

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint No. : 97 of 2018
Date of Institution : 21.03.2018
Date of Decision : 05.07.2018

Ms. Sangeeta Yadav
2399, First Floor, Sector-46
Gurugram, Haryana-122003

...Complainant

Versus

1. M/s Supertech Ltd.
Urban-5, Sector-68, Gurugram- 122101
2. Investor Clinic Infratech Pvt. Ltd.
IRIS Tech park, 8th floor, Block -A, Sohna
Road, Sector-48, Gurugram-122101

...Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

**Chairman
Member
Member**

APPEARANCE:

Sangeeta Yadav
Shri Prashant
Shri Abhey Raj Sharma

Complainant in person
Advocate for the respondent
no.1
Advocate for the respondent
no.2

ORDER

1. A complaint dated 21.03.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with



Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Ms. Sangeeta Yadav against M/S Supertech Ltd. & M/s Investors Clinic Infratech Pvt. Ltd. In the present complaint, the property is not in existence & neither the project was approved, nor the plans were sanctioned, then also the property was sold by the developer. M/s Supertech issued an advertisement in Dainik Bhaskar, Rewari Edition on 16.01.2016 inviting the applications for their newly launched project "Officer Enclave" in Hill Town, for which they had engaged M/s Investors Clinic Infratech Pvt. Ltd. as their service provider.

2. The particulars of the complaint are as under: -

1.	Name & location of the project	"Hill Town" at Sector-2, Sohna Road, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	A/1604, A2 Block, 16 th Floor
3.	Booking amount paid by the buyer to the builder/promoter/company	Rs. 3,50,000/-
4.	Total consideration amount as per allotment letter dated 30.07.2016	Rs. 35,95,250/-
5.	Total amount paid by the complainant up to date	Rs. 7,51,407/-
6.	Date of delivery of possession	Clause 26 i.e. by July 2020



3. As per the details provided above, which have been checked as per record of the case file. An Allotment letter cum builder-buyer

agreement is available on record for the aforesaid unit according to which the possession of the same had to be delivered by July, 2020. The complainant paid an amount of Rs. 7,51,407/- against the said unit & Rs. 17,175/- as service charge to M/s Investors Clinic Infratech Pvt. Ltd. against the said unit. The representative of M/s Supertech told the complainant that the said project has been scraped & advised the complainant to shift her booking in some other projects as per the price slab of the chosen project. Thereafter, the complainant asked the representative to give these statements in writing, which was refused by him. The Complainant tried to meet other representatives of M/s Supertech Ltd. but everyone pressurized the complainant to shift her booking, that too at a very high price band which the complainant was unable to afford.

4. The complainant has submitted that she has visited the office of the respondent no. 1 many times to get the refund but failed every time. The complainant further reported that she has not received any reply from respondent no. 1 till date.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent no. 2 appeared on 19.04.2018 & the respondent no. 1 appeared on 08.05.2018. The case came up for

hearing on 19.04.2018, 08.05.2018, 06.06.2018, 27.06.2018 & 05.07.2018.

6. The reply was filed on behalf of the respondent no. 2 which has been perused and found to vague and evasive as it has been contended that the respondent no. 2 is not a party to the Agreement executed between the parties and that it is mis-joinder of parties. The reply filed on behalf of the respondent no. 1 has also been perused. The respondent no. 1 has not disputed the fact that the said project is not an approved project and that it does not exist.
7. The Counsel for the complainant has made a statement that he is not appearing before the authority for compensation but against non-fulfilment of the agreement by the promoter which is an obligation of the promoter under section 11 of the Real Estate (Regulation & Development) Act, 2016.
8. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:



“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

9. It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

10. On the date of hearing i.e. 05.07.2018, the counsel for the respondent no. 1 intimated that, the complainant has booked a residential flat at Officer Enclave- Hill Town which is not an approved Project. Thereafter, neither there is any permission for construction from the competent authority nor any building plans have been approved so far with respect to this project. It seems that with a view to cheat the complainant as well as other buyers, the respondent no. 1 has sold / made large number of flats to similar placed buyers. The counsel for the respondent no. 1 is not aware about the details of the entire project and does not have knowledge whether the project is ongoing and



registerable. Accordingly, this matter needs to be investigated in detail and if necessary, criminal case be filed under the Indian Penal Code for cheating the allottees. This course of action for cheating the people shall be in addition to any other penal / criminal action warranted under the RERA Act. It is a very sad state of affairs that in spite of adjourning the matter 2-3 times, the respondents have not only failed to provide information about the project but are also trying to mislead the authority. The M/s Investors Clinic Infratech Pvt. Ltd. , real estate agent knowing fully well that this project has not been sanctioned or approved by the competent authority has allured large number of buyers to invest in this project. This is certainly an unfair trade practice adopted by respondent no. 1 and respondent no. 2 jointly. This is a clear violation of Section 7(1)(c) by the promoter and liable to be punished under Section 61, which is reproduced below:



61. Penalty for contravention of other provisions of this Act-

“ If any promoter contravenes any other provisions of this Act other than that provided under Section 3 or Section 4, or the rules or regulations made thereunder, shall be liable to a penalty which may extend up to five per cent of the

estimated cost of the real estate project as determined by the Authority.”

11. Further, by concealing the fact that the project was not sanctioned, and the building plans were not approved by the competent authority, the promoter has violated Section 11(3) of the RERA Act, 2016 which is reproduced below:

“11.3 The promoter at the time of booking and issue of allotment letter shall be responsible to make available to the allottee, the following information namely:-

(a) sanctioned plans, layout, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the authority;

(b) the stage-wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.”



12. The respondent no. 2 has violated the provisions of Section 10 by involving in unfair trade practices for which the respondent no. is liable to be punished under section 62 of the RERA Act, 2016 . The relevant provisions are reproduced below:,

“10 Every real estate agent registered under section 9 shall—

(a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;

(b) maintain and preserve such books of account, records and documents as may prescribed;

(c) not involve himself in any unfair trade practices, namely:—

(i) the practice of making any statement, whether orally or in writing or by visible representation which—

(A) falsely represents that the services are of a particular standard or grade;

B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;

(C) makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that



are not intended to be offered. (d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed.

”

“62 If any real estate agent fails to comply with or contravenes the provisions of Section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or building , as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.”

13. It is understood that respondent no. 1 took most of the booking through Respondent no. 2. The authority not only acts on this complaint but also taking Suo-moto cognizance of the fraud and mischief committed with large number of buyers, hereby order to appoint Shri Mam Chand Mehra, Retired Sessions Judge to be the Enquiry Officer to investigate the whole matter. The Enquiry Officer may associate any serving or retired Police officer, if needed.

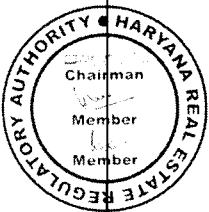


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14. Meanwhile, to take care of the interest of the present complainant, the authority, exercising powers vested in it under section 37 of the RERA Act, 2016, hereby directs the respondents to refund the entire amount along with the prescribed rate of interest within a period of 45 days from the date of order otherwise penal and criminal consequences shall be initiated.

The Enquiry Officer will also investigate the conduct of M/s Investors Clinic Infratech Pvt. Ltd. and the various acts of omission and commission committed by them not only with respect to the violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 but also with respect to any other law so that the matter may be referred to the competent authority for further action in the matter.

15. The Investors Clinic has also charged an amount of Rs. 17,175.00 from the complainant which was given to them by way of cheque. Any Real Estate Agent cannot charge for the service which is fraudulent and mischievous. Therefore, a show cause notice to M/s Investors Clinic Infratech Pvt. Ltd. be issued for cancellation of the registration certificate granted to them. The matter be also given wide publicity through the local newspapers so that other people are not cheated by such mischievous / unscrupulous real estate agents.

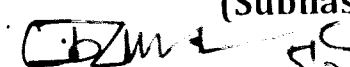


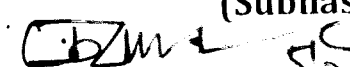
16. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.

17. The order is pronounced.

18. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

