



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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Complaint no.:	2135 of 2022
Date of filing:	02.09.2022
First date of hearing:	20.12.2022
Date of decision:	06.07.2023

Vikas Aggarwal and Jitender Kumar

House no. 2052, Ground Floor,

Eldeco county, Sector-19, Sonipat, Haryana

.....COMPLAINANTS

Versus

Jindal Realty Limited

DSM 648, 6th Floor, DLF Tower,

Shivaji Marg (Najafgarh road), Moti Nagar,

New Delhi-110015

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: - Sh. Chaitanya Singal , learned counsel for the complainants
through VC.

Sh. Drupad Sangwan, learned counsel for the respondent through
VC.

ORDER (NADIM AKHTAR -MEMBER)

1. Present complaint was filed on 02.09.2022 by complainants 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Jindal Global City, Sonipat
2.	Name of the Promoter	Jindal Realty Limited
3.	RERA registered/not registered	Registered.
4.	Unit no.(residential floor)	Villa No. D-50
5.	Unit area	153 Sq. yards



6.	Date of builder buyer agreement	08.12.2011 (with original allottees, i.e., M/s Kaleshwar Infrastructure Pvt. Ltd and Sumit Kohli)
7.	Deemed date of possession	08.12.2014
8.	Possession clause in BBA clause-9(i)	Developer proposes to hand over possession of said unit to the allottee within period of 30months from date of execution of this agreement with further grace period of 180 days.
9.	Total sale consideration	₹ 56,66,949/-
10.	Amount paid by complainants	₹ 19,44,351/-

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Case of complainant is that the original allottees M/s Kaleshwar Infrastructure Pvt. Ltd and Sumit kohli booked a residential villa in respondent's project "Jindal Global City", Sonipat, Haryana on 15.10.2011 and paid a sum of ₹1,00,000/- towards booking amount. Builder buyer Agreement (BBA) was executed between the original allottees .i.e., Kaleshwar Infrastructure Pvt. Ltd and Sumit kohli and respondent on 08.12.2011, accordingly they were allotted villa no. D-50, measuring 153 Square yards for a basic sale price of ₹56,66,949/-. As per Clause 9 (i) of the builder buyer agreement the respondent had promised to deliver the possession of booked unit within a period of 30 months plus 180 days grace period from the date of execution of builder buyer agreement which comes to 08.12.2014.



4. That the original allottees had paid a sum of ₹19,44,351/- to the respondent till date and next installment was due on "COMMENCEMENT OF CONSTRUCTION OF THE VILLA. For a period of 4 years from 2011 till 2015 the construction of the villa was completely kept at halt by the respondent. On 30.06.2015 after a time lapse of 4 years the respondent sent a demand note for payment sum of ₹6,49,391/- towards "commencement of construction of villa" to original allottee. On respondent's failure to timely construct and deliver the possession of booked unit original allottee sold their allotment rights to the complainants for a sum of ₹19, 44,351/- on 09.10.2015.
5. That on 10.10.2015 complainants visited the office of respondent for transfer/ endorsement of unit in their favour from the original allottees (M/s Kaleshwar Infra and Sumit Kohli) along with relevant documents of transfer, however the respondent did not transfer the unit in favour of complainants insisting that the complainants pay the pending dues and then only they will transfer the unit. Complainants protested against the demand letter of the respondent since installment was due on the "commencement of construction" of the unit and the respondent had not yet started construction. Further, respondent wrongly demanded installment before it was due without starting the construction and kept it as a pre-condition for transferring the unit in



the name of the complainants. Despite repeated requests of complainants the respondent did not transferred the unit in the name of complainants and sent demand letters and all other communications to the original allottee M/s Kaleshwar Infra and Sumit Kohli. The demand letters sent by respondent are not in possession of the complainants since the complainants are not in touch with the original allottees.

6. That in the year 2021 the complainants again visited the office of respondent and requested for transfer of unit, respondent told the complainant that they had cancelled the allotment of unit on account of non-payment of dues and have refunded the amount after deducting earnest money into the account of original allottees (M/s Kaleshwar Infra and Sumit Kohli) through ONLINE TRANSFER and both the original allottees had returned back the amount transferred by the respondent since they had sold their allotment to the complainants in the year 2015 and had no role to play.
7. That feeling aggrieved by respondent's failure to transfer the unit and illegal cancellation the complainants sent a Legal Notice on 08.10.2021 to the respondent challenging the unit cancellation and transfer the villa in the name of complainants. The respondent received the said legal notice however failed to reply.



C. RELIEF SOUGHT

8. Complainants sought following relief :

Possession of unit from the respondent along with delayed possession interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Respondent stated that the original allottees agreed to a construction linked payment plan and accordingly paid the first few installments timely. However, M/s Kaleshwar Infrastructure Pvt. Ltd. and Mr. Sumit Kohli defaulted in making subsequent payments when the same were demanded by the respondent company. Respondent has raised a demand as per the payment plan on 30.06.2015 which was not paid by the allottees. That after the non- payment of the said demanded amount, the respondent duly gave reminder letters dated 21.09.2015, 12.10.2015 and 28.10.2015 annexed as Annexure R-4. Even after several reminder letters were sent no payment was being made then a pre termination notice dated 28.10.2015 annexed as Annexure R-4 was issued to M/s Kaleshwar Infrastructure Pvt. Ltd. and Mr. Sumit Kohli. Even receipt of said pre termination notice when no payment was made, they sent cancellation letter on 16.11.2015 annexed as Annexure R-5 to M/s Kaleshwar Infrastructure Pvt. Ltd. and Mr. Sumit Kohli. After the pre termination notice, another cancellation confirmation letter was sent to original allottees on 12.01.2016



annexed as Annexure R-6 which clearly communicated that the allotment rights stood cancelled.

10. That as on the date of cancellation, the total amount paid by the original allottees was ₹19,44,350/- and out of said amount the earnest money was deducted and remaining amount of ₹7,85,220/- was duly refunded to M/s Kaleshwar Infrastructure Pvt. Ltd. and Mr. Sumit Kohli on 22.09.2021. Proof of said payment annexed as Annexure R-7. Thereafter, the unit was allotted in favour of Mrs. Suman Gupta and in pursuance of it builder buyer agreement was executed on 16.12.2021 between Mrs. Suman Gupta and Company which is annexed as Annexure R-8.

**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANTS AND RESPONDENT**

11. Ld. Counsel for respondent argued that the complaint is not maintainable as complainants have no cause of action nor any locus standi to maintain the present complaint against the opposite party, present complainants were not the allottees of the respondent company. Moreover, respondent had enter into agreement with original allottees i.e. M/s Kaleshwar Infrastructure Pvt. Ltd. and Mr. Sumit Kohli which was later on cancelled on 12.01.2016 due to non-payment on part of original allottees. Meaning thereby, the



relationship of builder/promoter and allottee either with original allottees or with present complainants does not exist. The present complainants who are not even allottees cannot raise any dispute with regard to the said cancellation that too good gap of 6 years. To rebut this Id. Counsel for complainant reiterated the facts of complaint and stated that original allottees have transferred their allotment rights in favour of complainants on 09.10.2015 and therefore they are now allottees of respondent under this Act. Further he stated that complainants have also approach the respondent for endorsement in year 2015 and 2021 but respondent refused to do so.

F. ISSUE FOR ADJUDICATION

12. Whether the complainants are entitled to relief of possession with delay interest claimed by the complainants under the provisions of HRERA Act of 2016?

G. OBSERVATIONS AND DECISION OF AUTHORITY


13. Arguments of both the parties have been heard and record has been perused. Authority observes that;

1. It is not disputed by either of parties that original allottees M/s Kaleshwar Infrastructure Pvt. Ltd and Sumit Kohli booked a residential villa no. D-50, measuring 153 square yards for a basic sale price of ₹56,66,949/- in respondent's project "Jindal Global City" Sonapat, Haryana on 15.10.2011 and paid a sum of ₹1,00,000/-



towards booking amount. Builder buyer agreement (BBA) dated 08.12.2011 was executed between the original allottees M/s Kaleshwar Infrastructure Pvt. Ltd and Sumit kohli and respondent. Payment of ₹19,44,351/- made by original allottees against total sale consideration of ₹56, 66,949/- is admitted by respondent.

2. Ld. Counsel for complainants pleaded that the allotment rights of the unit were transferred in their favour by the original allottees vide sale deed dated 09.10.2015, however respondent failed to endorse the same in their name and arbitrarily cancelled the unit. Ld counsel further pleads that by virtue of sale deed executed on 09.10.2015, allotment rights in the villa no. D-50 in the project stood vested in them and therefore they are covered within the definition of "allottee" as provided in the RERA Act , 2016. Moreover, it is the respondent who is at fault because complainants visited the office of respondent twice i.e. in the year 2015 and 2021 for the endorsement of allotment rights in their favour, however respondent refused to do so, hence they have valid cause of action in their favour and the complaint is maintainable before the Authority. Ld. Counsel for respondent stated that complainants have neither cause of action in their favour nor any locus standi because as per the provisions of RERA Act, 2016 there must be relation of promoter/builder and allottee between the parties to claim relief under this Act. In this case



complainants are not allottees as there is no agreement for sale/endorsement in favour of complainants that could establish that there was a relationship of an allottee and promoter between complainant and the respondent, meaning thereby complainants never stepped into shoes of original allottee nor were ever recognised as their allottee by the promoter. It is the original allottees i.e. Kaleshwar Infrastructure Pvt. Ltd and Sumit Kohli who had an builder buyer agreement and transactions with the respondent. There existed the relation of promoter/builder and allottee between respondent and original allottees, however, that relationship too ended w.e.f termination of unit on 12.01.2016 for the reason that original allottees defaulted in making payments in spite of several reminders.

3. On hearing both the parties, Authority observes that the main issues involved in this complaint are whether there exist any relationship of an allottee and promoter between the complainants and respondent and whether the respondent illegally cancelled the allotment of the villa no. D-50 in "Jindal Global City" Sonapat, Haryana. In view of the above, Authority observes that in order to adjudicate the relief of possession along with delayed interest as sought by the complainants it is important to establish that there existed a relationship of a promoter and allottee between the




complainants and the respondent. For this purpose the terms of builder buyer agreement dated 08.12.2011 has been perused. On perusal of builder buyer agreement it is observed that clause 15 of said agreement which deals with nomination, assignment and transfer of rights provides that *"the allottee(s) shall not be entitled to transfer the allotment/ benefit of agreement to any other person"* unless:

1. Allotee has first cleared all payments with interest, taxes including service tax failing due till that date along with the administrative charges, apart from completing the documentation/formalities prescribed by the developer in this behalf.
2. Further in case aforesaid charges, interest, dues, taxes are not paid and cleared by original allottee and Developer accepts the transfer of booking/rights in the agreement then under such circumstances transferee/subsequent transferee shall be liable for payment of such charges, interest, dues and taxes.
4. In case of first situation, where there were no dues pending and all dues were cleared, respondent did not have option but to allow transfer however in this present case as per reminder letter dated 21.09.2015 dues of ₹6,49,199/- were pending against the original allottees. Since dues were pending against the original allottees,



present case falls under second category, wherein transfer of allotment rights in the villa could only be allowed subject to the condition that developer accepts the transfer of the booking rights and in case the developer accepts the transfer of rights the transferee/subsequent transferee shall be liable for payment of unpaid charges, dues, interest and taxes and other liabilities of the original allottees. However, in the present case the respondent promoter never accepted the transfer of allotment rights in the villa. Authority observes that this is a very peculiar case wherein the complainants bought the allotment rights in villa no.D-50, Jindal Global City, Sonipat from the original allottees . As admitted by the complainant himself an amount of ₹6,49,391/- were due against the original allottees, nevertheless the complainants proceeded with the purchase of allotment rights and signed deed of assignment of booking/registration on 09.10.2015 with the transferor/original allottees.

5. On perusal of terms of deed of assignment it is observed that clause 8 of the said deed provided that *"any dues or interest towards late payment till the date of transfer i.e. 09.10.2015 shall be borne by the transferor/assignor, i.e., original allottee."* The said deed further provided that any charges after the said date of transfer of assignment



rights shall be borne by the transferee/assignee, i.e., the complainants.

6. As per record (reminder letter dated 21.09.2015) an amount of ₹6,49,199/- was due towards the original allottees on the date of transfer, i.e., 09.10.2015. There is nothing on record to show /prove that the original allottees had paid the due amount and if not paid then expressed/communicated their protest w.r.t the alleged illegal demands.
7. Since the original allottees were liable to pay any outstanding dues on the date of the transfer, the respondent was rightful to demand the same from the original allottees.
8. Further it is observed that as per clause 15 of the buyer agreement in case of outstanding dues it is the discretion of the developer to accept or not to accept transfer of allotment rights. From the facts of the case as present, the respondent continued to communicate with the original allottees for payment /clearance of the dues before allowing/endorsing the transfer of allotment rights. However, the original allottees did not pay/cleared the outstanding dues. On account of non-payment of the outstanding amounts the respondent was within his right to cancel the allotment of unit/villa no. D-50 after duly issuing reminders dated 03.08.2015, 21.09.2015 and 12.10.2015, pre-termination letter dated 28.10.2015 and finally the



cancellation letter dated 16.11.2015. The plea that the last demand of ₹ 6,49,391/- was illegal / arbitrarily could have been raised only by the original allottees , which is not the case in the instant complaint.

9. In view of the facts of the case the Authority is of considered view that it is the original allottees ,i.e, M/s Kaleshwar Infrastructure Pvt. Ltd and Sumit kohli who did not fulfil their obligations as per clause 8 of the deed of assignment dated 09.10,2015. Consequent thereupon the respondent declined to accept the transfer of assignment rights in favour of the complainants.
10. Therefore the relationship of the allottee and promoter was never established between the complainants and the respondent. Since there was no relationship of an allottee and promoter between the parties to the complaint, the respondent had no obligation to raise any demand of the outstanding dues or make any communication with the complainants.
11. In view of the above the complaint is **dismissed** as not maintainable under the RERA Act of 2016. The complainants are at liberty to avail any other appropriate remedy under civil law.



DR.GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]