening the provisions of Act, of 2016.
 - e. To order cost of litigation to the complainant.
9. The respondent contested the complaint by filing a written reply. It is averred that complainant had filed five similar complaints before HARERA, two civil suits in New Delhi and one criminal complaint for unit in question. As per Respondent, ^{this complaint} is not maintainable, being hit by principle of res-judicata. The respondent disputed jurisdiction of this forum to try and entertain present complaint, contending that same is with prayer for refund and A.O has no jurisdiction to grant relief of refund. Even on merits of case, it is contended that on application/request of complainant, unit allotted to him i.e B-1/902 was changed to unit no. B1-502. The complainant did

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not sign BBA for fresh unit despite draft having been sent to him. The respondent requested to dismiss to complaint.

10. Arguments heard. It is contended by Ld. Counsel for respondent that on 14.07.2020, before the Authority, a full and final settlement was reached between both of parties. It was decided that the complainant will withdraw all of the pending cases (including the present complaint) against the respondent, subject to realization of amount of Rs. 17,75,971/- along with interest of 9.70% within a period of four weeks. The fact is ^{not} controverted by the complainant.

When both of parties have already reached an agreement through which, complainant had agreed to withdraw all his cases, including this complaint, Considering ^{same} ~~all this~~, present complainant is not maintainable.

11. Due to aforesaid, reason the complaint in hands is dismissed, being not maintainable. No need to give any finding on other issues. Both of the parties to bear their own costs.

12. File be consigned to records.

HARERA
GURUGRAM

(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram