



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2642 of 2022

Phoolwati

....COMPLAINANT

VERSUS

Mapsko Builders Pvt. Ltd.

....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Date of Hearing: 14.10.2024

Hearing: 7th

Present: Adv. Vikas Lochab, ld. counsel for complainants

Adv. Akshat Mittal, ld. counsel for respondent

ORDER: (NADIM AKHTAR-MEMBER)

1. Complainant in her complaint has pleaded that Mrs. Sunil Kumari initially booked a Floor bearing No. 184, Second Floor, in ME Block, with an area measuring 860 Sq. ft. built-up area on a 180 sq. yard plot in the "Mapsko City Homes" project, Sector 27, Sonipat, Haryana, by paying amounting to ₹14,49,000. The booking was made on 02.06.2010, and the Builder buyer's agreement (BBA) was executed on 03.09.2010. Said floor was later on transferred to the complainant on 13.04.2013 (Annexure P-1 and P-2). Complainant was expected the possession by May 2012, as per the agreement. However, delays forced her to extend her stay in rented

accommodation at ₹12,000 per month, straining her finances. As per clause 14(a) of the agreement, the respondent committed to complete the floor within 18 months, extendable by six months. Instead, they offered possession on 26.12.2017, despite incomplete work in flooring, paint, electrical, plumbing, and finishing (Annexure P-3). Mrs. Sunil Kumari initially paid ₹3,00,000 on 02.06.2010, followed by two further payments of ₹2,00,000 and ₹2,20,118. These receipts were endorsed to the complainant at transfer. The complainant subsequently paid a total of ₹16,31,644 (Annexure P-4). Despite the delayed possession offer, the floor remained unlivable. The complainant made timely payments as per the respondent's demands, yet the project was delayed over five years. Repeated attempts to address issues directly or via phone and email were unsuccessful. When the complainant requested the refund, of the paid amount, respondent threatened to impose penalties and agent deductions. These actions constitute an unfair trade practice and ongoing harmful to the complainant.

2. Complainant in her complaint is seeking relief as follows:
 - i. In the event that the registration has been granted to the respondent company for the project namely Mapsko City Homes in Sonipat, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.



- ii. In exercise of powers under section 35, direct the respondents company to place on record all statutory approvals and sanctions of the project;
 - iii. In exercise of powers under section 35 OF RERA 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 compensate the Complainant Petitioner for the delay in completion of the project;
 - v. The complaint may be allowed with costs and litigation expenses of Rs. 50,000/-;
 - vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.
3. On the other hand, respondent in his reply has stated that the complaint is argued to be non-maintainable as the Hon'ble Authority lacks jurisdiction over the claims for compensation due to delay, and litigation expenses of ₹50,000, which fall under the purview of the Hon'ble Adjudicating Officer and should therefore be dismissed on this basis alone. The respondent states that the unit in question was completed and possession was offered on 05.04.2017, with an Occupation Certificate obtained on 29.09.2017. The complainant took possession on 26.12.2017 and later transferred the unit to Smt. Sarita Sharma vide a transfer letter dated 01.02.2022, followed



- by a Conveyance Deed executed on 28.04.2022 (Annexure R-1 and R-2). Consequently, the complaint is argued to be an afterthought by the complainant for personal gain, as the property has already changed hands. Further, the complainant allegedly concealed essential facts regarding the possession offer on 05.04.2017, transfer to Smt. Sarita Sharma, and the execution of the conveyance deed. Additionally, the Floor Buyer Agreement dated 03.09.2010 mandates dispute resolution through mutual discussion, understanding, and arbitration, as per Section 8 of the Arbitration and Conciliation Act, 1996. The agreement also limits jurisdiction for disputes to courts in Sonapat or Delhi, further supporting the argument that this Hon'ble Authority lacks jurisdiction in this matter.
4. Ld. counsel for respondent argued that the complainant is no longer eligible for relief under the RERA Act, as she no longer hold the status of an "allottee." The counsel asserts that the complainant transferred ownership of the unit in question to a third party, Smt. Sarita Sharma, through an official transfer process on 01.02.2022. By transferring the unit, the complainant has effectively relinquished her rights and obligations associated with the property under the RERA Act, 2016.
 5. After perusal of the files of the present case, it is observed by the Authority that Haryana Real Estate Regulatory Authority (HRERA), 2016 clearly stipulates that only an "allottee" is eligible to seek relief from the Authority under the RERA Act and rules and regulations. In captioned complaint,



respondent initially allotted the unit to Mrs. Sunil Kumari on 02.06.2010. As per the agreement and documents provided, Mrs. Sunil Kumari was the original allottee. The original allottee, Mrs. Sunil Kumari, transferred her unit to the complainant, Phoolwati, on 13.04.2013. At this point, Phoolwati became the allottee and had the legal right to seek remedies under the HRERA Act, if there were any issues related to possession or other concerns. The complainant, Phoolwati, later transferred the unit to Mrs. Sarita Sharma on 01.02.2022. This transfer was officially documented with a transfer letter (Annexure R-1) and a conveyance deed (Annexure R-2) executed on 24.04.2022, thereby transferring all rights, title, and interest in the property to Mrs. Sarita Sharma.

6. Authority observed that the captioned complaint was filed by the complainant-Phoolwati on 30.09.2022, which is more than seven months after the transfer of the unit to Mrs. Sarita Sharma. This timing is crucial because, under the provisions of the RERA Act, a person must be an "allottee" at the time of filing the complaint in order to seek relief from the Authority. As per Section 31 of the HRERA Act, 2016 a complaint can only be filed by an "allottee" of the real estate project. The term "allottee" refers to someone who holds the title or has an interest in the property at the time of filing the complaint. In this case, after Phoolwati transferred the property to Mrs. Sarita Sharma in February 2022, Phoolwati ceased to be the allottee and thus no longer had the legal cause to file the complaint.



7. Authority concludes that the HRERA Act, 2016 aims to protect the rights of allottees, but those rights are only vested in the individual who holds the title to the property at the time of the complaint. Since the complainant was not the allottee when the complaint was filed, she does not qualify to seek redressal from the Authority. Additionally, the complainant's failure to disclose that she had transferred the property to Mrs. Sarita Sharma before filing the complaint is a significant omission. This concealment misrepresents her standing as an allottee and further undermines the credibility of the complaint. The respondent rightly highlighted that the complainant did not mention this transfer in her complaint, nor did she attach any relevant documents that would have shown she was no longer the allottee at the time of filing.
8. The Authority's perusal of the records, including Annexure R-1 and R-2, confirms that the unit was transferred before the complaint was filed, and as such, the complainant is not the allottee at the time of filing. Since the complainant cannot claim to be an allottee, there is no legal cause of action that can be adjudicated by the Authority under the HRERA Act. Given these circumstances, the Authority finds that Phoolwati's complaint is not maintainable, as she no longer holds the status of an allottee under the HRERA Act. The transfer of the property to Mrs. Sarita Sharma extinguished Phoolwati's legal right to seek any relief related to the unit.



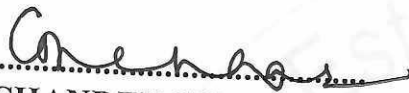
Furthermore, the complainant's failure to disclose the transfer undermines the complaint's validity.

9. Lastly, the complainant is also seeking costs and litigation expenses of Rs. 50,000/-. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer of the Authority for seeking the relief of compensation.
10. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the



grievances of the allottees who have suffered due to the dominant position of the promoter.

11. Authority decides to dispose of the captioned **complaint as dismissed** on the ground mentioned above. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

