

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

Complaint No. : 605 of 2018
First date of hearing: 25.09.2018
Date of Decision : 20.11.2018

Jeewan Kumar Jindal
R/o H-4,ITI Staff Colony, Opposite Sector 14,
MG Road, Gurugram,122001

Complainant

Versus

1. Vivek Purohit
C/o Prime Time Infraprojects Pvt. Ltd., 4th
Floor, Vatika Atrium, Block-B, Sector 53,
Golf Course Road, Gurugram-122002
2. Surinder
C/o Prime Time Infraprojects Pvt. Ltd.
Elements mall, Near DCM Market, Ajmer
Road, Jaipur-302021
3. Sapna
C/o Prime Time Infraprojects Pvt. Ltd.
Elements mall, Near DCM Market, Ajmer
Road, Jaipur-302021

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Jeewan Kumar Jindal
Shri Bijender Tanwar

Complainant in person
Advocate for the respondents



ORDER

1. A complaint 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 Jeewan Kumar Jindal, against the promoters Vivek Purohit, Surinder and Sapna.
2. The particulars of the complaint case are as under: -

| | | |
|-----|---|--|
| 1. | Name and location of the project | "ABL Prime" Sector-1, Pataudi, Gurgaon |
| 2. | Status of the project | Scrapped |
| 3. | Apartment/unit no. | F-110 |
| 4. | Flat measuring | 255.36 sq. Yds. |
| 5. | RERA registered/ not registered. | Not registered |
| 6. | Date of execution of apartment buyer's agreement | 02.08.2016 |
| 7. | Payment plan | Construction linked payment plan |
| 8. | Total consideration | Rs. 51,86,132/- |
| 9. | Total amount paid by the complainant till date | Rs. 19,75,669.25/- |
| 10. | Penalty clause as per apartment buyer's agreement | Clause 11(d) of the agreement i.e. Rs.300 /- per sq. mtr. On the full area |



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondents. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents filed an reply on 18.07.2018. The case came up for hearing on 25.09.2018 and

23.10.2018. The reply filed on behalf of the respondents have been perused.

Facts of the complaint

4. Briefly stated, the facts of the case as culled out from the case of complainant that M/s ABL Prime Infraprojects Pvt. Ltd. issued advertisements through banners inviting applications for purchase of plot in the real estate project located at Pataudi.
5. The complainant submitted that he got to know about this project through some local people and a banner on the site area. A meeting was held with Mr. Amit Kumar, sales consultant of the project at the Pataudi site when he explained the nature of the property which will be developed to the petitioner. He told the complainant that they will develop the project within two years i.e. upto October 2016.
6. The complainant submitted that he booked a plot in Prime Time Infraprojects Pvt. Ltd. and booking advance was paid by him through two different cheques Rs. 5,40,000/- to Prime Time Infraprojects Pvt. Ltd. and opted construction based payment .
7. The complainant submitted that in November 2015, complainant was called and offered to change his plot with a larger sized. The complainant accepted their offer and changed his plot from F-123 having 156.25 to F-110 having 256 yards.



8. The complainant submitted that total amount was paid by him is Rs. 19,75,669.25/-. Further, submitted that on 06.10.2017, complainant received a call from their project consultant, Ms Manpreet Saini who informed him that they won't be continuing with the project and should claim his refund without interest . Later, on she handed him the refund forms. The complainant was asked to submit builder buyer's agreement, original receipts and affidavit regarding "surrender of my plot on my own will".
9. The complainant submitted that upon calling several times to their project consultant, Manpreet Saini, he demanded his deposited money to be refunded with interest and also asked her to fix his appointment with Mr. Vivek Purohit, but she was told that he is busy. Later, on complainant received a call from Ms Manpreet Saini and told him that they can return his deposited money at the interest rate of utmost 9 % p.a. the complainant came to know that from few sources that the builder have sold out the land to some other builder. Also, the complainant has not been refunded his deposited money till date. Presently they are not responding to his calls.



10. Issues raised and relief sought by the complainant are as follows:

- i. The builder has not refunded complainant is deposited money i.e. Rs. 19,75,669.25/-. The complainant want his deposited money to be refunded with 24 % interest.

Respondent's reply

The respondents made application on behalf of the respondents for rejection of complaint on the ground of jurisdiction.

Preliminary objection

11. The respondents submitted that the complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint. The complainant has filed the present complaint seeking refund and interest for non-deliverance of the plot booked by the complainant. It is submitted that complaints pertaining to refund and interest under section 71 of the Real Estate (Regulation And Development) Act, 2016 is maintainable only before the adjudicating officer read with under rule 29 of the Haryana Real Estate (Regulation And Development) Rules,2017 and not by this hon'ble authority.



Reply on merits:

12. The respondents submitted that no such date was assured to the complainant, moreover the plot buyers agreement being executed between the complainant and the respondents on 02.08.2016 in its clause 11(A) schedule for possession clearly provides for 24 months' time for possession from the date of execution of plot buyers' agreement.

11(a) Schedule for possession

"The company shall endeavour to offer possession of the said Plot, within 24 months from the date of execution of this agreement..."

13. The respondents submitted that the facts relating to the change of plot on the request of the respondents are wrong and denied. It is the complainant himself who requested for a larger sized plot, therefore at the request of the complainant his booking was changed to a larger sized plot numbering F-210 admeasuring 255.36 sq. yd. and the complainant himself in his letter dated 25.07.2016 requested for waiver of interest accrued on non-payment of due amount. The total amount paid by the complainant as claimed is matter of record.

14. The respondents submitted that the facts stating the date of call informing the complainant that the respondents would not be



continuing with the project is wrongly stated and information about the discontinuance was provided at a very earlier date by call and further by letter dated 02.05.2017 giving an option to the complainant for transferring the booking to a new project of claiming of the refund of the invested money.

15. The respondents submitted that the facts relating of the land to someone else are false and denied and the complainant has himself accepted that the respondents were ready to pay interest at the rate of 9 % p.a. and the same was not acceptable to him. Therefore, it is denied that the money has not been refunded due to the respondents fault, it is the complainant who is not accepting the money. It is also denied that the respondents are not answering the calls of the complainant.

16. Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

- i. With respect to the **first issue** raised by the complainant, the respondents are liable to refund the amount along with interest as per prescribed rate of 10.75 % as per section 18(1) proviso and rule 15 of HRERA rules.



However, compensatory interest 24 % cannot be allowed and the complainants can seek compensation from the adjudicating officer under the RERA Act. The promoter is liable under section 18(1) which is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

17. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



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.

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation 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.

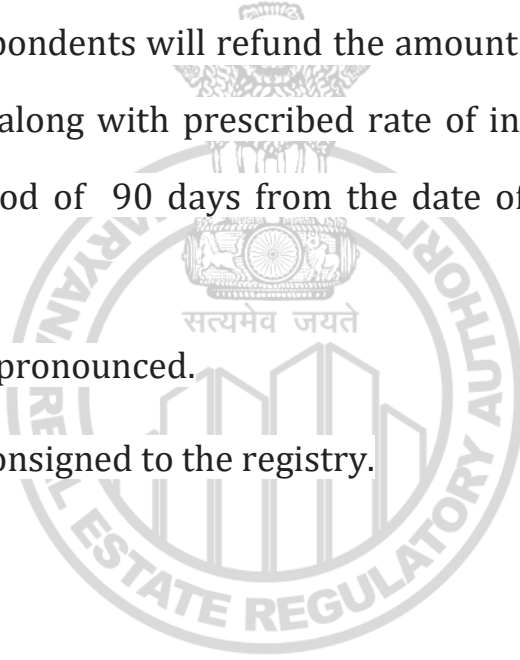
Findings of authority

18. The preliminary objections raised by the respondent 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.
19. The authority is of the view that it has been reported by counsel for the respondents that the project stands abandoned for the last 2 years. Respondents are ready to refund the amount along with prescribed rate of interest @ 10.75% per annum to the complainant.



Decision and directions of the authority

20. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 here by issue the direction to the respondents in the interest of justice and fair play that respondents will refund the amount deposited by the complainant along with prescribed rate of interest @ 10.75% within a period of 90 days from the date of issuance of this order.
21. The order is pronounced.
22. Case file be consigned to the registry.



HARERA
GURUGRAM



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated 20.11.2018

PROCEEDINGS OF THE DAY

| | |
|--------------------------------|---|
| Day and Date | Tuesday and 20.11.2018 |
| Complaint No. | 605/2018 case titled as Mr. Jeewan Kumar Jindal Vs. Prime Time Infraprojects Pvt. Ltd |
| Complainant | Mr. Jeewan Kumar Jindal |
| Represented through | Complainant in person. |
| Respondent | Prime Time Infraprojects Pvt. Ltd |
| Respondent Represented through | Shri Bijender Tanwar, Advocate for the respondent. |
| Last date of hearing | 23.10.2018 |
| Proceeding Recorded by | Naresh Kumari & S.L.Chanana |

Proceedings

Arguments heard.

It has been reported by counsel for the respondent that the project stands abandoned for the last 2 years. Respondent is ready to refund the amount alongwith prescribed rate of interest @ 10.75% per annum to the complainant.

Accordingly, it is directed that respondent will refund the amount deposited by the complainant alongwith prescribed rate of interest @ 10.75% within a period of 90 days from the date of issuance of this order.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)