



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

| | |
|------------------------|---|
| Day and Date | Monday and 26.08.2019 |
| Complaint No. | 87/2018 Case titled as CS Gupta vs Today Homes & Infrastructure Pvt. Ltd. |
| Complainant | CS Gupta |
| Represented through | Complainant in person |
| Respondent | Today Homes & Infrastructure Pvt. Ltd. |
| Respondent Represented | None for the respondent |
| Last date of hearing | 2.8.2019 |
| Proceeding Recorded by | Naresh Kumari & S.L.Chanana |

Proceedings

Arguments heard.

It is pertinent to point out here that the matter has been finally decided vide order dated 17.10.2018. As per order dated 2.5.2019 passed by the Hon'ble Real Estate Appellate Tribunal, Chandigarh, the relevant para of which is as under:-

"It is made clear that this order of ours will not apply to the orders directions and decisions, which has already attained finality".

More-over, the Local Commissioner report dated 20.2.2019, who was appointed by the authority on the request dated 21.12.2018 submitted by the respondent, has also been considered wherein it has been specifically mentioned that physically about 46% construction work has been completed at site. The above progress report is not inconsonance with the claim of the



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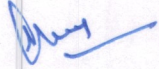
respondent that more than 75% work is complete at site. Therefore, the request of respondent for rectification of order dated 17.10.2018 on this pretext cannot be conceded to at this late juncture when the order pronounced on 17.10.2018 has already attained finality.

By virtue of all portents of law, the matter has reached finality and is res-judicata and cannot be re-opened at a subsequent stage. The report of LC at a subsequent stage is not relevant in the present case.

Application filed by the applicant for rectification of the order dated 17.10.2018 is not maintainable and the prayer made by the applicant is declined.

Order dated 2.5.2019 passed by the learned Appellate Tribunal in appeal No. 6 of 2018 titled as Sameer Mahawar versus MG Housing Pvt Ltd which defines the jurisdiction of the Authority. Since order dated 17.10.2018 was passed much prior to the pronouncement of order dated 2.5.2019 of the learned Appellate Tribunal, as such this order is beyond the pale of order dated 2.5.2019 and thus has attained finality. File be consigned to the registry.


Samir Kumar
(Member)
26.08.2019


Subhash Chander Kush
(Member)

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint No. : 87 of 2018
Date of First hearing : 19.04.2018
Date of Decision : 17.10.2018

Mr. C.S. Gupta, R/o 6-B, Sector-14,
Gurugram

...Complainant

Versus

M/s Today Homes & Infrastructure Private
Limited

Office at: (i) Statesman House, 8th Floor
Barakhamba Road, New Delhi-110001
(ii) B-21, FF, Sector-02, Noida-201301 (UP)

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Complainant in person

Advocate for the complainant

Shri Manish Kumar Saini

Advocate for the respondent



ORDER

1. A complaint dated 13.03.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Mr. C.S.Gupta , against the promoter M/s Today Homes & Infrastructure Private Limited, on account of violation of clause 23 of the agreement to sell executed on 24.11.2012 for unit no. T3/0501 on 5th floor with a super area of 1622 sq. ft. in the project “Callidora” for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

| | | |
|-----|--|--|
| 1. | Name and location of the project | “Callidora” in Village Behrampur, Sector 73, Gurugram |
| 2. | Unit no. | T3/0501 |
| 3. | Project area | 11.794 acres |
| 4. | Nature of real estate project | Residential |
| 5. | Registered/ not registered | Not registered |
| 6. | Date of booking | 25.04.2011 |
| 7. | Date of agreement to sell | 24.11.2012 |
| 8. | Total consideration | Rs. 80,00,833/- |
| 9. | Total amount paid by the complainant | Rs. 74,08,097/- |
| 10. | Payment plan | Construction Linked Plan |
| 11. | Date of delivery of possession. | Clause 23 – 36 months from date of agreement + 6 months grace period i.e. 24.05.2016 |
| 12. | Delay of number of months/ years upto 17.10.2018 | 2 years 4 months |



| | | |
|-----|--|--|
| 13. | Penalty clause as per agreement to sell dated 24.11.2012 | Clause 23- Rs. 5/- per sq. ft. per month |
|-----|--|--|

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An agreement to sell dated 24.11.2012 is available on record for unit no. T3/0501 according to which the possession of the aforesaid unit was to be delivered by 24.05.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 19.04.2018. The case came up for hearing on 19.04.2018, 08.05.2018, 07.06.2018, 17.07.2018, 24.07.2018, 11.09.2018 and 26.09.2018. The reply has been filed on behalf of the respondent on 08.05.2018.



Facts of the complaint

5. The complainant submitted that on 25.04.2011, he booked a unit in the project named "Callidora" in village Behrampur, sector 73, Gurugram by paying an advance amount of Rs.

19,93,207/- to the respondent. Accordingly, the complainant was allotted a unit bearing T3/0501 on the 5th floor.

6. On 24.11.2012, an agreement to sell was entered into between the parties wherein as per clause 23, the construction should have been completed within 36 months + 6 months grace period from the date of execution of agreement. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 74,08,097/-.
7. The complainant submitted that only structure has been erected at the site and further working has been stalled at the site since last two years which makes it crystal clear that the respondent has misappropriated the amount received from the complainant and diverted the funds received for his personal gain.
8. The complainant submitted that despite repeated calls, and intimation sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted



that keeping in mind the status of the project and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.

9. As per clause 23 of the agreement to sell, the company proposed to hand over the possession of the said unit by 24.05.2016. The clause regarding possession of the said unit is reproduced below:

“23. “..... the physical possession of the said unit is proposed to be delivered by the company to the allottee within 36 months from date of execution of buyer’s agreement. The allottee further agrees that the company shall additionally be entitled to a grace period of six months after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company including but not limited to delays in obtaining the occupation certificate/ completion certificate etc. from the competent authority.””

10. Issues raised by the complainant

The relevant issues as culled out from the complaint are as follows:

- I. Whether the promoter is justified in keeping the money received from the complainant in the circumstances when no construction activity has been done at the site for last two years?



- II. Whether it is not crystal clear from the facts narrated by the complainant that the developer has misappropriated the money received from the complainant for construction of flat at site?
- III. Whether the complainant is entitled to receive back from the developer principal amount paid by him to the tune of Rs 74,08,097 along with interest?
- IV. Whether the complainant is further entitled to compensation from the respondent as the complainant could not invest the money for purpose of a right property due to fraud committed by the respondent?

11. Relief sought

- I. To fully refund the amount paid by the complainant amounting to Rs 74,08,097.
- II. To provide the interest @ 24% of the agreement on amount of Rs 74,08,097 from date of receipt till the date of final settlement.



Respondent's reply

12. The respondent stated that the complainant, by suppressing the material facts, has not approached this Hon'ble Regulatory

Authority with clean hands in the present matter and has presented the facts of present case in a deceitful manner.

13. The respondent submitted that there is no legitimate grievance under the Real Estate (Regulation and development) Act, 2016 that the complainant can have against the opposite party. The complainant has booked the unit in question i.e. T-3/0501 only to trade upon the unit either by re-selling the same in the market or by letting out on rent to earn a fixed rental income.
14. The respondent further submitted that a substantial amount of Rs.270 Crores(approx.) has already been incurred by the respondent for the project on account of land cost, construction expenses, advance to contractors/ suppliers, administration etc and the project is nearing possession and the opposite party in its present estimate/ projections will start offering the possession to its esteemed customer of tower- 3 in project- Callidora around last quarter of 2019(subject to just exceptions and unforeseen events beyond the control of the company), so it is not open for the complainant to litigate the matter at this juncture and seek withdrawal of payment made in the project.



15. It is further submitted that the present matter is completely beyond the jurisdiction of this Hon'ble Authority as the said project is covered under the definition of an 'ongoing project' for which the respondent had already filed its application for registration of its project before this Hon'ble Authority.
16. The respondent submitted that an application was filed by the respondent for registration of its project with HRERA, however they were asked to furnish the copy of valid license completely overlooking the practical and ground reality of the transactions prevalent in Gurugram and Haryana where license is granted to one company and the project development is done by more than one company in phases. Also, the condition of having a valid license at the time of grant of registration certificate is nowhere mentioned in the RERA Act, 2016 or the HRERA Rules, 2017. Further, owing to non-cooperation on the part of the licensee company, M/s Realtech Realtors, the license has not been renewed. Thus, the license company must also be arrayed as a necessary and proper party to the complaint as without hearing them, proper adjudication is not possible.
17. Respondent further submits that no cause of action arises in favour of the plaintiff and till the time the project does not get



the registration certificate, the jurisdiction of this authority cannot be invoked.

18. Further, the complaint is premature as time is not of the essence of the contract as per the BBA and the completion date of the projection will be governed by the project registration certificate to be issued by RERA.
19. It is submitted that a combined reading of section 3 and section 13 of the RERA Act clearly shows that even for ongoing projects, afresh agreement between the parties has to be signed and till the time the same is not signed, no claim against the opposite party can be succeeded under the eyes of law.
20. Respondent submitted that the delay in handing over the possession was beyond the control of the respondent and can be owed to force majeure events which can be elaborated as follows: -
- a) Delay due to contractor disputes;
 - b) Delay due to non-availability of raw materials due to norms of procuring permission from Ministry of environment and forest;
 - c) Delay due to government demonetization policy dated 08.11.2016 that impacted the financial liquidity of the



contractors thereby directly affecting payment of wages to labourers forcing them to slow down or stop the work on the site.

Rejoinder

21. The complainant filed a rejoinder rebutting the assertions stated by the respondent in his reply. The complainant submitted that-

- a) None of the provisions of the RERA Act or HRERA Rules provides that if any project is not registered with the authority, the provisions of this Act would not be applicable. Registration of the project with the authority simply gives rights to the promoter for advertising, marketing, selling and booking the unit of the project;
- b) The objection of the respondent to make the licensee company, M/s Realtech Realtors Pvt. Ltd. as proper party to this complaint has no force as the total payment, i.e. 95% of the amount was received by the respondent only and the licensee party has no role to play in the construction or possession or sales of the units nor the project is connected in any way to the licensee company;
- c) The interpretation of the respondent that after coming into force of RERA, a fresh agreement has to be executed in order to



bring the project within purview of the Hon'ble Authority is simply misinterpretation as this would be applicable in case of fresh projects for which booking/advance to be received by the promoters after coming into force the RERA Act, 2016.

Determination of issues

22. As to **Issue I** raised by the complainant, there is a delay on the part of the respondent in handing over the possession and the delay is not justified. Further, the respondent made a submission in the proceedings dated 17.10.2018 that only 30% work has been completed at the site. Thus, the respondent is not justified in keeping the money taken from the complainant and is liable to refund the same in the manner laid down in subsequent paras.
23. As to **Issue II**, no such details or relevant documents have been provided by the complainant that the respondent has misappropriated money.
24. As to **Issue III**, as per statement of the respondent in the proceeding dated 17.10.2018, 30% work has been completed at the site. This clearly shows that the complainant has been made to suffer for no fault on his part and therefore, he is entitled to refund of the principal amount of Rs. 74,08,097/-



paid by him along with interest for delayed possession at the prescribed rate of 10.45% p.a.

25. As to **Issue IV**, the authority does not have the jurisdiction to grant compensation and thus, the complainant can file a separate application seeking compensation before the adjudicating officer.

26. As the possession of the unit was to be delivered by 24.05.2016 including the 6 months grace period, as per the agreement, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) & (b) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable,



from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

28. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

"37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."



29. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

30. **Jurisdiction of the authority-** The project "Callidora" is located in village Behrampur, sector 73, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.

31. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that the project is not registered as on date. The respondent moved an application for registration of project before the authority and the registration branch has raised certain queries as their licence is not renewed since 5.1.2015. As per section 4 of RERA, renewal of license is essential for registration. Further,



as per the statement of the respondent, 30% of the work has been completed at site. On the contrary, the respondent submitted in his reply that the project is nearing delivery of possession and he will start offering possession by last quarter of 2019. Thus, it can be clearly seen that the complainant has been made to suffer for no fault on his part and accordingly, he is seeking refund under the provisions of Section 18(1) of the Real Estate (Regulation & Development) Act, 2016. The authority is of the view that since the builder is not serious in his approach towards the completion of the project, the authority directs/orders for refund of the principal amount paid by the complainant along with interest at the prescribed rate of 10.45% per annum.

Decision and directions of the authority



32. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents:

- (i) The respondent is directed to refund to the complainant the principal sum of Rs.74,08,097 paid by him on account of the

failure of the respondent in handing over the possession by the due date of 24.05.2016.


- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay in handing over the possession. The interest will be given from 24.05.2016 till actual date of refund of the deposited amount within 90 days from the date of this order.

33. The complaint is disposed of accordingly.

34. The order is pronounced.

35. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member



Date: 17.10.2018