



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on: 27.04.2023

Name of Builder	SRC Buildtech Pvt, Ltd
Project Name	SRC Industrial Park, Palwal

Sr. No.	Complaint No.	Complainant
1.	765 of 2019	Mr. Kapil Aggarwal s/o Sh. Rajesh Aggarwal , r/o House no.96, Sector-9, Faridabad-121007
2.	1094 of 2018	Mr. Vikas Aggarwal s/o of Sh. Rajesh Aggarwal , r/o House no.96, Sector-9, Faridabad-121007

Versus

SRC Buildtech Pvt. Ltd, having its registered office at SCF-24, Sector-11d, DLF Main Market, FaridabadRespondent

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: Sh. Sumit Mehta, learned counsel for the complainant
 Sh. Ravi Dangi, proxy counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of all the 2 complaints titled as above filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent, i.e., "SRC Industrial Park, situated at Palwal. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in both cases pertains to failure on part of respondent promoter to deliver timely possession of booked units in question. Therefore, complaint no. 765 of 2019 titled "Kapil Aggarwal v/s SRC Buildtech Pvt. Ltd.", has been taken as lead case for disposal of both the cases.



A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	SRC Industrial Park, Palwal
2.	Nature of the Project	Industrial Plot
3.	RERA registered/not registered	HRERA-PKL-PWL-136-2019

4. Further the details of sale consideration, the amount paid by both complainants, date of proposed handing over of possession, delay period have been detailed in following table:

Sr. No.	COMPLAINT NO.	SHOPS	DATE OF AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	TOTAL SALES CONSIDERATION (In Rs.)
1.	765/19	Plot No. C3 in P-10 Block	30.09.2015	(Within 9 months) 30.06.2016	₹ 50,26,065/-	₹ 50,26,065/-
2.	1094/18	Plot Unit No. C2 in P-10 Block	30.09.2015	(Within 9 months) 30.06.2016	₹ 50,26,065/-	₹ 50,26,065/-

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

5. Complainant claims that he had booked a plot in the project of respondent named, "SRC Industrial Park" situated at Palwal. Builder

Buyer agreement between the parties was executed on 30-09-2015 for total sale consideration of Rs. 50,26,065/- against which complainant claims that he had made full payment in cash on 01.10.2015 to the respondent.

6. That complainant's grievance is that even after receiving entire consideration respondent has failed to offer him possession till date which was supposed to be delivered by 30-06-2016.
7. In support of his contentions, complainant has annexed copy of builder buyer agreement and receipts issued by one Mr. Munish Goel, representative of respondent which is annexed as annexure A and B at page no. 12-31.
8. That complainant's prayer is for delivering him possession of the booked plot in accordance with the project layout plan and with all amenities or in alternative to refund the amount paid along with interest.

C. RELIEF SOUGHT

9. In view of the facts mentioned above, the complainant prays for the following relief(s):-
 - a) Respondents be directed to deliver the Possession of Industrial unit bearing plot no. C-3/P-10, allotted to complainant in accordance



with the project layout, fit-outs & other amenities, etc. as promised in the agreement after completion of all the development works.

- b) Or Respondents be directed to refund the principal along with the interest amount of the complainant, as mentioned herein below.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Details of service of notice to respondent:

Particulars	Details
Notice sent on 03.04.2019	Successfully delivered on 06.04.2019

Learned counsel for the respondent filed short reply on 04.09.2019 and reply on 10.10.2019 pleading therein:

10. That respondent briefly states that complainant alleges to have paid the amount of Rs. 50,26,065/- in cash to one Shri Munish Goel and has relied upon an agreement executed by Munish Goel who is neither a representative nor an authorized signatory of the respondent company. Therefore, respondent owes no obligation towards the complainant.
11. In para 3 of reply, it is stated that Munish Goel has also filed a private complaint against the complainant and his brother under penal sections of criminal law before Chief Judicial Magistrate at Palwal, which is annexed as Annexure R-1&R-2 respectively.



12. That complainant has not annexed even a single receipt, or any proof with regard to mode of payment i.e. by Cheque, Bank Draft, RTGS made against the sales consideration vide which company has acknowledge the receipt of the payment from the complainant. Therefore, respondent has prayed for the dismissal of the captioned complaint as same is not maintainable for the reasons stated above.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments learned counsel for the complainant reiterated arguments as mentioned in Para 3-9 of this order. Further complainant counsel has referred to an application filed by him under Section 35(1) and 35(2) r/w provisions of Section 79 for appointment of a chartered accountant/ invigilator to inspect and verify the authenticity of documents. Learned counsel for respondent has submitted his contentions in Para 10-12 of this order.

G. ISSUES FOR ADJUDICATION

15. Whether the complainants are entitled to possession of the booked plot or in alternative refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY:



16. The Authority has gone through all the documents and rival contentions of both parties. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes that captioned matters were earlier heard at length on various dates, however detail observations with respect to each issues were recorded in order dated 12.08.2022. Relevant portion of the said order is reproduced below for the ready references:

" 2. In this case complainant claims that he had booked a plot in the project of respondent named, " SRC Industrial Park" situated at Palwal . Builder Buyer agreement between the parties was executed on 30-09-2015 for total sale consideration of Rs. 50,26,065/- against which complainant claims that he had made full payment in cash on 01.10.2015 to the respondent. Complainant's grievance is that even after receiving entire consideration respondent has failed to offer him possession till date which was supposed to be delivered by 30-06-2016. In support of his contentions, complainant has annexed copy of Builder buyer agreement and receipts issued by one Mr. Munish Goel representative of respondent at page no. 15-21. His prayer is for delivering him possession or in alternative to refund the amount paid alongwith interest and compensation.

