



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 1758 of 2023

Date of Institution: - 14.08.2023

Date of Decision: - 05.08.2024

1. Raman Bansal s/o Sh. Ram Kumar Bansal r/o House no.48, Sector-13, Urban Estate, Kurukshetra-136118.
2. Ruchi Bansal w/o Raman Bansal r/o House no.48, Sector-13, Urban Estate, Kurukshetra-136118.

...COMPLAINANTS

VERSUS

Jagran Developers Pvt. Ltd., office at 648, 6th Floor, DLF Tower, Shivaji Marg, Moti Nagar, New Delhi-110015.

....RESPONDENT

Hearing:- 5th

Present:- Mr. Raman Bansal, complainant no.1
Mr. Mangesh Goel, Advocate, counsel for the complainants
Mr. Drupad Sangwan, Advocate, counsel for the respondent

Sqrite Gupta

JUDGEMENT:

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

1. The complainants had booked a built up shop in the project of the respondent. A Buyer Agreement was executed between the parties on 10.06.2014 vide which the respondent had undertaken to deliver the possession of the shop to the complainants by 10.12.2017. The respondent had failed to develop the project and also to handover the possession of the shop to the complainants. Vide notice dated 15.06.2018 by virtue of clause 37.4(ii) of the Buyer Agreement, the complainants had terminated the Buyer Agreement. They had claimed refund of the whole paid up amount along with interest and compensation. They had filed Complaint no.966 of 2019 before Haryana Real Estate Regulatory Authority, Panchkula seeking refund of paid amount along with interest and compensation. Vide order dated 22.03.2023, the complaint filed by the complainants was allowed and respondent was directed to refund amount of ₹16,33,601/- along with interest @ 10.7%. By way of compensation, the complainants have claimed an amount of ₹10,00,000/- as damages on account of mental agony, torture and harassment under Section 18, 19 read with Section 31 and 71 of RERA Act. They have also claimed compensation of ₹10,00,000/- as damages on account of deficiency in service on the part of respondent under Section 18, 19 read with Section 31 and 71 of RERA Act along with cost of litigation of ₹1,00,000/-.

2. Upon notice, respondent appeared and filed reply stating that the present complaint against respondent is without any merit and totally misconceived. No substantial question of law arises for consideration of this Court. The filing of present complaint is gross misuse of process of law. The complainants are guilty of suppression of material facts. Complainants have not provided the correct factual background of the case and concealed material facts. Preliminary objections have been taken that complainants have no locus standi or cause of action to file the present complaint. The complaint is based on erroneous interpretation of the provisions of the Act and incorrect understanding of terms and conditions of the Buyer's Agreement. The complainants have approached Hon'ble Court with malafide intention without disclosing the correct and the true facts just to take undue advantage. After accepting the request of the complainants, the business unit bearing shop/office no.UG-34, Upper Ground Floor which was later on replaced with UG-66 with super area of 353.42 sq. ft. in project namely Galleria, Kurukshetra Global City, Kurukshetra was allotted to the complainants at agreed sale consideration. Change in the allotment was duly accepted by the complainants vide letter dated 27.12.2011. The terms and conditions of Buyer's Agreement was accepted by the complainants and it was signed on 10.06.2014. The allotment was made on the basis of construction linked plan. The complainants defaulted in making due payment to the tune of ₹84,017/- including interest as on 02.05.2019 towards payment of basic sale consideration. Since, the balance payment was due and unpaid, the complainants arbitrarily and

unilaterally sent a legal notice dated 15.06.2018 to the respondent expressing to withdraw from the project when the said unit was almost complete as on the date of said notice. After sending legal notice to the respondent, the complainants filed Complaint no.966 of 2019 before Hon'ble Authority. After completing the project, offer of possession was made in terms of order dated 30.10.2019 passed by the Authority. Occupation Certificate was received on 17.03.2020. The complainants did not come forward to take possession of the unit. Vide order dated 22.03.2023 passed by the Authority, the complaint was allowed to the extent of refund of money along with interest in view of withdrawal by the complainant himself. After passing of order by Hon'ble Authority, the respondent has refunded total amount of ₹30,33,621/- by cheque to the complainants which was including amount paid + interest. This fact has been concealed by the complainants. The complainants have not approached this Court with clean hands. The complainants cannot be allowed to blow hot and cold at the same time. The complainants had themselves decided to withdraw from the project without paying the demand draft for construction by sending a legal notice. No occasion arises for any compensation. There is no default or lapse on the part of respondent. There is no equity in favour of the complainants. The allegations levelled by the complainants are totally baseless. The complainants are estopped by their own act and conduct in filing the present complainant. The provision of RERA Act cannot be applied to the transactions executed prior to 01.05.2017 on which date the Act came into force. The provisions of said Act cannot operate

retrospectively. This Court has no jurisdiction to entertain the present case as it has been specifically mentioned in the agreement that all the disputes shall be referred to an Arbitrator. All the averments made by way of preliminary submissions have been reiterated on merits. The respondent has prayed for dismissal of the complaint.

3. Rejoinder to the reply filed by respondent was filed by the complainants. It has been stated that respondent has tried to reopen the complaint filed by the complainants before Hon'ble Authority. The complaint filed by the complainants was allowed by Hon'ble Authority vide order dated 22.03.2023. The said order has attained finality. The respondent has not challenged the said order either in Appeal or elsewhere. In order dated 22.03.2023, Hon'ble Authority has already held that the project of the respondent could not be completed within stipulated time as per agreement and it was got delayed by few years, the complainants have already exercised their right to terminate Builder Buyer Agreement in terms of clause of said agreement and said termination was duly communicated by issuance of notice to the respondent. Refund of paid up amount along with interest was allowed in favour of the complainants. The complainants were advised to approach the Court of Adjudicating Officer for claiming the relief of compensation. On 10.06.2014, Buyer Agreement was executed. As per clause 27(a) the possession was to be handed over within 36 months from the date of agreement with further grace period of 6 months in case of force majeure. Due date of possession was 10.06.2017/10.12.2017. As per clause 37.4(ii), the

allottees were having option to terminate the agreement if the developer fails to handover possession to the allottee within stipulated time. In that eventually the developer shall be liable to refund the entire amount paid by the allottee along with interest within 30 days of the receipt of such termination notice. On 15.06.2018, the complainants sent notice to respondent and terminated the Buyer Agreement. The respondent was to refund the entire paid up amount along with interest by 15.07.2018. On 22.04.2019, the complaint was filed before the Authority. On 30.10.2019, the Authority had observed that the case of refund was not made out and the right to claim refund must continue till the time the allottee chooses to invoke his right of termination. On 20.01.2020, respondent had offered possession of unit illegally to the complainants in pursuance to order dated 30.10.2019 passed by the Authority. On 17.02.2020 reply to the letter of offer of possession was sent to the complainants. On 17.03.2020, Occupation Certificate was granted to the respondent. The respondent was not competent to offer possession prior to 17.03.2020. The Buyer Agreement had already been terminated by the complainant vide notice dated 15.06.2018. Vide order dated 07.03.2022, Hon'ble Appellate Tribunal set-aside order dated 30.10.2019 passed by Hon'ble Authority and directed the Authority to decide the issue of refund afresh. Vide order dated 22.03.2023, complaint of the complainants was allowed for refund of the paid up amount along with interest. Construction could only be started after approval of layout plan, despite that the respondent had claimed instalments from the complainants even before the approval of layout plan. The

respondent has committed fraud with the complainants and caused wrongful loss to him and wrongful gain to itself by enjoying money of the complainants. Since, the possession of the shop was not offered to the complainants till termination of agreement i.e. 15.06.2018 or till filing of the complaint, hence complainants were not liable to pay last instalment which was payable at the time of delivery of possession. The respondent has not made complete payment of refund as per order dated 22.03.2023. The respondent had paid interest upto 15.02.2023 only. Part payment was made on 12.08.2023. The respondent had concealed the receipt on which the complainant had made endorsement of part payment that interest @ 10.7% per annum w.e.f. 16.02.2023 was payable and the right to claim the balance amount was reserved by the complainants. The failure on the part of respondent has caused monetary loss, harassment and agony to the complainants.

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 detailed facts have not mentioned by the complainants at the time of filing complaint. Neither the date of booking has been mentioned nor the basic sale price of the unit has been mentioned. It has not been mentioned as to what amount was paid on which date. The total amount paid upto which date has also not been mentioned. Which number of commercial unit i.e. shop/office was allotted to the complainants has not been mentioned. Detailed reply was filed by the respondent and at the time of filing rejoinder, detailed facts have been mentioned. It is admitted by the complainants themselves that

possession was to be handed over to him within 36 months from the date of agreement with a further grace period of 6 months in case of force majeure. In column no.3 due date for possession has been mentioned as 10.06.2017/10.12.2017. It is only after 6 months from 10.12.2017. On 15.06.2018 the complainants had sent notice to respondent and terminated the Buyer Agreement. When on 15.06.2018, the complainants had themselves sent notice for termination of Buyer Agreement, it is immaterial for him as to when Occupation Certificate was received by the respondent and before that date, the respondent was not in a position to offer possession to the complainants. The complainants have themselves admitted that offer of possession was made to them by the respondent on 20.01.2020. They had filed complaint before the Authority on 22.04.2019 and it was decided vide order dated 22.03.2023 vide which the complaint was allowed refund of paid up amount along with interest. As per version of the respondent amount of ₹30,33,621/- was paid by the respondent to the complainant. Exhibit R-11 shows that cheque in the sum of ₹20,00,000/- dated 28.07.2023 and another cheque of the same date in the sum of ₹10,33,621/- were paid to the complainants. Copies of cheques in the sum of ₹20,00,000/- and ₹10,33,621/- have been placed on the record. It is not disputed that the said amount has been received by the complainants. Since only 6 months after the due date of possession when the complainants had withdrawn from the project of respondent and as per order passed by Hon'ble Authority refund of whole paid up amount along with interest has been given by the respondent to the

complainants, no case of awarding compensation on the ground of mental agony and harassment is made out. Hence, no amount of compensation is being awarded under the head of mental agony and harassment.

6. The complainants have also sought compensation of ₹10,00,000/- on ground of deficiency in service. Compensation on the ground of deficiency in service could be claimed by the complainants had they opted to stay with the project. Since they had opted to walk out of the project within 6 months from the due date of possession, no ground for awarding any compensation on account of deficiency in service is made out.

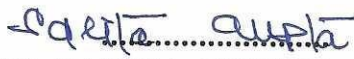
7. Since, no compensation has been awarded on account of mental agony and harassment and deficiency in services, cost of litigation is also not being awarded in favour of the complainants.

8. Finding no merit, the present complaint is ordered to be dismissed with no order as to costs. File be consigned to record room after uploading the order on the web site of the Authority.

05.08.2024


(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 9 pages and all the pages have been checked and signed by me.


(DR. SARITA GUPTA)
ADJUDICATING OFFICER