



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint no. 3108 of 2022

Date of Institution: 21.11.2022

Date of Decision: 09.02.2023

1. Dr. Suresh Chand Jain s/o Sh. Naranjan Dass Jain, r/o Shikhar Apartments, GH-2, Flat No.414D, MDC, Sector-5, Panchkula, Haryana-134114 having acquired status of NRI residing at 47646 Mardis St. Fremont, CA 94539 USA since 2011

2. Ms. Sulabha Jain w/o Dr. Suresh Chand Jain r/o Shikhar Apartments, GH-2, Flat No.414D, MDC, Sector-5, Panchkula, Haryana-134114 having acquired status of NRI residing at 47646 Mardis St. Fremont, CA 94539 USA since 2011

....COMPLAINANTS

VERSUS

1. TDI Infrastructure Pvt. Ltd., through its Managing Director, 10, Shaheed Bhagat Singh Marg, New Delhi-110001.

2. Intime Promoter Pvt. Ltd., through its Managing Director, 9 Kasturba Gandhi, New Delhi-110001.

3. Kamal Properties, through its Managing Director, 10, Shaheed Bhagat Singh Marg, New Delhi-110001.

....RESPONDENTS

Hearing: 5th

Present: - Ms. Navneet Advocate, Counsel for the complainants
Mr. Shubhnit Hans Advocate, Counsel for the respondent no.1 through video conferencing
None for respondent no.2 and 3

JUDGEMENT:

Sarla Gupta

The brief facts culminating into the institution of the present complaint are:

1. The complainants are senior citizens residing in U.S.A and the complainants have authorized Sh. Harjeet Singh s/o Sh. Babu Singh resident of Village Dadhi Bhola, Tehsil Nalagarh, District Solan, H.P. as their attorney to file and pursue the present complaint. In response to advertisement given by the respondents, the complainants had booked a plot measuring 250 sq. yards in 'TDI City', residential project being developed by respondent situated in the revenue estate of village Kundli, Tehsil & District Sonipat and had paid an amount of ₹4,50,000/- as booking amount on 06.01.2006. On 23.02.2006, the complainants paid an amount of ₹2,74,375/- as per demand raised by the respondents. This way the complainants had paid more than 30% out of total basic sale consideration within 2 months of booking without execution of any written agreement by the respondents. Vide letter dated 27.02.2006, the respondents had allotted Plot no.L-733 measuring 250 sq. yard. The basic sale consideration of the allotted plot was ₹22,50,000/-. Till the year 2010, the complainants had paid complete 100% of amount of basic sale consideration. Despite letters dated 14.07.2009 and 10.11.2009 Builder Buyer Agreement was not executed. Respondent did not inform the complainants about the status of construction. Since there was delay of 12 years to handover possession of the unit allotted to the complainants, an email was sent to the respondents on 02.01.2018. In reply to email dated 02.01.2018, it was informed by the respondents that they were unable to complete

the project and unable to handover possession of the unit allotted to the complainants. The complainants had paid ₹26,65,625/- as per demand raised by the respondent i.e. more than 100% of basic sale consideration till 2010. The respondents had arbitrarily sent demand letters to the complainants for outstanding amount instead of constructing the said project. The hard-earned money of the complainants had been siphoned off by the respondents by making false and misleading representations. Respondents had provided the complainants with a payment plan but demands were not made by the respondents as per payment plan as well as not as per construction carried out by the respondents. The respondents had taken more than 10% out of basic sale consideration of the said plot from the complainants before entering into agreement. No development work was being carried out by the respondents, how could they be entitled for EDC which are statutory charges payable directly to the Government. Till date there is hardly any development work being carried out by the respondents. What is the purpose to collect complete amount against the said plot including EDC which was payable at the time of completion of the project. This act of the respondents is not only illegal but unjust, arbitrary and unlawful. Respondents had offered an alternate plot to the complainants in the project where no roads or infrastructure was available. The complainants told the respondents either to offer them unit which was ready for possession or to refund the amount paid by them, as the entire amount was paid by them against the unit allotted to them. The complainants also sent a letter and emails to the respondents. The complainants

made several requests to the respondents to refund the amount but till date not even a single penny has been refunded by the respondents, that forced the complainants to face several hardship and caused harassment to the complainants. The respondents have intention to cheat the complainants since beginning as it is proved by malafide act and conduct of the respondents. The respondents had taken the entire amount of their hard-earned money from the complainants on the basis of false promises and assurances which they never intended to fulfill. In the year 2006, the respondents had allotted Plot no.L-733 for which they had extorted money without executing any written agreement for the last 16 years. The respondents are in continuous breach of trust and misrepresentation. The respondent had also assured about timely delivery of plot but failed to fulfill their promises. After writing a number of letters, emails, texts or calls the respondents failed to give any satisfactory response. The complainants approached Hon'ble Authority vide Complaint no.65 of 2018. Vide order dated 17.05.2022, Hon'ble Authority directed the respondents to refund the entire amount paid by the complainants alongwith interest. The complainants had suffered losses & damages due to false and incorrect statements or commitments made by the respondents for delivering the possession of the plot within stipulated time. The respondents have neither offered possession of the unit nor refunded the amount paid by the complainants. Because of act and conduct of the respondents, the complainants have suffered losses & damages for which they are entitled to compensation. The respondents have cheated the complainants and they have also

committed breach of trust. The respondents are indulging into unfair trade practices. By way of the present complaint, the complainants have sought compensation of ₹20,00,000/- for mental agony, harassment, breach of trust, unlawful trade practice and cost of litigation ₹1,00,000/-, to impose penalty upon the respondents as per provision of Section 61 of RERA Act for contravention of Section 12, 13, 14 and 16 of the Act, to direct the respondents to provide detailed account statement against the amount collected from the complainants in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, the issue direction to make liable every officer concerned i.e. Director, Manager, Secretary or any other officer of the respondent company at whose instance and connivance, offences have been committed under Section 69 of RERA Act and to recommend criminal action against the respondents for criminal offences of cheating, fraud, criminal breach of trust under Section 420, 406 and 409 of Indian Penal Code.

2. Upon notice respondent no.1 appeared through counsel and filed reply to the complaint filed by the complainants, taking preliminary objection about maintainability of the complaint. It has also been stated that the respondent company had commenced the construction of the project in question when the RERA Act was not in existence. The respondent company could not have contemplated any violation and penalties thereof. The application of Act cannot be made applicable retrospectively. The said project is not registered with Hon'ble Authority, therefore cannot be adjudicated by the Adjudicating Officer.

If the provisions of the Act are given retrospective effect, it would cause great hardship and will ruin the finances of respondent company, resultantly disturbing the construction and development plan of the project. The provisions of RERA Act are to be applied prospectively. The present complaint is not maintainable and falls outside the purview of provisions of RERA Act. The present complaint is liable to be dismissed in limine. The complaint has been filed by the complainants seeking vague reliefs and have sought an order to pay the amount to the complainants along with upto date interest as well as compensation and penalty. No documentary evidence has been annexed by the complainants alongwith complaint to support averments. As per Section 72 of RERA Act, certain factors are to be taken into consideration by the Adjudicating Officer while adjudging the quantum of compensation. The agreement was executed between the parties much prior to the date when RERA Act came into existence. The RERA Act and Rules do not force to supplant already agreed upon terms and conditions of the Flat Buyer Agreement executed between the respondent company and the complainants. The complainants are bound by the terms of agreement, as such they cannot withdraw their consent. If at all the complainants are entitled to compensation, it is only in terms of agreement executed between the parties. Delay, if any, cannot be solely attributed to the respondent company as the complainants are themselves defaulters in making the payments, which directly hits the construction of the project. Respondent company had sent various reminders to the complainants to clear the dues. Despite that the complainants

had failed to make the payments on time. Instead of the complainants, it is the respondent company to whom the compensation be paid. The complainants have invested in the project of the respondent company for the sole reason of earning profits and speculative gains. No documentary proof has been annexed by the complainants to prove their allegations. The present complaint is barred by limitation as the complainants have been sleeping over their rights for long 8 years. This Court has no jurisdiction to adjudicate the issue in hand. The complaint filed by the complainants before Hon'ble Authority has not attained finality, hence the present complainant is not maintainable. All the averments made by the complainants are false, vexatious, misleading, frivolous and denied.

3. In para wise reply, all the allegations made by the complainants are denied by the respondent. It has further been stated that the respondent company, as the gesture of good will, requested the complainants to choose between two options, which were to take alternate ready for possession unit in the same project and registration of sale deed within 15 days of completion of all formalities or to adjust entire deposited amount in any other project of respondent company. The filing of Complaint no.65 of 2018 before Hon'ble Authority is admitted but it has been denied that order dated 21.08.2018 passed by Hon'ble Authority clearly showed unlawful activities of the respondents due to unreasonable delay and inability to deliver the possession of plot. Hon'ble Authority had directed to refund the entire amount alongwith interest. Respondents had filed Appeal against said order passed by Hon'ble Authority. Hon'ble Appellate Tribunal had

set-aside the said order and remanded the complaint before Adjudicating Officer. It is denied that the respondents had failed to develop project and handover the actual physical possession of unit to the complainants within promised timeline, due to which the complainants are entitled for compensation from the respondents. It is denied that the complainants have suffered loss and damages due to false and incorrect statements or commitment made by respondents for delivering the possession of plot within stipulated time. It is denied that respondents have misled the complainants by suppressing the material information. It is also denied that respondents have played willful fraud and have been deceiving the complainants. Respondents have prayed for dismissal of the complaint.

4. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.
5. Perusal of file shows that the present complaint has been filed seeking compensation as per provisions of Section 18 and 19 of RERA Act, for mental agony, breach of trust, harassment and unlawful trade practice and seeking cost of litigation. The complainants have also sought to impose penalty upon the respondents as per provisions of Section 60 of RERA Act for wilful default committed by them, penalty as per provisions of Section 61 of the Act for contravention of Sections 12, 13, 14 and 16 of the Act, respondents be directed to provide detailed account statement against amount collected from the complainants in lieu of interest & penalty for delayed payments under Rule

21(3)(c) of HRERA Rules, to issue directions to make liable every officer concerned of the respondent company at whose instance any of the offences has been committed and to recommend criminal action against the respondents for cheating, fraud and criminal breach of trust under Section 420, 406 and 409 IPC. The present complaint has been filed through Sh. Harjeet Singh, who is holding special power of attorney from Sh. Suresh Chand Jain and Ms. Sulabha Jain the present complainants and the original allottees from the respondent no.1 company. The copy of special power of attorney has been placed on record as Annexure C-1. Against the top para, it has been mentioned that both Sh. Suresh Chand Jain and Ms. Sulabha Jain are residing in USA since 2011 and have acquired the status of NRI. Sh. Harjeet Singh s/o Sh. Babu Singh, resident of village Dadhi Bhola, Tehsil Nalagarh, District Solan, Himachal Pradesh was being appointed by them as their attorney. It is pertinent to mention here that at page 2 the date of execution of special power of attorney has been written as 13.04.2022 but it has not been mentioned as to at which place it has been executed. The back page of page no.1 has not been photocopied which could show as to on which date and from what place the stamp paper was purchased. Page no.1 shows the stamp of Himachal Pradesh. In para no.4 of the said copy of special power of attorney, it has been mentioned that they have filed a case before Haryana Real Estate Regulatory Authority, Panchkula against the builder and proceedings are going on in the Court / Tribunal / High Court. In para no.5, it has been mentioned that it has been felt necessary to appoint an attorney to carry out

all / any work / Act in connection with the plot situated at TDI City, Kundli, Sonipat, Haryana. In para no.6, it has been written that they appoint / retain / constitute / nominate Sh. Harjeet Singh as their own true lawful and legal attorney to do all or any of the Acts namely to commence and to prosecute any action, suit or other proceedings at law....., as per para no.6(b), to Act, appear and plead in the cases, related to plot in TDI City, Kundli, Sonipat, Haryana before Arbitrator / HRERA / Civil Court / Consumer Forums / High Court or any other Court in which the same to be tried or heard.


6. This all shows that special power of attorney has not been executed in favour of Sh. Harjeet Singh to file complaint for compensation. Rather General Power of Attorney has been executed to do any Act on behalf of complainants with regard to plot measuring 250 sq. yards situated at TDI City, Kundli, Sonipat, Haryana. Though in para no.6, it has been written that the photograph and signatures of Harjeet Singh are attested, yet there is no attestation either with photograph or signatures. This alleged special power of attorney was executed on 13.04.2022, the present complaint has been filed on 21.11.2022. Both the complainants are residents of U.S.A. and have themselves stated that for the last 11 years they have been residing there and are NRI's. Copy of judgment dated 17.05.2022 has been placed on record, wherein it has nowhere been mentioned that it was filed through Special Power of Attorney. At the time of executing the present special power of attorney, it has not been specifically given power of file the present complaint for compensation. Rather general powers have been given

Sarita Gupta

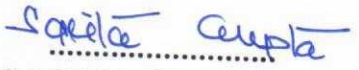
to Sh. Harjeet Singh to do an Act, to sign, file and present pleadings, appeals, cross-objections, review, revision, withdrawal, compromise or other petitions, replies, objections, or affidavits or other documents. The word Special Power of Attorney has been used but general powers have been given to Sh. Harjeet Singh. The name of witness on the said special power of attorney is not written, neither his parentage nor address has been mentioned, only signatures are there. If the present complaint has been filed through Special Attorney on the basis of Special Power of Attorney, the document must be validly executed. In the absence of validly executed Special Power of Attorney, on the basis of which the present complaint has been filed, it cannot proceed. However, the complainants are at liberty to file fresh complaint seeking compensation on various grounds or direction to impose penalty after executing fresh Special Power of Attorney.

7. Without going into merits of the case, this complaint is ^{ordered to be} dismissed ^{sq} on technical ground. File be consigned after uploading the order on the website of the Authority.

09.02.2023


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 11 pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER