



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1456 of 2023
Date of filing:	14.07.2023
First date of hearing:	23.08.2023
Date of decision:	21.10.2024

Mr. Manoj Kumar, S/o Sh. Subhash Chander,
R/o 601/28, street No. 11, Near Geeta Ashram, Jyoti Park,
Gurugram-122001COMPLAINANT No.1

Mrs. Yashomati, W/o Sh. Manoj Kumar,
R/o 601/28, street No. 11, Near Geeta Ashram, Jyoti Park,
Gurugram-122001COMPLAINANT No.2

VERSUS

Ambition Colonisers Private Limited
(through its Chairman-cum-Managing Director)
Building No. 433, Second Floor, Sector 31
Gurugram-122003 ...RESPONDENT No. 1

Dwarkadhis Projects Private Limited
(through its Chairman-cum-Managing Director)
Building No. 3, Plot No. 2, Ghitorni, MG Road,
New Delhi-110030

2nd Address:-

Building No. 433, Second Floor, Sector 31
Gurugram-122003 ...RESPONDENT No.2

CORAM: **Nadim Akhtar** **Member**
Chander Shekhar **Member**

Present: - Mr. Abhay Jain, Id. Counsel for the complainants through VC.
 None for the respondent no.1.
 Mr. Neeraj Goel, Id. counsel for the respondent no. 2 through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainants on 14.07.2023 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 complainants, 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 promoters and projects	1.Ambition Colonisers Private Limited - 'Springwoods City', sector 22, Dhauhera.
2.	Date of booking	21.10.2020



4.	Unit area	1200 sq. yds.
5.	Date of allotment	21.10.2020
6.	Date of builder buyer agreement	2.11.2020 executed between respondent no.1 and complainant no.2
7.	Basic Sale Price	₹24,73,029/-
8.	Amount paid by the complainants	₹2,50,000/- on 22.10.2020.
9.	Due date of possession	02.11.2020 as per Agreement to sell of springwoods city.
10.	Offer of possession	15.01.2021

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant No. 1 and 2, Mr. Manoj Kumar and his wife Mrs. Yashomati booked a 2-BHK apartment having a tentative super build up area of 1200 square feet via Application for Provisional Registration in the residential group housing colony named 'Aravali Heights' situated at village Garhi Alawalpur, Dharuhera, Rewari, Haryana, being developed by respondent no.2, Dwarkadhis Projects Pvt. Ltd. Complainants paid Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand) via cheque no. 847330 dated 2nd June, 2007 as booking amount to the Respondent No. 2. A copy of which is annexed as Annexure -01 of the complaint.



4. That the Respondent No. 2 executed an agreement with the Complainants on 14th July, 2007 towards purchase of the Residential Apartment, No. 93 at 9th Floor in Block No. D-7 having a super build up area of 1200 square feet @ Rs.1575/- per square feet in the project 'Aravali Heights'. Thus, the Basic Sale Price of the Apartment was Rs.18,90,000/- (Rupees Eighteen Lakh Ninety Thousand). A copy of which is annexed as Annexure -02 of the complaint.
5. That the respondent no.2 failed to complete the construction and handover the possession of apartment. Complainants being aggrieved filed a consumer complaint before District Consumer Dispute Redressal Forum, Gurugram, its First Appeal before the State Consumer Disputes Redressal Commission, Panchkula and the Revision Petition before National Consumer Disputes Redressal Commission, New Delhi.
6. During the pendency of the Petition before the National Consumer Disputes Redressal Commission, New Delhi, the Respondent No. 2 approached the Complainants to settle the dispute for the allotted apartment in the project 'Araveli Heights'. On 26th February, 2020, the Deed of Cancellation and Settlement was signed between the Respondent No. 2 and the Complainants for the cancellation of booking of the said apartment and refund of total amount of ₹20,50,000/-



(Rupees Twenty Lakh and Fifty Thousand) as full and final settlement amount for such cancellation.

7. That the respondent no. 2 paid ₹4,50,000/- to the complainants out of the settlement amount and for balance ₹16,00,000/-, the respondent no. 2 requested the complainant to book a plot in 'Springwoods City project' of its sister concern, respondent no. 1 and promised to adjust ₹16,00,000/- against the cost of the said Plot.
8. That the complainant had no other choice but to book the plot by adjusting an amount of ₹2,50,000/- as booking amount on 22.10.2020 to the respondent no. 1. However, respondent no. 2 failed to fulfill its promise by transferring the balance settled amount into the project of respondent no.1 and thereby respondent no. 2 raised demand of ₹22,58,870 with the offer of possession for the allotted plot. Till date respondent no.2 failed to transfer and adjust the balance settlement amount of ₹16,00,000/- along with the interest against the plot in sister concern project i.e. respondent no.2.
9. That on 29.11.2023, complainants filed an application for submission of ₹16,00,000/- in favour of respondent no. 1. In this application, complainants stated that respondent no. 2 has paid its part of payment to the complainants and settled its account with the complainants. Thereafter complainants submitted a cheque amounting ₹16,00,000/-



bearing cheque no. 091481 dated 19.11.2023 drawn on ICICI Bank in favour of respondent no. 1. Complainants had paid ₹2,50,000/- on 16.10.2020 and made total payment of ₹18,50,000/- till date to the respondent no. 1.

C. RELIEFS SOUGHT:-

10. That the complainants while filing the complaint sought following reliefs and directions to the respondent:-

- i) Direct the Respondent No. 2, Dwarkadhis Projects Private Limited to transfer and adjust the balance settlement amount of Rs.16,00,000/- (Rupees Sixteen Lakhs) with prescribed rate of interest from the date of settlement to Respondent No. 1, Ambition Colonisers Private Limited against the Plot No. 115 purchased by the Complainant on the advice of the Respondent No. 2.
- ii) Direct the Respondents to pay legal expenses of Rs. 1,00,000/- (Rupees One Lakh) incurred by the Complainants for filing and pursuing the instant case.
- iii) Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the Complainants and against the Respondents.



Amended Relief :-

An application of amended relief was filed on 29.11.2023 in which following reliefs have been sought from the respondent.

- i) Direct the Respondent No.1, Ambition Colonisers Private Limited to issue receipt against the payment of Rs. 16,00,000/- paid via cheque no. 091481 dated 19th November, 2023, drawn on ICICI Bank in favour of Ambition Colonisers Private Limited.
- ii) Direct the Respondent No.1, Ambition Colonisers Private Limited to issue afresh Statement of Accounts as per the Agreement to Sell. The cost of the Plot is Rs.24,73,029/- and we have paid a sum of Rs.18,50,000/- to th Respondent No.1, thus the balance payable amount is Rs.6,23,029/-.
- iii) Direct the Respondent No.1 not to charge any interest, on amount payable against the Plot No. 115, from the Complainants as delay in paymen caused due to complete lapses and faults of Respondent No.2, Dwarka Projects Private Limited, the sister concern of Respondent No.1, Ambition Colonisers Private Limited.
- iv) Direct the Respondents to complete all the development works on the subject plot along with all facilities and



amenities like water, electricity, roads, parks, club, etc. immediately.

- v) Direct the Respondents to handover the legal and rightful possession of the subject plot to the Complainants, after receiving all the required permissions and approvals from the competent authorities.
- vi) Direct the Respondents to get the Conveyance Deed executed in favour of the Complainants.
- vii) Direct the Respondent to pay legal expenses of Rs. 1,00,000/- (Rupees One Lakh) incurred by the Complainants.
- viii) Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the Complainants and against the Respondents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1

11. Learned counsel for the respondent no.1 filed a short reply on 21.02.2024 pleading therein as under :-



- i) That the present petition is not maintainable as preferred under the Real Estate Regulation and Development Act 2016 as the Complainants have failed to disclose any maintainable cause of action under the said provisions of the Act as alleged. That Section 19(6) of the Real Estate Regulation and Development Act 2016 clearly prescribes the rights and duties of the allottees.
- ii) That the present complaint is based upon malicious concealment and misrepresentation of an important fact that the ground of obligation of payment of Rs. 16,00,000/- on the Respondent under the Settlement Deed dated 26.02.2020 which the complainants misleadingly alleged in this complaint to have been adjusted by the respondent against the total sale consideration of the disputed Plot was already under adjudication for recovery before the Hon'ble NCDRC vide complaint no. RP/580/2018 filed much earlier than filing of the present complaint. Moreover, the complainants have successfully recovered the amount vide post-dated cheque dated 16.11.2023, which was duly accepted by the Counsel of the Complainants. The aforesaid has been recorded in the Order dated 18.10.2023 passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi. The complainants herein had in fact withdrawn the said Revision Petition number 580 of 2018 in



satisfaction of its claim. Hence, in the light of aforesaid, relief sought by the complainant qua the complaint have already been availed by the complainant and the complaint accordingly has become infructuous as well. A copy of order dated 18.10.2023 of Hon'ble NCDRC is annexed as Annexure R-1.

- iii) That complainants are forum shopping in the Hon'ble NCDRC and the Ld. RERA Authority. That aggrieved allottees has the option of availing remedy available to it, but it is also an established precedent that an aggrieved allottees cannot do forum shopping and institute multiple litigations against the same cause of action seeking different reliefs in the Petitions. A Deed of Cancellation and Settlement was entered into between respondent no. 2 and complainants and the parties had agreed that the complainants after receiving the said amounts (as mentioned in the Settlement Deed), shall withdraw all/any other complaints, suits, proceedings, actions, etc. whatsoever, either civil or criminal filed, initiated or otherwise being pursued in any Courts, Departments, Forums etc. against the Respondent or any of its director, employees, which had not been complied by the Complainant. A copy of the said Deed of Cancellation and Settlement dated 26.02.2020 is annexed as Annexure R-2.



- iv) That the Complainant owing to its obligations qua the Settlement Deed should have in fact withdrawn this Complaint on the previous date of hearing i.e., 29.11.2023 for two simple reasons:
- a) The Reliefs sought by the Complainant have been satisfied by the Respondent qua the payments made hence, the Complaint accordingly has become infructuous (as recorded in the Order dated 18.10.2023; Annexure R-1)
 - b) The Complainant was obligated to withdraw this Complaint qua its obligations under the Settlement Deed dated 26.02.2020, having made the payments.
- v) That the Id. Authority has erred in its observations in the Order dated 29.11.2023, wherein, the Respondent was burdened with cost of ₹5,000/- payable to Authority and ₹2,000/- payable to Complainants for not filing reply in time. The situation should not have arisen wherein the Respondent ought to file a reply in a matter that had already been settled and the refund having been already made. That the notice and complaints were never served to the Respondent as the address of the Respondent mentioned in the notice is not the current address, which is duly established from perusal of the company record available with the Ministry of Corporate Affairs. A copy of the MCA record is annexed as Annexure R-3. Therefore, the



respondent should not be held liable for any delay and no cost should be imposed. A copy of the said notice dated 18.07.2023 and the order dated 29.11.2023 is annexed as Annexure R-4.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.2

12. Learned counsel for the respondent no.2 filed a short reply on 05.03.2024 pleading therein as under:-

- i) That the plot pertaining to which the present complaint has been filed by the complainants are developed by the respondent No.1 Ambition Colonizers Pvt. Ltd. which is entirely a separate and independent legal entity totally different from the answering respondent No.2. Moreover, there is no relief pertaining to the said plot which can be claimed against the answering respondent No.2. Therefore, the present complaint of the complainants are liable to be dismissed against the answering Respondent for mis-joinder of parties. The answering respondent has wrongly been impleaded as a party in the present complaint.
- ii) That on 26.02.2020 complainants entered into a 'Deed of Cancellation and Settlement' (hereinafter called the "said deed") with the answering respondent before the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) during the



pendency of a Revision Petition bearing No. 580 OF 2018 filed by them. Copy enclosed as Annexure R1

- iii) That in terms of the said Deed, the answering respondent had to pay a total amount of Rs.20,50,000/- to the complainant. Out of the said Rs. 20,50,000/-, Rs. 2,00,000/- was paid upfront vide Cheque No. 000386 dated 27.03.2020 as token money as specified in the clause 2 of the Cancellation Deed. As per Clause 3 and 4 of the said deed, after receiving the token money, the complainant had to withdraw all complaints against the answering respondent and also had to submit all original documents to the answering respondent.
- iv) That the complainants filed an application for withdrawal of the complaints before Hon'ble NCDRC on 13.10.2023. In compliance to the same, the answering respondent paid the remaining amount of ₹16,00,000/- to the complainant vide PDC dated 16/11/2023 before the Hon'ble NCDRC which was accepted by the Ld. Counsel for the complainants and the same is recorded in the Final Order of Disposal of the Revision Petition No.580 of 2018. dated 18.10.2023 passed by the Hon'ble NCDRC. Further, the complainant have realized the payment of cheque amount of ₹16,00,000/- by getting the same encashed in their account hence, the complainant has already realized the entire payment of ₹ 20,50,000/- payable under



the said deed and the said Revision Petition numbered as 580 of 2018 has been withdrawn by the complainants in satisfaction of its claim. The order dated 18.10.2023 is attached as Annexure R2.

- v) That the Ld. Authority herein has erred in its observations in the Order dated 29.11.2023, wherein, Respondent was burdened with cost of ₹5,000/- payable to Authority and ₹2,000/- payable to Complainants for not filing reply in time. The situation should not have arisen wherein the Respondent ought to file a reply in a matter that had already been settled and the refund having been already made.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS

13. During oral arguments, complainants reiterated the facts of the complaint. Learned counsel for complainants submitted that respondent does not have any proof regarding that they both are separate entities. However post-dated cheque of ₹16,00,000/- has been encashed by the complainants. Learned counsel for respondent no. 2 appraised the Authority that both respondents are separate companies.

F. ISSUES FOR ADJUDICATION

14. i) Whether the complaint is maintainable or not?
ii) Whether the complainants are entitled to the relief sought by them?



G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

15. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

- i) That plea of complainants that respondent no. 2 requested complainants to book a plot in project of its sister concern has not been supported with any documentary evidence. Further, perusal of file revealed that complainants were given a post-dated cheque of ₹16,00,000/- dated 16.11.2023 by the respondent no.2 and the Revision Petition was dismissed by the Hon'ble NCDRC vide order dated 18.11.2023 as withdrawn with liberty to the petitioner to approach the Commission in the event of the post-dated cheque delivered are not encashed.
- ii) That complainants after getting issues resolved, by way of entering into settlement before Hon'ble National Consumer Dispute Redressal Commission, New Delhi got the transaction concluded with respondent no. 2. Another aspect to look into said transaction is that even in case, the post-dated cheque provided by respondent no. 2 got bounced then complainant were at liberty to approach the Hon'ble Commission again but complainants without explaining the status of cheque of ₹16,00,000/-, even before passing of final order



dated 18.10.2023 passed by the Hon'ble Commission, filed present complaint on 14.07.2023 for the relief sought mentioned in para no. 10 of this order. In the aforesaid circumstances, when complainants got their grievances fully and finally settled with respondent no.2 by way of settlement which is duly recorded in the order dated 18.10.2023 passed by the Hon'ble Commission then why did complainant approached this Authority pre-maturely.

- iii) Perusal of complaint file, also revealed that complainants before filing of the present complaint, had already filed a Revision Petition No. 580 of 2018 against respondent no. 2 before the National Consumer Dispute Redressal Commission, New Delhi on 13.02.2018, which ultimately got decided vide order dated 18.10.2023 wherein parties had settled the dispute amicably and complainant were duly paid an amount ₹4,50,000/- and post-dated cheque of ₹16,00,000/-. But complainants after getting their issues adjudicated/settled still continued with present complaint on the ground that respondent no. 2 had not adjusted the amount of ₹16,00,000/- till date in project of respondent no. 1. No documentary evidence has been attached in complaint on the basis of which complainants are relying upon for adjustment of amount of ₹16,00,000/- by respondent no. 2 in project of respondent no. 1.



These crucial facts were not revealed by complainants during the course of hearing also. Act of complainants are a step towards forum shopping. In support, reference is made to Hon'ble Supreme Court in case of Civil Appeal No.3581-3590 of 2020 titled as "**M/s Imperia Structure td. Vs. Anil Patni & Ors**". The relevant portion of which is reproduced for reference:

"31. At this stage, we may profitably refer to the decision in Pioneer Urban Land and Infrastructure Limited and another vs. Union of India and another, where a bench of three Judges of this Court was called upon to consider the provisions of Insolvency and Bankruptcy Code, 2016, RERA Act and other legislations including the provisions of the CP Act. One of the conclusions arrived at by this Court was:-*

"100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

In reference to aforesaid order passed by Hon'ble Supreme Court of India, Authority observes that as per law laid down by Hon'ble Apex Court the complainant/consumer have choice to choose any forum for redressal of their grievance. Accordingly, an aggrieved person may approach consumer forum, RERA or NCLT,



whichever found convenient by them for getting redressal of his grievance. Therefore, Authority is of considered view that present complaint is not maintainable because two parallel proceedings for same cause of action cannot continue before two different forum, as the same may end up with contrary findings on same issue.

- iv) Factual matrix of the case is that admittedly, respondent no. 2 has paid its part payment via cheque no. 000034, dated 16.11.2023 to the complainants on 18.10.2023 as mentioned in deed of Cancellation and Settlement dated 26.02.2020 before NCDRC, New Delhi. However, Respondent no. 2 has fully settled its account with the complainants and no relief is sought against the respondent no. 2 in the amended relief filed by the complainants after getting their payment done with the respondent no. 2. Now, the complainant seeking relief against the respondent no. 1 by trying to adjust ₹16,00,000/- against the plot no. 115 in their Springwoods City project. It is necessary to mention here that respondent no. 1 issued a letter of allotment dated 21.10.2020 in favour of complainant no. 2 and allotted the plot no. 115 measuring 119.47 square yards and complainant no. 2 paid a sum of ₹2,50,000/- vide cheque no. 091434 dated 22.10.2020 to the respondent no. 1. Thereafter agreement to sell was executed



between both the parties on 2.11.2020 and the letter of possession was issued against the said plot on 15.01.2021 to the complainant no. 2 by raising the demand of remaining payment i.e. ₹22,58,870/- of the plot but no payment was made by the complainant no. 2 to the respondent no. 1.

- v) Perusal of documents revealed that respondent no. 1 had issued various reminders for demanding final payments to the complainant no. 1 dated 15.12.2020, 16.01.2023 and 20.02.2023(annexure –A3a) by post but no reply was made by the complainant no.2. On 23.03.2023, complainant no.2 requested to the respondent no. 1 through email that she was ready to make the payments of the plot as now the stay of Hon'ble Punjab and Haryana High Court has been vacated and you were allowed to make transaction and also to change ~~her~~^{her} residential address. In response, respondent no. 1 intimated that there was huge amount pending towards her and despite repeated reminders, she has not made the full payment. Respondent no. 1 had requested the complainant no. 2 to make full payment before 10.04.2023 and get the plot registered. They provided last chance to the complainant to make payment otherwise booked plot will be treated as cancelled but complainant no. 2 failed to make the full payment of



the allotted plot. Thereafter, respondent no. 1 issued Final Reminder cum Cancellation Notice-II on 17.06.2023 by post to the complainant at her previous address and again emailed it to the complainant no. 2 on 03.07.2023 but no intimation was given by the complainant no. 2 in response to these notices.

- vi) After the payment of ₹16,00,000/- was made by the respondent no. 2 on 16.11.2023, complainant no. 2 filed an application for amended relief on 29.11.2023 in which she prayed that ₹16,00,000/- be adjusted against the plot of respondent no.1 as she issued a cheque of ₹16,00,000/- in favour of respondent no.1 which was not drawn by them. Despite issuing reminders by respondent no.1 to complainant no.2, no payment was made of the due amount and hence cancellation notice was issued by the respondent no.1, that too was not replied by complainant no.2. Thus, as of now there is no liability of respondent no.1 to consider the request of complainant no.2 as respondent no.1 and 2 are separate legal entities and born no liability over each other to adjust. There is no document which purports that the respondent no.1 is liable to adjust the payment of respondent no.2. Respondent company has a right to cancel the allotment, in case of failure in making payments as per schedule-C Part -2.of the



agreement to sell by the complainant no. 2. The proceedings before the Authority are summary proceedings and its findings are relied upon documentary evidences. The amended reliefs sought by the complainant no.2 against the respondent no.1 is only for adjustment of ₹16,00,000/-. There is no relief sought for quashing the cancellation notice and to the refund the paid amount of ₹2,50,000/- by the respondent no.1. Hence, request of complainant no.2 is rejected and relief sought by her cannot be granted to her.


- vii) Further, the complainant is seeking cost of litigation. 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 PvtL 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 for seeking the relief of litigation expenses.

viii) In view of above-mentioned terms, Authority concludes that present complaint filed by the complainant is hereby dismissed for the reasons stated in aforesaid paragraphs.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

