



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 258 OF 2019

Mridul Yadav

....COMPLAINANT(S)

VERSUS

1. M/s Omaxe Pvt Ltd

....RESPONDENT(S)

2. Mr. Sandeep Mangla, Chairman, Omaxe Pvt Ltd

3. Mr. Ashok Kumar

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

**Member
Member**

Date of Hearing: 29.01.2020

Hearing: 8th

Present: - Mr. Ajay Chhikara, Counsel for the complainant

Mr. Vishal Singal, Counsel for the respondent no. 1 & 2.

Mr. Bhushan Bhatia, Counsel for respondent no. 3.

ORDER (ANIL KUMAR PANWAR-MEMBER)

1. The complainant's case is that she had purchased allotment rights of Flat No. 612, G.F. having an area of 1522 Sq. Fts. in a project named Omaxe Happy Homes situated at Rohtak from its earlier allottee Ashok Kumar (hereinafter referred to as the allottee). Said allottee after receiving the agreed amount had given her documents necessary for transfer of flat to her name and executed two affidavits initially on 20.09.2014 and subsequently on 27.06.2017 in her favour acknowledging receipt of money and transfer of flat. Complainant's grievance is that she had sent all necessary documents to the respondent no. 1, (hereinafter referred to as the promoter) but he is neither transferring the flat to her name nor handing over possession even after receiving the balance sale consideration.
2. The promoter has admitted that the complainant had sent him documents alongwith necessary fee for transfer of the flat and his plea is that he has not effected necessary transfer to her name because the allottee had sent him a letter stating that the flat should not be transferred without his presence. A copy of the said letter was attached as Annexure with the promoter's reply.
3. The Authority vide its order dated 27.08.2019 had directed the complainant and the promoter to meet on 06.09.2019 in promoter's office in the presence of the allottee for the purpose of ascertaining whether the flat should be transferred in the name of complainant. The promoter was directed to present the minutes of said meeting before the Authority.


Anil Kumar Panwar

4. The promoter on the date fixed for presenting the minutes of the meeting had not produced the relevant minutes. Rather, he simply apprized the Authority that the allottee had not agreed for transferring the flat in the name of the complainant. So, the Authority decided to issue a notice to the allottee in order to adjudge the justification for not agreeing to transfer the flat in the name of complainant despite having executed the transfer documents in her favour.

5. The allottee in his reply has averred that the complainant has no locus standi to file the present complaint because she is neither an allottee of the promoter nor has purchased allotment rights from him. He has further averred that complainant has not paid single penny to him. Infact, he alongwith complainant's father was doing business of sale-purchase of properties and the complainant's father was having access to all his documents and files. The complainant's father had obtained his signatures on various documents on the pretext of obtaining housing loan from the bank. Her father had subsequently also obtained affidavit from him on 24.06.2017 in the garb of settling a matrimonial dispute with her in-laws.

6. Parties have been heard and record has been perused.

7. At the outset, learned counsel for the allottee has argued that the complainant is not entitled to any relief because she has filed the present complaint without impleading allottee Shri Ashok Kumar and her father who was instrumental in obtaining allottee's signatures on the transfer documents on



false pretexts, firstly on the misrepresentation that such documents are required for applying house loan and secondly, under the guise of settling complainant's matrimonial dispute. The Authority is of the considered opinion that the complaint can neither be dismissed on the ground of non-impleadment of the allottee who had been since impleaded as respondent and has availed a full and adequate opportunity to defend himself nor even for non-impleadment of complainant's father against whom no relief is being claimed.

8. Next argument raised on behalf of the allottee is that the case in hand involves complicated issues of facts which can be resolved only by a Civil Court on holding regular full-fledged trial. So, this Authority, for the reason that it is obligated to decide the cases summarily, has no jurisdiction in the matter.


9. The argument is again not acceptable. **The** complainant herein has claimed purchase of allotment rights from **the** allottee and her grievance is that the promoter is not transferring allotment rights in her favour even after submission of transfer documents. It is indisputable fact that allotment rights are transferable. Furthermore, the respondent-promoter has admitted in his reply the receipt of necessary transfer documents sent by the complainant. So, the dispute for adjudication before this Authority is as to whether the act of promoter in not transferring the allotment rights is justified. Said dispute having been raised by a person claiming herself to be the purchaser of allotment rights and it being raised against the promoter of real estate project of the project, falls within the


A. S. J.

jurisdiction of this Authority and now requires resolution on the basis of material brought on record by the parties. Mere fact that this Authority in order to ensure expeditious disposal of disputes is obligated to adopt summary procedure, will not imply that such dispute falls outside its jurisdiction. As a matter of fact, Section 79 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called RERA Act, 2016) clearly bars the jurisdiction of the Civil Court to decide any matter which falls within the jurisdiction of the Authority. The inevitable conclusion that follows in this situation is that this Authority has jurisdiction to adjudicate the present complaint.

10. Furthermore, a dispute arises only when a right claimed by one party is denied by the opposite party. Such dispute then requires resolution by a Court/Authority empowered to decide the same. Needless to mention that the Court/Authority so empowered cannot abdicate its duty on the ground that procedure prescribed for resolution of disputes is inadequate or improper. Rather, the Court/Authority concerned must decide the dispute on the basis of material brought on record by the disputing parties. It is, therefore, not permissible to hold that this Authority has no jurisdiction to decide the present complaint merely because it is obligated to decide the cases summarily.

11. Now coming to merit of the case. The promoter's plea in this case is that he has no objection to transfer the flat to the name of the complainant but such transfer could not be made because the allottee had sent him a letter dated



11.09.2017 (Annexure R-1) requesting that the transfer shall not be made without his presence. Interestingly, the allottee in his letter R-1 has nowhere alleged that he had not sold his rights in the flat to the complainant or had not executed the transfer documents in favour of the complainant. The plea now being raised by him is that the father of the complainant was a partner with him in a business of sale and purchase of the properties and he had obtained his signatures on transfer documents initially on the pretext of obtaining a loan and later on the pretext of resolving complainant's matrimonial dispute.

12. Now the crucial question requiring determination is as to whether the allottee's version is trustworthy on the point that transfer documents were fraudulently obtained in the alleged manner. Significantly, the allottee had executed two affidavits firstly on 20.09.2014 and secondly on 27.06.2017. He has categorically averred in the very first affidavit that he had received full and final payment of the flat and has no objection for transferring the same in the name of the complainant. The promoter has not disputed the authenticity of statement of account, attached as Annexure C-8 with the complaint, wherein details of various instalments paid in respect of flat in question are mentioned. It is evident from said statement, C-8, that last seven installments in respect of the flat were paid through cheques. It was not disputed during arguments that these payments had come from the bank account of the complainant. The instalment received prior to these seven payments ~~was~~ paid on 10.10.2013. So, it is



established on record that the allottee had stopped making payment of instalments after 10.10.2013 and all instalments in respect of the flat after execution of first affidavit dated 20.09.2014, were paid by the complainant. The fact that allottee stopped paying instalments after executing affidavit and transfer documents in favour of the complainant thus leaves no room to hold that transfer documents and affidavits were obtained fraudulently.

13. That apart, no material has been brought on record revealing that the complainant was involved in some matrimonial dispute or her father had applied for some loan. How can it be then held that the allottee had signed the affidavits on the asking of the complainant's father for obtaining loan or settling a matrimonial dispute. Rather, the only inevitable conclusion permissible in the aforesaid circumstances is that the allottee had voluntarily executed transfer documents including affidavits and had transferred the flat to the complainant after receiving full and final payment.

14. Aforesaid conclusion becomes all the more irresistible because the allottee after a gap of three years of executing first affidavit dated 20.09.2014 had again executed affidavit dated 27.07.2017 (available at Page 38 of the complaint) reiterating therein that he, with full consent and sweet will, had relinquished his rights in respect of the flat in question in favour of the complainant. Besides signing the affidavits, the allottee had executed various other documents (available at Pages 30 to 37) for the purpose of transferring the flat. The



documents so signed were on the printed proforma as prescribed by the promoter's company for assignment of allottee's rights to a subsequent purchaser. The allottee himself is a property dealer and it is therefore difficult to believe that he was ignorant about the nature of documents which he had signed. He has not merely signed the documents but even after realising that complainant has started using such documents to claim allotment rights in the flat has failed to challenge the same before any Court on the ground that his signatures were obtained fraudulently. He did not raise the allegation of fraud at the first available occasion when he had sent letter dated 11.09.2017, annexure R-1, to the promoter. So, the Authority is not convinced with the allottee's plea that the complainant's father had fraudulently obtained his signatures on the documents.

15. In view of above discussions, the Authority finds no justification for not transferring the flat to the name of the complainant on the basis of the transfer document executed by the allottee. The complaint is, therefore, allowed and the respondent-promoter is directed to transfer the flat to the name of the complainant. However, it is made clear that the transfer of flat will not absolve the complainant of her liability to pay the balance outstanding dues, if any, to the promoter.

A handwritten signature in blue ink, appearing to be 'O. J. ...', with a horizontal line underneath it.

16. Case is **disposed of**. Order be uploaded on the website of the authority and file be consigned to the record room.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

