

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 24.06.2022 by complainant 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.

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 and location of the project.	Asha City, Sector 36, Bypass Road, Bahadurgarh, Jhajjar, Haryana
2.	Nature of the project.	Residential plots
3.	RERA Registered	Un-registered
4.	Details of plot	D043, Phase D (Note- As per complainant, Mr. Pradeep, an



		authorized representative of respondent transferred the plot of the complainant from "Plot No. 87 measuring 145 sq. yds. to plot no. D043)
5.	Date of plot buyer agreement/ allotment letter	Not executed
6.	Deemed date of possession	30.09.2019 (As mentioned on page no. 8 of complaint book.)
7.	Application for expression of interest	05.03.2017
8.	Interest free- Security amount paid by complainant	₹1,50,000/- (Annexure-C-1, on page no. 19 complaint book)

B. FACTS OF THE COMPLAINANT AS STATED IN THE COMPLAINT

3. Facts of complaint are that complainant had booked a residential Plot No. 87, measuring 143.5 sq. yard in the project namely; "ASHIA CITY" in Bahadurgarh vide Application for Expression of Interest dated 05.03.2017 and paid a booking amount of Rs. 1,50,000/- for the same vide Cheque No. 660785 dated 05.03.2017 of SBI Bank. The deemed date of delivery for the said project was 30.09.2019 as per the payment schedule shown at the time of booking of the said plot. Respondent also issued an allotment letter but failed



to provide the copy of the same to complainant. The copy of the application for expression of interest dated 05.03.2017 is annexed as "Annexure C-1". A copy of the cheque dated 05.03.2017 is annexed as "Annexure C-2."

4. That in 2019, Mr. Pardeep, an authorized representative of the opposite party transferred the plot of complainant from "Plot No. 87 (145 Sq. Yards.)" to "Plot No. D043" in new project of respondent on the pretext that Phase 6 lacked certain compliance. Furthermore, Mr. Pardeep promised timely possession as per given Schedule for Phase-D. A noting qua the transfer was noted on the Application for Expression of Interest and the opposite party promised an updated allotment letter qua the same. That the deemed date of possession as per the schedule laid down by the opposite party was 30.09.2019.
5. That complainant had never defaulted in any payment as per request raised by the opposite party and had shown an active approach regarding the said booking. That on 03.11.2021, complainant received an unverified letter on an unverified letter head without any authorized signature, dated 03.11.2021, on behalf of opposite party, whereby in contradiction to the previously agreed terms and condition respondent with a mala-fide intention informed that "purpose of deposit cannot be fulfilled" and initiated refund process for the



booking amount paid by the complainant without his consent and cancelled the said booking made with the opposite party. After receiving the said letter, complainant approached respondent but their office bearers failed to address the concern of complainant which clearly shows that respondent, after realizing the increase in the value of the said plots in the market, with a mala fide intention, wants to illegally acquire back the plot allotted to the complainant to capitalize on the enhanced market value post sale. A copy of the letter dated 03.11.2021 is annexed as "Annexure C-3".

6. Further, on 31.03.2022 the complainant wrote a comprehensive email to the opposite party detailing all the grievances of the complainant and highlighting the mala fide practices being followed by the company to oppress innocent allottees and again demanding the opposite party to issue allotment letter so that subsequent payments can be made. The copy of the email dated 31.03.2022 is annexed as "Annexure C-4".
7. That on 02.05.2022, the complaint received another letter from the opposite party, ignoring the email of the complainant dated 31.03.2022, stating that the opposite Party will refund the amount as the purpose of the deposit could not be fulfilled. A copy of the letter dated 02.05.2022 is annexed as "Annexure C-5". Complainant was willing to perform his part of the agreement and expects

A handwritten signature in blue ink, appearing to read 'Kand', with a horizontal line underneath it.

timely possession of the plot allotted to his and safeguard his right of getting possession on account of the booking made and allotment issued.

C. RELIEF SOUGHT

8. That the complainant seeks following reliefs and directions to the respondent:-

- i. In the event that the registration has been granted to the opposite party for the abovementioned project under RERD Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERD Act, 2016 for violating the provisions of the RERD Act, 2016.
- ii. In exercise of powers under section 35 of RERD Act, 2016, direct the opposite party to place on record all statutory approvals and sanctions of the project;
- iii. In exercise of powers under Section 35 of RERD Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demand if any;
- iv. To direct the opposite party to withdraw letter dated 03.11.2021 whereby in contradiction to the previously agreed terms and



condition, opposite party with a mala-fide intention informed that "purpose of deposit cannot be fulfilled" and initiated refund process for the booking amount paid by the complainant and tried to cancel the said booking made with the opposite party.

- v. To direct the opposite party to hand over the allotment letter for the said booking and enter into proper buyer agreement as provided under the Real Estate (Regulation and Development), Act 2016.
- vi. To direct the opposite party to deliver possession of the said plot as soon as possible as the deemed date of possession has already elapsed.
- vii. To provide the complainant interest on deposited amount for the delay in completion of the project from 30.09.2019 till actual delivery of possession by paying interest on the total amount of Rs. 1,50,000/- at the rate of 9.5 % per annum in accordance with Rule 15 of the Real Estate (Regulation and Development), Act 2016.
- viii. To pay the complainant a sum of Rs. 1,10,000/- as legal fees.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed detailed reply on 12.04.2023 pleading therein that captioned complaint is not maintainable for following reasons:
- i. The present complainant is not "an allottee" according to Real Estate (Regulation and Development) Act, 2016 since no proof of any booking request letter / allotment letter, buyer's agreement is annexed by the complainant.
 - ii. That complainant has got no locus standi or cause of action to file the present complaint.
 - iii. That there exists no entity with the name, "Essel Housing and Infrastructure Development Ltd." No Project is being developed by the said entity, hence no question arises of project office situated at Bahadurgarh.
10. That respondent is not developing any project by the name, 'ASHA CITY'. Further, amount of Rs 1,50,000/- was paid as an interest-free security amount not as a booking amount to respondent but for finding out the property of the complainant choice. It was mutually agreed as the time of depositing the amount that if the respondent could not find such a suitable property for the complainant, the said amount would be refunded to the complainant. Further



respondent never issued any allotment letter to complainant and there was no promise for estimated time for the delivery of booked plot. In fact, complainant has himself mentioned in para no. 4 of the complaint that the said amount of Rs. 1,50,000/- was an expression of interest. There exists no allotment letter, buyers agreement or any such document hence there arises no question of default in payment.

11. Furthermore, letter dated 03.11.2021 annexed by complainant is an unverified letter on an unverified letterhead without any authorized signature and the same is in contradiction to the previously agreed terms and conditions. On the other hand, respondent has sent a duly authorized and legit letter dated 03.11.2021 which was very well in furtherance of the agreed terms and conditions to complainant. That the respondent proceeded as per the averments of letter dated 03.11.2021. Moreover, respondent also gave multiple reminders /intimations through email/letters dated 03.11.2021, 02.05.2022, 17.06.2022.
12. Respondent gave ample chances to the complainant to put forward any objection to the refund of amount. There was not even a single instance where any objection was raised by the complainant and so respondent company proceeded with the refund of his paid amount; however the account of the



complaint was closed. In furtherance, respondent asked for updated account details complainant, but the complainant never responded. The copies of communications are annexed as "Annexure A-1 (Colly)".

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY:

13. After going through rival contentions of both the parties, it is revealed that complainant's averments in his complaint are that that he initially booked a plot no. 87 in project namely; "Asha City, Bahadurgarh", situated at Sector 36, Tehsil Bahadurgarh and District Jhajjar, Haryana vide application for expression of interest dated 05.03.2017. In reference to the booking made, complainant issued a cheque dated 05.03.2017 amounting to ₹1,50,000/-. Further, in the year 2019, respondent transferred the plot of the complainant from plot no. 87 to plot no. D043 in new project. Respondent promised to deliver possession of the booked plot by 30.09.2019.
14. Respondent on the other hand, has challenged the maintainability of the case on two grounds:
 - i. Firstly, that there exists no entity with the name, "Essel Housing and Infrastructure Development Ltd." No Project is being developed by the said entity; hence no question arises of project office situated at Bahadurgarh.



To adjudicate the said issue, Authority in exercise of its mandate u/s 35 of the Real Estate (Regulation and Development), Act 2016 obtained the information with regard to the status of the project as well as confirmation of the name of respondent promoter from the project section of the Authority, wherein it is gathered that there exist an entity namely; "Essel Housing and Infrastructure development Private Limited", bearing registration number 270962 and registered office @ 135, Continental Building, Dr. A.B. Road, Worli, Mumbai City, Mumbai, Maharashtra, India, 400018. Perusal of complaint book reveals that complainant has written correct name of respondent promoter, i.e., Essel Housing and Infrastructure Development Pvt. Ltd. on Performa-B (Page no. 2 of complaint book), on affidavit of complainant (Page no. 16 of complaint book) as well as on cheque issued by complainant against payment of expression of interest (page no. 20, Annexure C-2 of complaint book). Therefore, Authority concludes that complainant has filed a complaint against an existing entity only namely; "Essel Housing and Infrastructure Development Pvt. Ltd.

- ii. Secondly, that the stated amount of ₹1,50,000/- was paid by complainant as an interest free-security amount to the respondent for finding the



property of the complainant choice and not as a booking amount of any specific plot.

In this regard, Authority observes that learned counsel for respondent stated that complainant has neither cause of action in their favour nor has any locus standi because as per provisions of RERD Act, 2016 there must be relation of promoter/builder and allottee between the parties to claim relief under this Act. In this captioned complaint complainant is not “an allottee” as there is no agreement for sale/ allotment letter in favour of complainant that could establish the relationship of an allottee and promoter between the complainant and respondent.

In this regard, Authority observes that the main issues involved in this complaint are whether the complainant is within the ambit of the definition of “allottee” and whether there exist any relation of an allottee and promoter between complainant and respondent. Authority is of the view that in order to adjudicate the relief of possession along with delayed interest as sought by complainant, it is important to establish that there existed a relationship of a promoter and allottee between complainant and respondent. To adjudicate upon said issues, it is pivotal to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:



“section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

From the bare perusal of the definition of “allottee”, it is clear that the transferee of an apartment, plot or building is an allottee. Careful perusal of receipt of expression of interest annexed by complainant in his complaint book as “Annexure C-1” reveals that complainant had made a payment of ₹1,50,000/- vide application for expression of interest dated 05.03.2017 to respondent as “interest free security amount” and not as a “booking amount”.

15. Further, expression of interest is a document or letter submitted by potential buyer or investor to express their interest in a particular property. It only provides a formal channel for initiating discussions and exploring the potential of a real estate deal. It is an offer of contract and not a contract. It is pertinent to mention here that complainant has failed to prove by way of placing on record any documents such as issuance of booking receipts, issuance of allotment letter etc. of the said plot in the name of complainant that there exists an agreement for sale between complainant and respondent.



Further, since there was no relationship of an allottee and promoter between the parties, the respondent had no obligation to execute a builder buyer agreement/allotment letter or raise any demand of the outstanding dues or make any communication with the complainant.

16. In view of above, Authority concludes that present complaint is not maintainable under the RERD, Act 2016 and decides to dispose of the captioned **complaint as dismissed**. This is without prejudice to complainant's rights to claim refund of amounts paid along with interest.

Disposed of. File be consigned to record room after uploading of the order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]