

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA**

Comp No. :

RERA-PKL 335/2018

Date : 27.11.2018

No. of Hearing : 3rd

Baldev Singh

...Complainant

Versus

M/s Ultratech Township Developers Pvt. Ltd.

...Respondent

CORAM :

Sh. Rajan Gupta

Chairman

Sh. Dilbag Singh Sihag

Member

APPEARANCE :

Sh. Kamal Dhaiya

Counsel for Complainant

Sh. Shobit Phutela

Counsel for Respondent

Order:

1. This matter was first taken up on 31.10.2018 when none appeared on behalf of respondent despite of delivery of notice to them. Thus the matter was adjourned to 22.11.2018 and a cost of Rs. 83,000/- was imposed as the respondent had failed to file their reply by the date



prescribed in the notice. The office was directed to issue a fresh notice to respondent to inform them the next date of hearing. On 22.11.2018, Ld. Counsel for respondent filed the reply along with an application of waiver of cost of Rs. 83,000/- on the plea that they did not receive the earlier notice, since the same was delivered to its previous address from which they had shifted. The Authority directed the respondent to file an affidavit stating that they were not residing at the address mentioned in the complaint at the time of delivery of the order and the same was not received by them and also furnish their present address of correspondence. The matter was adjourned to 27.11.2018. Today Ld. Counsel for respondent has filed the affidavit corroborating their statement of change of address and non-receipt of the notice by the respondent as the office was shifted to a new place before the notice was received and the same was not received by them. Thus in view of the affidavit submitted by the respondent, the Authority has waiver of the earlier cost of Rs. 83,000/-.

2. The matter was heard on merits and finally disposed of by the Authority today.

3. Ld. Counsel for complainant submitted that the complainant booked a flat in the Project namely "New world Residency" of respondent situated in sector-32, Karnal. He was tentatively allotted the

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flat no. 103, in Tower T4 having an area of 1791 sq. fts. on 28.04.2014.

The complainant had opted for construction linked payment plan.

S. No	Head	Amount
1	Booking Amount	Rs. 1,00,000/-
2	Basic Sale Price	Rs. 52,85,241/-
3	Amount Paid till date	Rs. 14,04,264/-

The complainant is aggrieved on the following grounds:

- An Apartment Buyers Agreement was executed between the complainant and the respondent. The respondent had to complete the construction within 30 months from the date of execution of Agreement, as per clause 10.1 of the agreement thus the expected date of delivery was Oct, 2016. But when the complainant visited the site , he found that there was no development on the site and in fact the project was nowhere near to completion.
- The respondent without doing any construction further raised demand notices for payment including of Rs. 14,44,984/- on 22.11.2014 , Rs. 29,64,248/- on 20.02.2015 and Rs. 56,65,138/- on 21.04.2017. Hence the Complainant sent a legal notice dated 01.11.2017 requesting the respondent for refund.



- The complainant is also aggrieved on account of Illegal charges paid by him for Car Parking amounting to 1.5 lakhs.

The complainant hence filed the present complaint seeking refund of payments made till date along with @ 18 % per annum from date of allotment letter. He further requested Authority to impose penalty u/s 60, 61, 12,14,15,16, 59 Of RERA Act, 2016 & Rule 21 (3) (c) of HRERA Rules, 2017. Further the complainant has requested the Authority to pass directions making every Director, manager, Secretary etc. liable u/s 69 of RERA Act, 2016 r.w. HRERA Rules, 2017, direction to respondent to deliver flat without additional charges for increased area and to take criminal action against respondents u/s 420, 406 & 409 IPC. He has also requested the Authority to direct respondent to pay compensation for mental agony, physical harassment and undue hardship along with cost of litigation.

4. In response to the pleas of the complainant, the respondent has rebutted complaint on the following grounds:

- The present complaint has been filed against 2 companies firstly, Ultratech Township Developers Pvt Ltd. Ltd which has been impleaded as respondent No.1 and New World Residency Pvt Ltd which has been impleaded as Respondent No.2. The respondent has stated that there

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is no company in the name of New World Residency Pvt Ltd., thus the complaint is not maintainable against respondent no. 2.

- The complainant had booked a 3 BHK Apartment in Tower T-4 (Prayag) having approximately super area of 1791 sq.ft at the total basic price of Rs. 52,85,241/- which was exclusive of other charges as specified in the Apartment Buyers Agreement.
- The application for grant of an Occupation Certificate was submitted by the respondent on 24.07.2017 with respect to the Group Housing Colony admeasuring 6.356 acres, project at Karnal (Tower T-2, T-3, T-4 & T-7 (EWS) covered under License No. 46 of 2011. Thus the application for grant of OC was made prior to the commencement of the Haryana Real Estate (Regulation & Development) Rules, 2017 which have come into force only on 28.07.017. Hence, the project in question does not fall within the definition of an "ongoing project", as defined under section 2(o) of the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as "the Rules"), and it is for this reason that the project falls outside the purview of the Act.
- Since the respondent had applied for Occupation Certificate on 24.07.2017 and it is only because of the departmental delay that the Occupation Certificate was granted on 17.07.2018 i.e. almost one year



from the date of application. He further stated that the Tower in which the unit of the complainant is situated i.e. Tower T-4, is ready and complete and the complainant is free to clear the pending dues and take possession of the same.

- The Apartment Buyer's Agreement was entered into between the parties for purchase of Unit No. 103, Tower T-4, (Prayag) on 28.04.2014. The Construction Linked Payment Plan had been opted by the complainant to make the payments for the purchase of the said unit. As per the provisions of the Apartment Buyer's Agreement, in case the delay is on account of non-payment of timely payments by the Complainant then the time period of 30 months from the date of the Apartment Buyer's Agreement for granting possession were not not applicable.

Several letters/reminders were sent to the complainant for payment vide Demand Notice dated 22.11.2014 for Rs. 14,44,984/- , for Rs. 29,64,248/- on 20.02.2015 and for Rs 56,65,138/- on 21.04.2017. Further a letter regarding the status of project and levy of GST was sent to the Complainant on 07.06.2017. Final payment reminder was sent to the Complainant demanding a payment of Rs. 56,65,138/- on 07.08.2017. But the complainant was a habitual defaulter and thus it was only due to delay in payment of his instalments and of other similar



allottees that the project could not be completed within the period stipulated in the Agreement.

- The project of the respondent has got ~~his project~~ registered under the RERA Act and a Registration Certificate bearing Regd. No. 248 of 2017 dated 26.09.2017 has been issued by the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula with respect to the Group Housing Colony Admeasuring 6.356 acres situated in Village Budda Khera & Phoosgarh, Sector 32, Karnal, Haryana.
- Further the construction in the project was also delayed due to mining activities being banned in the State of Haryana for more than 2 years during 2014 to 2016-17.
- The Director General, Town & Country Planning, Haryana has issued Occupation Certificate for the Tower in which the complainant unit is situated on 17.07.2018. Possession of Apartments have already been given to more than 32 allottees in all the three towers. Out of which 14 families have already shifted and residing at the condominium for the past 4 months in a peaceful, hygienic and free atmosphere and the apartments are complete in all respects and habitable condition. The respondent company had to arrange funds from financial institutions such as Indiabulls Housing Finance limited at 16.2% of interest.

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- The respondent has admitted that the complainant has till date paid an amount of Rs. 14,04,264/- out of basic sale price of the unit of Rs. 52,82,241/-. All other charges- EDC, IDC, etc. were excluded from the said basic sale price and were to be borne separately by the complainant. As regards the car Parking charges amounting to Rs. 1,50,000/- the respondent has submitted that the amount was charged as per the terms and conditions mentioned in the Agreement which are binding on both the parties. Moreover, the complainant had executed the buyer's agreement without any objection and cannot challenge those conditions at such a belated stage

The respondents have basically admitted the fact of the complainant having paid the claimed amount to them. They, however, state that as per clause 10.1 of the agreement, the possession of the flat is supposed to be handed over within 30 months of executing the buyer's agreement which, however, is subject to force majeure conditions, timely payment of the price of the flat etc.

It has further been stated by the respondents that the Authority while adjudicating the complaint of this nature should consider the interest of the project as a whole and the impact of any refund/claim on the interest of all allottees of the project as well. Even the Tower -4 in which the flat of the complainant is located is complete and ready for



possession and the complainant can anytime take the delivery of the flat after payment of pending dues. Further, if the relief of refund as prayed for is allowed then not only would the interest of the other allottees of the said project be jeopardized but viability of the project as a whole would also go into serious problems.

5. After detailed consideration of the matter and evaluating the written and oral submissions made by both the parties, the Authority disposed of this matter with following directions: -

(i) While deciding these complaints at the outset, Authority will deal with the question of jurisdiction raised by the respondent's counsel. Question on this point is no more res integra because this Authority in ***Complaint Case No. 144 of 2018 titled as "Sanju Jain Versus TDI Infrastructure Ltd."*** has already ruled that the jurisdiction of Authority to adjudicate the complaint is not barred in respect of a project which is neither registered nor registerable. So, the Authority now proceeds to dispose of the complaint on merits.

(ii) The Authority observes that in case the relief of refund is granted to the complainant, interests of the rest of the non-complainant allottees could also get seriously jeopardized. Moreover, it the respondent has stated in his reply that the flat of

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the respondent is complete and ready for possession and the complainant can take the possession of the flat after clearing his pending dues. Thus in the opinion of this Authority, it not only is entrusted with the responsibility to protect the interest of the home-buyers including complainant but also has to promote orderly growth of real estate industry through efficient project execution in the larger public interest.

- (iii) Thus since the respondent has already received the Occupation Certificate issued by the Director General, Town & Country Planning, Haryana (DTCP), which includes Tower T-4 in which the flat of the complainant is located on 17.07.2018 and the the respondent is ready to deliver the possession of the flat after payment of outstanding dues by the complainant. Therefore this Authority directs the respondent to handover the vacant possession of the flat to the complainant upon payment of pending dues by the complainant. It is further directed that the respondent shall not charge more than 9% interest on any payment due from the complainant. The Authority had already followed the decision of Hon'ble Supreme Court and observed in many complaint cases that charging of huge rate of interest by the respondent companies is arbitrary, unfair and unjustified and the

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respondent companies cannot charge interest more than 9% from the complainants on account of any outstanding payments.

- (iv) This Authority has already taken a view with regard to the compensation to be paid to the allottee on account of delay in handing over possession by the developer in ***Complaint Case No.113 of 2018- Madhu Sareen Versus M/s BPTP Ltd.*** In the said complaint, two Members have taken a view that for the delay compensation should be payable as prescribed in Rule 15 of the HRERA Rules whereas the 3rd member has taken a different view for the reasons recorded in detail in ***Complaint Case No.49 of 2018- Parkash Chand Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd.*** While as per law, the majority view will be implemented, however, the views of the respective members shall remain as expressed in above mentioned complaints.

Haryana Real Estate (Regulation and Development) Rules, 2017, Rue 15 is reproduced herewith for the ready reference:

"An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on



account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

Disposed of in above terms. File be consigned to record room.


Dilbag Singh Sihag

Member


A. K. Panwar

Member