

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

Date of Hearing: 04.11.2018

1. Complaint No. 102 of 2018
Dushyant Purwar and Sulekha Purwar ... Complainants
Versus
M/s Tulip Housing Pvt. Ltd. ... Respondent
2. Complaint No. 224 of 2018
Parveen Kumar Bansal ... Complainant
Versus
M/s Tulip Housing Pvt. Ltd. ... Respondent
3. Complaint No. 225 of 2018
Suresh Kamboj ... Complainant
Versus
M/s Tulip Housing Pvt. Ltd. ... Respondent

QUORUM:

1. Shri Rajan Gupta
2. Shri Anil Kumar Panwar
3. Shri Dilbag Singh Sihag

Chairman
Member
Member

APPEARANCE:

1. Shri Himanshu Raj, Counsel for the complainant.
2. Shri J.C. Manju & Shri Vivek Sethi, Counsels for the respondent.



Order:

This bunch of complaints was received in the office of the Authority in May, 2018. These complaints have been heard thrice earlier. A gist of the earlier proceedings before the Authority is given in the following paragraphs:

2. In the hearing dated 5.9.2018 the Authority had observed that prayer of the complainants for refund of the money paid to the respondent cannot be accepted because the apartments have been constructed, occupation certificate has been obtained on 26.10.2016, conveyance deed has been executed and the complainants are using their apartments as they wished for the last over 2 years. Further, the Authority will not have jurisdiction to entertain the complaints when the contracts between the parties have been concluded and requisite documents thereof have been signed.

It was, however observed that the Authority will continue to have the jurisdiction to the extent of subsisting obligations between the parties and in respect of the deficiency in services which are supposed to be provided by the respondents up to the time of handing over of common areas and services to the competent



Local Authority or to the Resident Welfare Association. In the orders dated 9.10.2018 it was specifically observed by the Authority that the complainants should submit a proof of deficiency in services in the colony. Since no proof of deficiency in services was produced, it was presumed by the Authority that the allegations with regard to the deficiencies in services are not correct.

A further allegation was made by the complainant that the respondents have collected excess EDC from the allottees which has not been deposited with the DTCP. The matter was adjourned for today to receive evidence from both the sides to determine whether the respondents have collected excess EDC from the complainants and whether the same has not been deposited with the DTCP.

3. This bunch of three complaints is disposed of today through this common order. The facts of the Complaint No.102 of 2018- Dushyant Purwar and Sulekha Purwar Versus M/s Tulip Housing Pvt. Ltd. have been taken into consideration for disposal of the matter.



4. The case of the complainant is that he executed an apartment buyer agreement on 12.02.2011, vide which Apartment No.804, 8th Floor in Tower A-1 with approximate area of 1795 sq.ft. was allotted to him. The total sale consideration plus taxes was about Rs.32.27 lakhs. The possession was supposed to be handed over by 12.02.2014. The promoter had offered possession on 14.11.2016 along with a demand notice to the complainant, also stating that requisite occupation certificate in respect of Tower A-1 has been received on 26.10.2016. The complainants have alleged that the occupation certificate has been obtained fraudulently without actual completion of the project work. The complainant further alleges that the conveyance deed dated 18.07.2017 was executed under threat and coercion. The complainants along with some other residents had lodged complaints on CM Window also for deficiency in services and for having obtained occupation certificate fraudulently. The complainants have prayed for compensation for delay in completion of the project; refund of certain additional amounts charged on account of basic amenities which have actually not been provided; completion of certain pending works; and compensation for mental agony etc.



5. The case of the respondents is that they initiated the development of project in accordance with the law of the land after getting appropriate licence from the State Authorities and after getting their plans approved from them, and have completed the same in accordance with the law. After completing the project, they had applied for grant of occupation certificate to the DTCP Department vide communication dated 11.08.2014. They also applied for other approvals from the State Government Authorities. After correspondence with the State authorities they were granted the occupation certificate on 26.10.2016. Thereafter, they also applied for grant of completion certificate vide letter dated 23.12.2016. Accordingly, they had applied for the completion certificate well before coming in force of RERA. They had offered the possession to the complainant on 14.11.2016. The complainant had sought waiver of interest on delayed payments and also compensation for delay in handing over the possession. The respondents on the request of the complainants have waived off the interest on delayed payments and the dues towards additional/better specifications and facilities. On 23.11.2016 an MoU was executed between the respondent company and the complainants vide which all issues between the parties were



settled and the complainant had shown his full satisfaction with it. The complainants also undertook to pay all outstanding dues and also to execute conveyance deeds etc. Now, possession of the apartment has been handed over and conveyance deed has been executed and registered in the office of Sub Registrar Ballabgarh on 24.1.2017 i.e. much before coming into force of RERA, therefore, no further dispute remains between them. The contract between the parties has been fully discharged.

In brief, the case of the respondent is that they have fully complied with their obligation under the contract therefore, these complaints are false and frivolous and are intended to harass the respondent.

6. On the basis of the pleading of both the parties the Authority observes and orders as follows:

(i) Admittedly, the project has received the occupation certificate from the State Govt. authorities in 2016 i.e. well before the coming into force of RERA. The apartment has been handed over to the complainants and a conveyance deed has also been executed. The complainants are using the apartments for the last two years in the manner they considered appropriate. After



handing over of the possession and after execution of the conveyance deed substantial part of the contract between the parties stands discharged and cannot be reopened. There remain no more obligation of the parties towards each other. The Authority cannot reopen a concluded contract between the parties. The purpose of the RERA is that the property should be properly developed, its possession should be handed over and its ownership rights should be conveyed by way of conveyance deed. Once this much has been done, the relationship between the parties comes to an end and this Authority will have no jurisdiction to reopen this fact of the concluded contract.

(ii) However, it had been noted by the Authority in its earlier orders that this Authority will continue to have jurisdiction in respect of the obligations subsisting on the part of any of the parties towards each other. Such obligation in the circumstances of this case would be of the nature of provision and maintenance of services for a period of 5 years or so. If, there is any deficiency in the services to be provided by the developers, the Authority direct the respondents to bridge those deficiencies. In this case, the complainant have not been able to produce any evidence, despite opportunities being given to them do so, to show which all



services are deficient in the project. In the absence of production of such an evidence, mere allegations to that effect cannot sustain the case of the complainants.

(iii) Another issue raised by the complainants, by way of an additional application dated 28.11.2018, is that excess EDC has been charged by the respondent, and the area of the unit had been arbitrarily changed.

With the regard to the area change, it is observed that after execution of the conveyance deed this matter cannot be reopened. It is to be presumed that both the parties have concluded the contract after verifying the ground situation and after settling the outstanding amounts paid in respect of the area taken over. At this stage, the Authority cannot re-open a concluded contract.

With regard to extra payment of EDC, the complainants have not produced any calculation sheet to substantiate their allegation. According to the respondent, the EDC had been collected strictly in accordance with the super area handed over as demanded by the State Govt. and nothing in excess has been charged from the complainants. Since, the allegations could not be substantiated by the complainants, the same are hereby rejected. The complainants may, however, approach the DTCP and obtain



information whether the EDC collected from the complainants have been deposited with the Department or not. If they come across any evidence to substantiate their suspicious, they will be free to seek redressal of their grievance in this regard, from any appropriate authority in a lawful manner, including from this Authority.

7. In the Complainant case Nos.224 of 2018 and No. 225 of 2018, the complainants state that in their cases conveyance deed has not been executed. The respondent however states that they have offered everyone including the complainants to execute conveyance deed. It is upto the complainants to furnish document for execution of the deed. They are ready to do so immediately. Accordingly, the complainant may furnish the requisite documents and the respondent shall get the conveyance deed executed within the period of 15 days thereafter.

8. This complaint is hereby disposed of in these terms. The file be consigned to the record room and the orders be uploaded on the website of the Authority.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman

Sh. A.K. Panwar, Hon'ble Member vide his email dated 07.01.2019, has approved and consented to the above orders.

Dated:07.01.2019




Executive Director
HRERA, Panchkula