

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 25.10.2018
Complaint No.	622/2018 Case titled as Mr. Ashutosh Jyoti V/S Puri Constructions Pvt Ltd.
Complainant	Mr. Ashutosh Jyoti
Represented through	Complainant in person with Shri Hemant Chaudhary Advocate.
Respondent	Puri Constructions Pvt Ltd.
Respondent Represented through	Shri Himanshu Juneja Consultant on behalf of the respondent.
Last date of hearing	25.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Complainant is seeking refund of the deposited amount under sections 12 and 14 of the Real Estate (Regulation & Development) Act, 2016 as he does not want to continue with the project for which he has given various/sundry reasons. All the points raised by the complainant have been discussed in detail. Respondent is directed to submit the approval for revised layout plan approved by the competent authority alongwith compliance report of LOI by tomorrow. Complainant is insisting for refund of his money invested alongwith the prescribed rate of interest. However, his request for refund of money can not be acceded to at this juncture in view of the progress

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

of the project. If the complainant is not satisfied with the decision of this authority, he has the remedy to avail as per law.

The complaint stands disposed off. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint no. : 622 of 2018
First date of hearing : 25.09.2018
Date of decision : 25.10.2018

Mr. Ashutosh Jyoti
R/o. C-103, Park Grandaura,
Sector-82, Faridabad, Haryana.

Complainant

Versus

1. M/s Puri Construction Pvt. Ltd.
(through its director)
2. M/s Florentine Estates of India Ltd.
(through its directors)
Office address: 4-7B, Ground Floor,
Tolstoy House, 15 & 17 Tolstoy
Marg, New Delhi.

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Ashutosh Jyoti
Shri Hemant Chaudhary
Shri Himanshu Juneja

Complainant in person
Advocate for the complainant
Consultant on behalf of the
respondents
Authorised representative on
behalf of the respondent
company.

Ms. Smriti



ORDER

1. A complaint dated 27.07.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Ashutosh Jyoti, against the promoter M/s Puri Construction Pvt. Ltd. and M/s Florentine Estates of India Ltd.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Emerald Bay", Sector 104, Village Dhanwapur, Gurugram, Haryana.
2.	Project area	15.337 acres
3.	Nature of project	Residential group housing colony
4.	Registered/not registered	Registered
5.	HRERA registration no.	136 of 2017
6.	Date of completion as per HRERA registration certificate	28.02.2020
7.	DTCP license no.	68 of 2012
8.	Date of execution of apartment buyer's agreement	09.05.2017
9.	Apartment/unit no.	B1-301, 3 rd floor, block no. B1.
10.	Unit measuring	1550 sq. ft.
11.	Total consideration amount as per payment plan annexed as annexure III to the said agreement	Rs.1,40,48,791 /-
12.	Basic sale price of the unit as per agreement	Rs.91,50,813/-
13.	Total amount paid by the	Rs.36,73,125/-



	complainant till date as per sales customer ledger dated 01.09.2018	
14.	Percentage of consideration amount	Approx. 26.1 percent
15.	Date of delivery of possession as per clause 10(a) of apartment buyer's agreement (36 months from the date of execution of this agreement + 180 days grace period)	05.11.2020
16.	Delay in handing over possession till date	Premature
17.	Penalty clause as per buyer's agreement	Clause 14 of the agreement i.e. 18% p.a. on amount deposited from the last date of offer of possession till actual offer of possession.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondents. An apartment buyer's agreement is available on record for the aforesaid unit according to which the possession of the same is to be delivered by 05.11.2020. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents through their counsel appeared on 25.09.2018. The case came up for hearing on 25.09.2018 and 25.10.2018.



Brief facts

4. Briefly stated, the facts of the complaint are that after going through the advertisement published by the respondents in the newspapers and as per the broacher/prospectus provided by them, the complainant had booked a unit/flat bearing no. B1-301 in the upcoming project named “Emerald Bay” situated in Sector-104, Village Dhanwapur, Gurugram.
5. The complainant submitted that the apartment buyer agreement was executed on 09.05.2017 and till today a total sum of Rs.36,73,060/- has been paid duly time to time as per the agreement to the respondents by the complainant.
6. The complainant submitted that during the course of construction of the above said project, the respondents has changed the sanctioned plan and layout plan in contravention of the brochure/prospectus that was presented and shown to the complainant at the time of booking. The complainant submitted that a letter dated 26.09.2017 was sent to the complainant by the respondents intimating him regarding the change and revised building plans. That after receiving the letter, the complainant contacted the respondents and showed his disinterest in the said revised plans and also conveyed to them that he booked the flat specifically on the



basis of layout plan that was mentioned in the brochure which was shown to him at the time of booking. The similar layout plan was also available on the website of the Puri Construction and based upon such representations and subsequent satisfaction he was ready to book and purchase the said flat.

7. The complainant submitted that when he visited the site during the course of construction, he came to know about the changed layout plan and noticed that the construction was not being done as per the brochure/prospectus that was shown to him at the time of booking of the flat. The various amenities for example "internal connecting roads, civil structures, green areas, minor entry and exit points, water bodies were altered, removed or changed by the respondents.
8. The complainant submitted that he further showed disinterest and requested the respondents not to change the layout plan and under such circumstances, if the plan is revised, the complainant would like to withdraw his flat booking along with his entire amount along with interest and compensation.
9. The complainant submitted that when he did not receive any satisfactory reply from the respondents, he requested the



respondents for cancellation and refund and compensation of his amount along with interest. That afterwards on various occasions, complainant requested through verbal and telephonic communications, for the cancellation of his flat and asked the refund of his amount but till now the respondents have not paid any heed to the just and genuine request of the complainant, neither returned his amount deposited by him in respect of the above said flat.

10. The complainant submitted that as per section 12 of the Act, the respondents have provided false information on the prospectus/brochure and under the same section the complainant is entitled to get the entire amount refunded along with compensation.

11. The complainant submitted that the act of the respondents is mala fide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and the respondent is liable to be prosecuted under section 12 and other relevant sections of the Act *ibid*.

12. **Issues raised by the complainant are as follow:**

- i. Whether the layout plan as agreed by the developer was not delivered?



- ii. Whether the respondent company is liable to be prosecuted for the violation of RERA provisions other than section 12?

Reliefs sought

13. The complainant is seeking the following reliefs:

- i. The complainant is seeking refund of total amounts of Rs.36,73,060/- along with 18% (or as per HRERA) compound interest per annum from the date of deposit till the realization of the amount for false representation of layout plan.
- ii. The complainant is seeking compensation towards mental harassment and agony caused by the respondents due to change in the layout plan, along with litigation charges Rs.55,000/-.

Respondent's reply:

14. The objections and submissions raised by the respondents challenging the jurisdiction of this hon'ble authority are as follows:

- i. The respondents submitted that the complaint filed by the complainant is not maintainable under the provisions of the Act and applicable Rules, as the



complaint can only be filed for violation and/or breach of the provisions of the Act and Rules. In the present complaint, no violation or breach of the provisions of the Act and Rules has been alleged or averred.

ii. The respondents submitted that the relationship between the parties is governed by the binding terms of the apartment buyer's agreement dated 09.05.2017 and the respondents have not committed any default in terms of the said agreement. The respondents have followed due procedure of law while getting the building plans revised and the complainant had not filed any objections against the revision in building plans even after receiving the letter dated 26.09.2017 and the final approval for revised building plans was issued by the Director, Town and Country Planning, after following due procedure of law. Hence, the complainant cannot take any recourse to the RERA Act and Rules and the present complaint is liable to be rejected.

iii. The respondents submitted that the present complaint does not fall within the ambit of said Rules, and the hon'ble authority has got no jurisdiction to try and entertain the same as neither there is any breach of the obligations by the respondents nor there is any delay in



offer of possession, as the respondents had already filed the application for obtaining occupation certificate and amounts paid by the complainant stand invested in the project hence the present complaint be dismissed.

- iv. The respondents submitted that the complainant has not come before the authority with clean hands and has concealed various facts and is also guilty of misrepresentation, hence the complainant is not entitled to any relief. The complainant had made two bookings i.e. the complainant booked two units with the respondents in the same project. The first unit was booked by the complainant in April 2015, for which also the complainant had filed the complaint on similar allegations and satisfied with the project, the complainant had made another booking i.e. present booking in October 2016. The complainant being an investor had concealed all these facts from this hon'ble authority, hence is not entitled to any relief.



15. The respondents submitted that the complainant had made an earlier booking in the month of April 2015 and satisfied with the project, out of his own volition had made the present booking in October 2016 without getting influenced by any brochure etc.

16. The respondents submitted that they followed the due procedure of law while getting the building plans revised from the competent authorities. The respondents submitted that the Department of Town and Country Planning Haryana has issued a policy dated 28.01.2013 for getting the building plans of group housing colony revised. The respondents followed the procedure laid down in the said policy and applied for revision in building plans. The Director, Town and Country Planning Haryana, granted in-principle approval issued vide memo no. ZP-840/SD(BS)/2017/23219 dated 15.09.2017 for revision in plans, subject to the conditions mentioned therein. The respondents were directed to invite objections from the existing allottees regarding revision/amendments made in the building plans. Further, the respondents had informed each existing allottee about the proposed revision including complainant vide letter dated 26.09.2017 [the receipt of which the complainant admits], wherein the last date of submission of objections is clearly mentioned as 25.10.2017. Further, the respondents had hosted the copies of earlier building plans and revised building plans on its website at that relevant time and also displayed the both sets of plans at its site office. After following the due procedure of law the final approval of



revised plans was granted to the respondents. It is fact that the complainant voluntarily chose not to file any objection within prescribed time despite receiving letter dated 26.09.2017. Further the complainant did not send any letter/e-mail regarding the same after receipt of letter dated 26.09.2017. Hence the present complaint is not maintainable being filed only on the ground of change in building plans. The respondents also mentioned following salient features in their letter:

- i. Number of residential towers and their location in pocket 1 (towers B1, B2, B3) and pocket 2 (towers A1, A2, A3) remain the same. The civil structure of these towers are already complete and finishing work is in progress.
- ii. A club and a swimming pool have been added in pocket 1 (tower B1,B2,B3)
- iii. A club has been added in pocket 2 (tower A1, A2, A3) along with the existing swimming pool.
- iv. The facilities proposed in these clubs include: multipurpose hall, club lounge and coffee bar, bowling alley, a mini movie theatre, gym, games room.



- v. Area of greens/open spaces has been increased in pockets 1 and 2.
- vi. 4 villas which were earlier planned in pocket 2, have been removed and club house has been proposed there.
- vii. No change has been proposed in building elevations and distance between the already constructed 6 towers (A1, A2, A3, B1, B2, B3).

It is clear from the above that the respondents did not change the unit plan or areas of the unit booked by the complainant. Hence the allegations of the complainant are false and complaint is liable to be dismissed.

17. The respondents submitted that they carried out the construction of all the towers as per building plans only. Further as mentioned above, the green areas were increased marginally in the layout.
18. The respondents submitted that the complainant neither contacted the officials of the respondents nor submitted any objections against the revision in plans, hence the complainant is estopped from raising the said issue now. The features of the revised building plans stand mentioned in the letter dated 26.9.2017 which make it clear that the complainant has made false allegations.



19. The respondents submitted that the complainant never contacted the respondents nor asked for cancellation of apartment and there was no occasion for the same. The falsity of the allegations is evident from the fact that the complainant had alleged sending the request for cancellation for another unit B3-303 but had not alleged the same in the present booking. Hence all the allegations are wrong and denied.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under:

20. With respect to the **first issue** raised by the complainant, from the perusal of documents filed by the respondents in compliance of direction issued by the authority vide proceeding dated 25.10.2018, the respondents have complied with all the legal formalities required for approval of revised building plans. The respondents got the revised building plans approved in-principle dated 15.09.2017 from Director, Town and Country Planning, Haryana with several conditions. The respondents got the approval of revised building plans from the concerned authority on 17.11.2017



vide memo no. ZP-840/SD(BS)/2017/29348. Since, the said approval is granted by the competent authority, the said issue does not sustain and thus, decided in negative.

21. With respect to the **second issue** raised by the complainant, the complainant has not given any concrete ground nor has produced any document which makes the respondents liable for misrepresentation under the provisions of the said Act.

Findings and decision of the authority

22. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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. As per notification no.1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has



complete territorial jurisdiction to deal with the present complaint.

23. The complainant is seeking refund of the deposited amount under sections 12 and 14 of the Real Estate (Regulation and Development) Act, 2016 as he does not want to continue with the project for which he has given various/sundry reasons. All the points raised by the complainant have been discussed in detail. Complainant is insisting for refund of his money invested along with the prescribed rate of interest. However, his request for refund of money cannot be acceded to at this juncture in view of the progress of the project. The complaint is premature.
24. The order is pronounced.
25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 25.10.2018

