



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 434 OF 2019

Rajesh Goyal

....COMPLAINANT

VERSUS

M/s Ansal Housing and Construction Pvt. Ltd. & Ors LtdRESPONDENT

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

**Chairman
Member
Member**

Date of Hearing: 03.11.2020

Hearing: 13th hearing

Present through video call: - Sh. Neeraj Gupta, Counsel for complainant with Sh. Rajesh Goyal, complainant in person
Sh. Surjeet Bhadu, Counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. The complainant in this case has already taken possession of the property purchased from the respondent and a conveyance deed in his favour stood executed on 18.03.2015. He has filed the present complaint for recovery of certain amounts which according to him were illegally collected by the respondent. Detailed facts of the case were already recorded vide order dated 26.09.2019, same is reproduced below and to be considered as part of this order:

1. "The complainant in this case has purchased a residential plot no. A-61, measuring 270 square yards in respondent's project named "Ansal Town", Sector 20, Yamunanagar vide agreement dated 30.05.11. As per the agreement, respondent had promised to deliver possession of plot to the complainant by June 2013. The complainant had paid a sum of Rs. 48,47,331/- till June 2013 to the respondent against the basic sales consideration of Rs. 44,38,250/-. On 17.01.14, respondent offered physical possession to the complainant and demanded various other payments including PLC, Club charges, STP charges, Utility charges, VAT charges and additional EDC/IDC. The complainant alleges that respondent threatened the complainant that allotment would be



cancelled if he doesn't pay the aforementioned charges. Thereafter, complainant made all the payments and conveyance deeds were registered in favour of complainant on 18.03.15.

2. The present complaint has been filed by the complainant disputing all the illegal demands made by the respondent and prays for refund of the respective amounts. Learned Counsel for the complainant stated that respondent has illegally charged PLC from the complainant. He stated that the respondent had promised to provide park facing plot, for which he charged PLC to the tune of Rs. 1,38,250/-. However, the plot provided by respondent is not park facing, rather this is a residual open space which has been used for construction of sewerage treatment plant. Whereas complainant has categorically mentioned in Para 13 of his complaint petition that a water harvesting pit exists in this open space, meaning thereby that there is contradiction in his verbal and written averments.”

2. The respondent challenged the maintainability of the present complaint. His submission is that inter-se obligations between the parties came to end on execution of conveyance deed i.e. on 18.03.2015. So, the complainant has now no subsisting claim for recovery of the amounts in question particularly when he had neither raised any objection while paying the amounts nor had reserved any right for its recovery at the time of execution of the conveyance deed.



3. After hearing both the parties, the Authority observes that relationship of promoter-allottee between the parties had come to an end on execution of the conveyance deed. Further, Occupation Certificate was granted to the respondent on 23.05.2016 i.e before coming into force of RERA Act. Therefore, all the obligations between the parties stood discharged. The Authority, deems it fit to confirm its prima facie views, which were earlier expressed in the orders dated 03.10.2019, 19.12.2019 passed by this Authority and said is reproduced below:

Order dated: **03.10.2019**

1. A conveyance deed was executed on 18.03.15 in favour of complainant in respect of the unit which he has purchased on 30.05.11. He has filed this complaint averring that respondent had charged an extra amount of Rs. 9,71,835/- from him on the pretext of preferential location charges, enhanced EDC, Utility charges, VAT charges, club charges and STP charges, which he was not liable to pay.

2. The Authority is, prima facie, of the view that relationship of promoter-allottee between the parties had ceased to exist on execution of conveyance deed and the complainant after having already paid the amounts in question without protest, cannot now question the legality of the money charged by the respondent. The complainant's counsel was, therefore, asked to address the Authority on the question of maintainability of present complaint. He is not ready for arguments and seeks adjournment. So, the case is adjourned to **27.11.19**.



Order dated: 19.12.2019

1. The complainant is basically praying for refund of the amounts which according to him were illegally charged by the respondent. Conceding that a conveyance deed had already been executed in favour of the complainant and he had not raised any issue in respect of the amounts so collected from him, the Authority in its previous order dated 30.10.2019 had asked the complainant to clarify as to how his complaint is maintainable for refund of the amounts which he had voluntarily paid to respondent without protest and of which neither legality was questioned nor any right was reserved at the time of execution of conveyance deed.

2. During the course of today's hearing, it has been revealed that respondent had collected Rs. 1,38,250/- from the complainant on account of PLC, Rs. 3,30,763/- excessive on account of EDC, Rs. 1,52,075/- on account of utility charges, Rs.1,38,250/- as VAT charges and Rs. 1,24,847/- as service charges, Rs. 60,000/- as club charges and Rs. 27,650/- on account of STP charges.

Learned counsel for the complainant has today referred to section 11(4)(a) and section 14(3) of the Real Estate (Regulation and Development) Act, 2016 to establish that the present complaint for claiming refund of the various amounts which have been illegally collected by the respondent is maintainable. Section 11(4)(a) reads as under: -

The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the

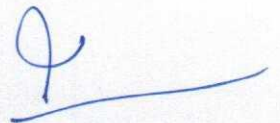


allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

Section 14(3) reads as under: -

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.


3. It is plain from the conjoint reading of aforesaid provisions that the promoter's obligations and responsibilities towards the allottee last only till the conveyance of the purchased property. Section 14(3) creates an exception to this rule as it provides that the promoter even after conveyance of the purchased property shall have the responsibility towards allottee for rectification with respect to structural defects or any other defect occurring in the purchased property and such liability of rectifying the



defects continues for a period of five years from the date of handing over possession to the allottees.

4. Now the question would arise whether the money alleged to have been illegally collected would fall in the ambit of responsibility cast upon promoter under section 14(3) of the Act. Answer to this question has to be in the negative because illegal collection of money, by no stretch of imagination can be termed as structural defect which a promoter is obliged to rectify for five years immediately preceding after handing over of possession to the allottee. Viewed from this perspective, no complaint can legally be maintained for recovery of the amounts which the respondent had illegally collected from the allottee. Rather, the very fact that the complainant in the present complaint has paid the amounts to the respondent voluntarily without raising any protest for reserving his right in the conveyance deed for recovery thereof, shall debar him from filing the present complaint after lapse of four years of the execution of conveyance deed.

5. The whole matter can be looked at even from a different angle. The amounts in question were paid to the respondent prior to the execution of conveyance deed. Undeniably, the conveyance deed was executed on 18.03.15 and the general period for recovery of an amount illegally collected or illegally withheld by some person, is three years from the date the cause of action has arisen. Assuming for the sake of argument that the respondent had illegally collected the amounts as averred by the complainant, such amounts were illegally recoverable by the complainant only within a period of three years. Said period has already lapsed and therefore, the complainant is now debarred from taking any legal action against the



respondent for recovery of impugned amounts. Viewed from this perspective also, the present complaint is not maintainable.

4. The complainant has filed his written arguments. The arguments of the complainant is that the builder-buyer agreement was executed on 30.5.2011, the RERA Act came into force on 1.5.2016, the occupation certificate was obtained on 23.05.2016 and the complaint was filed on 03.02.2019. The complainant has argued that since the complaint was filed within the 3 years of grant of the occupation certificate. Therefore, limitation in the present matter should start from 23.05.2016. Accordingly, the complaint filed is within limitation.


5. The Authority has gone through the contentions of the complainant. It specifically refers to its order dated 19.12.2019 in which it has been stated clearly by the Authority that once possession of the apartment is handed over and conveyance deed thereof is executed, the contractual obligation between the parties comes to an end, however, subsisting obligations shall continue till the entire project is handed over to the Association of Allottees. In this case the complainant is agitating that the respondent has taken certain charges from him, as have been reproduced in para 2 of the order dated 19.12.2019. Since those charges are allegedly illegal, therefore he should be allowed refund of such illegal charges.

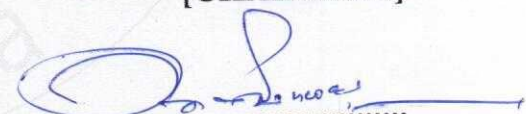



The Authority is unable to accept the argument of the complainant. It observes that the possession of the apartment had been handed over to the complainant on 17.01.2014 and conveyance deed thereof was also executed on 18.03.2015. RERA Act came into force on 01.05.2017 and the complaint has been filed in February,2019. The complainant did not take recourse to any lawful forum between the year 2014 and 2019. At this late stage the concluded contract cannot be allowed to be reopened. Allowing re-opening of such concluded contract will be against public policy because in that case no contract would ever be considered concluded. Acceptance of the request of the complainant could give rise to unlimited litigation.

6. For the foregoing reasons the arguments of the complainant are declined and the complaint is disposed of as dismissed.

Files be consigned to the record room and orders be uploaded on the website.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SHAG
[MEMBER]