



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1627 OF 2019

Vinay Narwal and Anr.

....COMPLAINANT(S)

VERSUS

JBB Infrastructure Pvt Ltd

.... RESPONDENT (S)

**CORAM: Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 19.12.2019

Hearing: 7th

**Present: - Mr. Shalander Mohan, Counsel for complainant
Mr. Jitender Kadyan, Representative of respondent**

ORDER (ANIL KUMAR PANWAR-MEMBER)

The complainants, are allottees of Flat No. 403, Tower-T-2A in respondent's residential project "JBB Grand, Karnal" and they have filed this complaint seeking relief for cancellation of occupation certificate granted to

the respondent on 20.06.2017 by the Town and Country Planning Department.

2. The ground pleaded for claiming the relief is that the respondent had constructed his project violating fire safety norms laid under the National Building Code (NBC) and therefore, he was not entitled for grant of occupation certificate, which has since been granted to him on 20.06.2017. The precise violation was alleged to have been committed in respect of statutory requirements contained in clauses 2.25 and 4.6.2 of the NBC which mandates that building having floor area of more than 500 Sq. Mtrs. shall be provided with atleast two stair cases. The occupation certificate was allegedly granted without providing required two stair cases in the building of his project.

3. The respondent has contested the complaint and his plea is that out of total six towers in his project, only two towers, namely, T-3 and T-1A were requiring two stair cases because the height of building in these towers is more than 500 Sq, Mtrs. and he had already provided two stair cases in these towers. So, the present complaint for the reason that the building has been constructed as per statutory requirements, deserves dismissal.

4. During the course of arguments, a pertinent query was put to the counsel for the complainant as to which specific provision of Real Estate (Regulation and Development) Act, 2016 (for short, the Act) empowers this



Authority to scrutinize the validity of an occupation certificate granted by the Director General Town and Country Planning Department (DGTCP). Learned counsel for the complainant has referred the Sections 31 and Section 14(3) of the Act to convince the Authority on the point that it has jurisdiction to cancel the occupation certificate in question. The Authority, however, is not convinced with the proposition sought to be so contended by the complainant's counsel, for the reasons stated hereinafter.

5. Section 31 of the Act reads as under:-

"31. Filing of complaints with the Authority or the adjudicating officer.-

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations."

The aforesaid section indeed empowers the Authority to deal with a complaint filed by a person aggrieved of any violation or contraventions of the provisions of the Act or Rules and Regulations made thereunder.



However, the complainants herein are not aggrieved of violation of any provisions of the Act or Rules or Regulations made thereunder. He is rather aggrieved of an alleged violation committed in respect of NBC. This Authority does not have any power to take cognizance in respect of violation of the provisions of the NBC. Whether or not the compliance of NBC has been made is a question which exclusively lies within the competence of the DGTCP to determine at the time of granting Occupation Certificate. If he had granted occupation certificate ignoring any provision of the NBC, then the remedy available to the aggrieved person is either to approach the DGTCP or his senior Authority for cancellation of the occupation certificate. For vindication of any grievance in respect of violation of the provisions of NBC, this Authority is not an appropriate Forum. If the arguments of the complainant's counsel is accepted on the point that cognizance in respect of violation of NBC provisions is permissible under Section 31, such interpretation will then tantamount to re-writing of Section 31 and exercise of a jurisdiction which the legislature has never intended to vest in the this Authority. So, the first leg of complainants' counsel is not acceptable.

6. Now coming to the provisions of Section 14(3) of the Act which reads as under:-

“14. Adherence to sanctioned plans and project specifications by the promoters.-

(1) xxx

(2) xxx



(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

....(emphasis laid)

It is plain from the above mentioned provisions that the same are enacted to provide a right to the allottee to seek rectification of any structural defect or other defect in workmanship, quality or provisions of services or any obligation of the promoter as per agreement for sale, by bringing it to the notice of the promoter within a period of five years from the date of handing over the possession. The right so vested in the allottee is in respect of promoter's contractual obligation and not in respect of his statutory obligations. So, the complainants cannot draw any support to his contention even from section 14(3) of the Act.

7. Viewed from the above perspectives, the Authority is of the considered opinion that it has no jurisdiction to cancel the occupation certificate granted to the respondent by the DGTCP.



8. Consequently, the complaint filed by the complainants is hereby dismissed. File be sent to the record room after uploading of the order on the website of the Authority.


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]