3. On the other hand, respondent briefly states that complainant alleges to have paid the amount of Rs. 50,26,065/- in cash to one Shri Munish Goel and has relied upon an agreement executed by Munish Goel who is neither a representative nor an authorized signatory of the respondent company. Therefore respondent owes no obligation towards the complainant.

4. *

5. *

6. Today, when matter came up for hearing for 14th time, complainant as well as respondent reiterated all the averments which were recorded in previous orders. Both parties sought time to file Written Arguments. They have submitted their written arguments.

7. Authority has gone through the written submissions, written arguments as well as verbal arguments put forward by both parties. Numerous allegations and counter allegations have been made against each other. References have been made to the FIRs, criminal suits and appeal.

8. A careful analysis of facts and situations reveals that the basic issue is regarding whether a lawful builder buyer agreement was executed between the complainant and respondents. Case of complainant is that builder buyer agreement dated 30.09.2015 placed at Page no. 15-21 of complaint book has been duly executed between parties. This agreement is executed on 30.9.2015. Further, case of complainant is that they had made cash payment of Rs. 50,26, 065/- lacs in each case. Agreement as well as receipt allegedly were signed by one Mr. Munish Goel. Complainant states that Mr. Munish Goel was formerly a Director of the respondent-company and was duly authorised by respondent-company to sign agreement and to accept money and issue receipt thereof. Since respondents have not delivered plot, therefore, complainant states that either he should be given possession of the booked plot along with delay interest or in alternative refund the money paid along with interest.

9. Case of respondent on the other hand is that respondents have not signed any builder buyer agreement with complainant. They have not received cash money as has been claimed by complainant. Respondent denied that no money was received and Mr. Munish Goel was never a Director of the company or was authorised agent of the respondent. Mr. Munish Goel was not authorised to either sign the agreement, or to receive cash payments. In brief, respondents completely deny any relationship with Mr. Munish Goel with whom complainant claims to have executed the agreement. Respondents imply that complainant and Mr. Munish Goel themselves have estranged relationship. Mr. Munish Goel had also filed certain FIR against complainants which have been duly taken into account by the Court of learned CJM, Palwa

10. Authority has gone through available facts and circumstances. It observes and orders as follows:-

- i) In the order dated 18.4.2019, Authority had expressed tentative view that perusal of Board Resolution placed at Annexure CR-1 (page 14 of the complaint) and collaboration agreement (page 32) and certain other documents indicate that Mr. Munish Goyal was acting on behalf of respondents-company for certain purposes including for the purpose of



acquisition of land for the project. Authority, however, had demanded certain documents to be able to arrive at final conclusion in the matter.

- ii) On perusal of documents, Authority observes that Mr. Munish Goel had acted on behalf of respondent-company for purchase of certain lands in the month of October 2011 and December 2011. However, alleged Board Resolution (Annexure CR-1) was supposed to have been passed on 15.12.2011. Accordingly, alleged Board Resolution for which complainant alleges that Munish Goel was conferred with powers for sale of plots etc. was passed after he had acted on behalf of respondent-company for purchase of land. The Board Resolution states that the resolution bears signatures of Mr. Munish Goel, whereas, there are no signatures of Munish Goel on Annexure CR-1. Said board Resolution raises question mark on the authenticity of copy of alleged Board Resolution and alleged powers conferred upon Mr. Munish Goel.
- iii) The disputed agreement and disputed receipts of cash payments are of the year 2015. Authority observes that proceedings before it are of summary nature. In the summary proceedings only authentic documents can be relied upon. In this case, however, all the documents proposed to be relied upon are highly disputed. Alleged Board Resolution does not show signatures of Mr. Munish Goel. Respondents seriously dispute that they have ever authorised Mr. Munish Goel to act on their behalf. They even dispute builder buyer agreement allegedly executed by Mr. Munish Goel. Further doubtful circumstances to be noted are that the entire payments is alleged to have been made in cash. Source of cash generated have not been placed before this Authority.
- iv) Therefore, in the absence of authentic documents, this Authority is not able to proceed further in the matter in these summary proceedings. Therefore, Authority is of the tentative view that whether Mr. Munish Goel was authorised signatory of the respondent-company to act on their behalf to execute builder buyer agreement and to receive cash payment etc. has to be proved before an appropriate court of law in regular proceedings. Authority is not able to arrive at any conclusion in the matter in the absence of reliable documentary evidence being placed before it by the parties.



- v) *Authority proposes to direct the parties to prosecute this matter before Civil Court which after taking detailed evidence will be in a position to give its verdict about authenticity of the documents. Directions are proposed to be given on these lines. Authority would hear both the parties on the next date where after it will give its final decision".*

17. Subsequent, to interim order dated 12.08.2022, parties were heard on 12.10.2022 and 07.02.2023. However, the issues highlighted above, by the authority could not be proved during the summary proceeding without adducing documentary evidences. Therefore the authority confirms its view and decision taken vide order dated 12.08.2023 and **dismisses** the captioned complaints with the liberty to the complainant to prosecute the matter before the civil court, which after taking detailed evidence will be in a position to give its verdict about the authenticity of the documents.

File be consigned to the record room after uploading this order on the website of the authority.



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Dr. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]