

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA

Complaint No: 943/2018

Date: 13.12.2018

Hearing: 1st

Rajesh Sajwan

Vs

...Complainant

M/s Adel Landmark (India) Pvt Ltd
(formally known as Era Landmarks Limited)

...Respondent

QUORUM:

Shri Rajan Gupta
Shri Anil Kumar Panwar
Shri Dilbag Singh Sihag

Chairman
Member
Member

APPEARANCE:

1. Ms. Srishti Girdhar, Advocate for the complainant
2. None for the respondent

Order:

1. Following are the major facts of the present case: -
 - a) The complainant was allotted the unit no. B-63 measuring 180 sq ft. in the real estate project i.e. "Era Divine Court", Sector-79, Faridabad" after payment of booking amount Rs 3,60,888/-.
 - b) Buyer agreement between complainants and promoter respondent was executed on 10.10.2009 and unit no. B-63 was allotted to complainant for basic sale price of Rs 15,95,000/- against which Rs 18,10,200/- had already been paid by

complainants. As per the agreement dated 10.10.2009 was signed between the complainants and respondent promoter, the possession of the unit was to be delivered up to 10.10.2011.

c) The complainant's grievance is that the respondent has neither kept his promise to deliver the possession within stipulated time i.e by 10.10.2011 nor was able to complete the project. These malafide /fraudulent acts of respondent forced them to file the present complaint. Therefore, complainants made following prayer for relief in his complaint: -

- To direct refund of Rs 18,10,246/- alongwith pendente lite and future interest to the tune of 18% per annum.
- Respondent to pay Rs.5,00,000/- for mental agony and harassment.
- Respondent to pay Rs.50,000/- to reimburse litigation cost.

2. Learned Counsel for complainant submitted that the a petition under section 7 of the Insolvency and Bankruptcy Code,2016 was allowed by National Company Law Tribunal, Special Bench, New Delhi against the respondent company and vide its order dated 05.12.2018 Mr.Udayraj Patwardhan was appointed as Interim Resolution Professional, therein he was directed to make public announcement with regard to admission of this application under section 7 of the code within 3 days. Further it

was requested that this matter may be taken up for consideration in the light of the judgement dated 30.10.2018 passed in bunch matter pertaining to M/s ABW Infrastructure Pvt Ltd in complaint no. 383/2018 tilted as Gurbaksh & Another Vs M/s ABW Infrastructure Pvt Ltd because after being received the order dated 05.12.2018 of NCLT, Delhi, there is a possibility that no one would appear on behalf of respondent to pursue these complaints in this authority.

3. It is pertinent to mention here that as per office record the respondent was duly served a notice to file reply and to appear before the Authority on hearing which got successfully delivered on 24.11.2018.

4. After perusing the written as well as oral submissions made by complainant's counsel and office record, the Authority has taken up following issues for consideration: -

a) To proceed Ex-parte

It is evident from the record that the respondent was served on 24.11.2018 but no one was present on behalf of respondent. Moreover, the National Company Law Tribunal, Special Bench, New Delhi has declared moratorium in terms of section 14 of Insolvency and Bankruptcy Code, 2016. So, it appears that respondent is no more entitled to defend himself in this Complaint. As per RERA Act, 2016 and rules 2017 thereof, the Authority is bound to follow summary trial procedure. So, in these



circumstances the proceedings of the complaints are taken ex-parte for adjudication.

b) Refund of the amount

The request of complainant's counsel is accepted as the issue involve in the present complaint is similar to the complaint no-383/2018- tilted as Gurbaksh & Another Vs M/s ABW Infrastructure Pvt Ltd. Moreover, proceedings under Section ⁷⁺ Insolvency and Bankruptcy Code, 2016 are already initiated against the answering respondent and Interim Resolution Professional has already been appointed by National Company Law Tribunal, Special Bench, New Delhi.

c) Relevant part of the judgement is produced below for ready reference:-

“13. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows:-

- (i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to

understand risk factors involved Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

- (ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot

access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.

The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

- (iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 18: Return of amount and compensation- (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: Provided that where an allottee does not intend to withdraw from the project, he shall be

paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section 19(3): Rights and Duties of allottees- *The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.*

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Section 79: Bar of Jurisdiction- *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the*

Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 89: Act to have over-riding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee,

therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall be treated superior most. The money paid by the allottees shall be refunded before entertaining claim, if any, of the commercial creditor.

15. Another question that arises at this juncture is whether by granting a superior right to the allottees compared with other creditors whether purposes of the RERA Act are fully served or not? This Authority observes that RERA Act is supposed to provide expeditious remedy to the allottees and also ensure that real estate sector develops in a systematic manner and ongoing projects are completed within a time bound manner. This necessarily brings us to the question of responsibilities of the State Government, through the Town & Country Planning Department, which is the license/approving authority for development of a real estate project.

16. In a situation like the facts of the case, it must be determined whether the State Government and its agencies have faithfully discharged the duties cast upon them by law? Have the State agencies monitored the project in a proper manner through the course of its development? Why did they allow the project

to slip in the manner that it has become a stuck project to the prejudice of the allottees as well as society in general?

17. It can be safely said that there must have been failure of some organs of the machinery of the State which resulted into the state of affairs that are being faced here. The promoters have been defaulting in payment of dues to the Government. In this situation, especially when the project promoters have turned serious defaulter of other financial institutions and criminal cases are pending against them, the Town & Country Planning Department should have taken timely steps to safeguard interests of the allottees. The allottees purchased the apartments on the basis of the sovereign assurances held out to them by the State Government. Now, it is an equal duty of the State Government to come to their rescue and take all steps necessary to get the project completed by taking it over or in any other manner considered appropriate. The Town & Country Planning Department cannot allow a licensee to collect money from the allottee and abandons the project. The Department is duty bound to take coercive action.

We hereby direct that for safeguarding interests of the allottees, Director, Town & Country Planning Department, Haryana shall immediately make an assessment of the assets of the project and take appropriate decision for getting the project completed by taking it over themselves or through any other appropriate agency. They shall take these steps regardless of the claims of the other financial creditors against the project promoters or the project



land. After cancellation of the licence, once the project is taken over by the Town & Country Planning Department, the rights of the allottees can be secured. The financial institutions or other creditors, however, may get their claims satisfied from the remaining assets of the project or from the other assets and properties of the promoters or by involving guarantees and securities. It is only by taking over of the project by Town & Country Planning Department that the purposes of the RERA Act will be served and interest of the allottees can be protected.

18. The directions issued in the foregoing Paras are summarized as follows:-

- (i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.
- (ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their



claims from the assets of the promoters other than the assets of the project in question.

- (iii) The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the "Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013".
- (iv) While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against respondents No.1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.
- (v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them

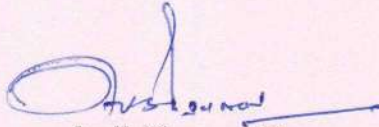


to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.”

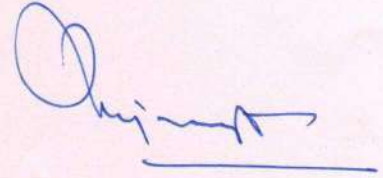
5. The matter stands disposed of in light of the judgment dated 30.10.2018 passed in complaint no. 383/2018 titled as Gurbaksh & Another Vs M/s ABW Infrastructure Pvt Ltd with liberty to complainants to approach this Authority again. File be consigned to record room.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman