

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

Complaint. No. 565 /2018- Narender Gupta

Versus

Aerens Gold Souk International Ltd. & Ors.

Date of Hearing: 22.11.2018

Coram: 1. Shri Rajan Gupta, Chairman
2. Shri Dilbag Singh Sihag, Member

Appearance: 1. Sh. Akshat Mittal, Counsel for Complainant
2. Sh. Abhinav Singh for Sourabh Goel, Counsel for Respondents

ORDER:

Today is the second hearing of this case. In brief the case of the complainant is that the respondent company approached him through one Mr. Pankaj Rathore who was working in the 'investor clinic' of the respondent's for pre-launch booking of an apartment in Golf Link Project, Sector-17, Sohna promoted by the respondents. The complainant, accepting the offer, issued cheque of Rs.2.00 lakhs on 21.02.2013. Two more cheques of the amounts Rs.8.00 lakhs and Rs.10,00 lakhs were issued in April and May,2013 respectively. The respondent even upto May, 2014 did not make allotment of any apartment. The respondents, instead of offering the apartment, insisted upon allotment of a villa in the same project costing Rs.97.75 lakhs. The complainant accepted the offer



of allotment of the villa. In May, 2015 a document bearing the name "Expression of Interest" was executed between the parties. The complainant on the same day further issued a cheque of Rs.2.00 lakhs.

In September, 2015 the complainant was asked to pay the total cost of the villa amounting to Rs.1,22,58,200/- in three installments of 40%, 30% and 30%.The complainant alleges that this demand of the respondent is unjustified because the initial agreed price of the villa was Rs.97.75 lakhs. He alleges that the additional demand forRs.24,83.200/- is illegal and unjustified.

In next one year certain correspondence took-place between the parties as a consequence of which a cheque of Rs.16.90 lakhs dated 11.02.2016 was issued by the complainant. This amount was calculated as the difference between the amount already paid and the 40% of the first installment assuming Rs.97.75 lakhs to be the cost of the villa. The complainant alleges that he had specifically directed the respondent not to present the cheque in the bank. The respondent had assured to act accordingly. The faith of the complainant was breached by the respondent by presenting the cheques in the bank. Feeling annoyed the complainant issued instructions to the bank for not honoring the cheque. Accordingly, the cheque got dishonored. After this the complainant had been asking for refund of the amount paid by him which the respondents did not agree.



Meetings have also taken place between both the parties but the issue remain un-resolved.

The complainant also alleges that construction of the project has not commenced and even after lapse of 5-1/2 years and there is no sign of its development. The complainant suspects that the respondents have sold the project land to a third party and now there is no hope at all of development of the project. The complainant requests for refund of the money along with interest and suitable compensation.

2. At the outset the respondent has challenged the jurisdiction of this Authority because their project in question has not been registered with it. The respondent has taken another technical objection that more than 5 years have lapsed, therefore, this case is now barred by limitation. The respondent also states that the expression of interest was entered into between the complainant and the broker and the respondent had neither offered or agreed to offer the villa to the complainant for a sum of Rs.97.75 lakhs. Further, this was a construction linked plan and 40% of the amount was required to be paid as booking amount and remaining in two instalments as per progress of the construction work. Further, the amount of Rs.97.75 lakhs was only the basic price and rest of the money being demanded was towards EDC, IDC and taxes etc. The respondent cannot be held answerable for wrong assurances given by a broker. He attributes the frustration of the agreement entirely to the complainant



because it was the complainant who got the cheque dishonored. Stopping of cheque by the complainant was without any rhyme or reason and now the complainant is taking benefit of his own wrong which he cannot be allowed to do.

3. Written and oral submissions of both the parties have been examined in detail. The fact of the payments having been made by the complainant and the same being received by the respondent have not been denied. Further, the project is already delayed by 5 years and the respondents have not made any assertion with regard to its stage of construction nor have they stated anything as to when it is likely to be completed. They have only tried to defend themselves by indulging into technicalities of the proceedings and denying the jurisdiction to this Authority in entertaining this complaint.

4. With regard to the jurisdiction, the Authority has already laid down the law in the complaint case No.144 of 2018-Sanju Jain Versus TDI Infrastructures Pvt.Ltd. The logic and reasoning given in the said complaint shall be applicable in this case as well. Accordingly, the Authority has jurisdiction to deal with this complaint.

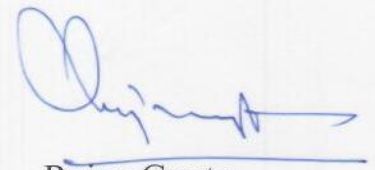
Other than the technical ground of jurisdiction the respondent have not said anything to justify the delay. They have also not given any plan of action for completion of the project in future.

In view of above findings the Authority considers that in this case the refund of the amount is fully justified. Accordingly, it orders that the entire amount paid by the complainant shall be refunded along with interest calculated at the rates provided for in Rule 15 of the HRERA Rules. It also orders that the amount shall be paid by the respondent within a period of 60 days, 50% amount in 30 days and remaining 50% in next 30 days.

Disposed of. Orders be uploaded on the website of the Authority and the file be consigned to the record room.



Dilbag Singh Sihag
Member



Rajan Gupta
Chairman