



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 243 OF 2019

Tikkam Saraf & Ors.

....COMPLAINANT

VERSUS

M/S Aarcity Builders Pvt. Ltd. & Anr.

....RESPONDENTS

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 04.02.2020

Hearing: 10th

Present: - Sh. Kamaljeet Dahiya, Counsel for complainants

Shri Shekhar Verma & Smt. Rupali Verma, Counsels for respondents

ORDER (RAJAN GUPTA- CHAIRMAN)

1. The complainants are members of consortium of 11 persons who came together for making an investment as lenders in respondent no. 1's real estate project named "Regency park", Hisar with an intent to earn good returns. The complainants and respondents entered into a loan agreement to the tune of Rs. 33 crores on 20.02.18 wherein it has been specifically mentioned that

respondent no. 1 is the borrower, respondent no. 2 is the guarantor and complainants are the lenders. Respondent no. 2 assured the complainants that in order to ensure timely repayment of principal loan amount and interest, all the assets and receivables belonging to respondent no. 1 will be hypothecated. By virtue of the agreement, the complainants transferred a sum of Rs. 29,54,86,906/- to the bank account of respondent no. 1. However, later the complainants came to know that the project is in doldrums and it will never see the light of the day, therefore, the complainants were constrained to release the remaining amount to the respondents.

The Respondents sent various legal notices to the complainants for transfer of the balance amount which were not complied by the complainants. Thereafter, respondents sent legal notice dated 18.10.18 vide which they terminated the said loan agreement. The complainants averred that till today nothing has been paid by the respondents to the complainants against the money invested by them. Now the complainants have come before this Authority for declaring them as investor or lender of loan amount in relation to the said project. The complainants further pray the Authority to give necessary directions to the respondents for return of the amount paid by complainants along with interest.

2. Per contra, the respondents submitted that the present complaint is not maintainable since the Real Estate (regulation and Development) Act, 2016 regulates contractual relationship of allottees, promoter and real estate agents emanating from agreement for sale, allotment letter and other contractual

documents. The dispute projected by the complainants cannot be a subject matter of adjudication by this Authority. Further, as per the loan agreement the dispute between the complainants and respondents is governed by arbitration clause and respondents have already availed of the said provision on 05.02.2019.

3. During verbal arguments, learned counsel for the complainants stated that his case is covered by Section 12 of the Real Estate (Regulation and Development) Act, 2016. The relevant portion of which is produced below:

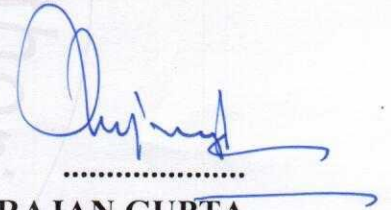
“Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act”

4. The Authority observes that Section 12 relates to veracity of advertisement or prospectus through which the promoter advertises his project in the market and invites customers for buying units in the project. The

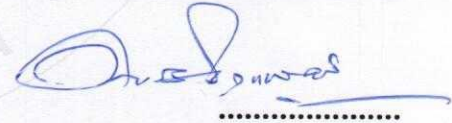


complainants, in the present case have clearly given their money as investors not as allottees. Therefore, the case of the complainants is not covered by this section. The Real Estate (Regulation and Development) Act, 2016 is aimed at adjudicating the dispute between promoter and allottees of real estate project. There is no provision in the Act vesting power in the Authority to resolve a dispute between a promoter and the person who by virtue of investing money in the project with an intent to earn profit has acquired status of a money lender vis-à-vis the promoter of the project. The respondents never allotted any unit or apartment to the complainants and no allotment letter or builder buyer agreement was ever executed between the parties.

5. In view of the above, this complainant is **dismissed**. Order be uploaded on the website of the Authority and files be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SHAG
[MEMBER]