

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.12.2018
Complaint No.	754/2018 case titled as Mr. Manmohan Singh V/S M/S Elan Buildtech Pvt Limited
Complainant	Mr. Manmohan Singh
Represented through	Shri Ajit Kakkar Advocate for the complainant
Respondent	M/s Elan Buildtech Pvt. Limited
Respondent Represented through	Shri Ganesh Kamath Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	H.R.Mehta

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Main grievance of the complainant is with regard to allotment of exact number of shop/unit that was allotted to him by the respondent. Contentions of the complainant are that he had signed a provisional allotment form for Shop/Unit No.1005 with super area 285 square feet in project "MERCADO", Sector 80, Gurugram but the respondent intentionally allotted/mentioned shop No.1006 instead of 1005 with super area of 344 square feet

provisionally and despite raising objection to this effect, respondent failed to rectify the mistake in their records and raising demands on account of allotment of shop No.1006 instead of 1005. Respondent also sent a copy of BBA for attesting the signature of the complainant by mentioning the allotment of shop/unit No.1006. Complainant has so far paid 50% of the total consideration of the unit booked by him but no BBA inter-se the parties have so far been executed. Complainant further submits that instead of rectifying the mistake, the respondent unilaterally and arbitrarily sent a pre-cancellation letter dated 09.08.2018 demanding outstanding amount alongwith interest on delayed payments. By way of the present complaint, complainant seeks directions from the authority to direct the respondent to allot shop No.1005 with covered area of 285 sq. ft or alternatively refund the deposited amount with 24% interest.

Countering the allegations levelled by the complainant, counsel for the respondents submits that complainant himself had agreed and accepted the allotment of shop No.1006 which is apparent on the face of record where the complainant himself had corrected and written the number of shop as 1006 and as a matter of abundant precaution even circled 1006 and signed alongside the correction and accordingly the complainant accepted the allotment of shop No.1006.

Considering the pros and cons of the matter and hearing the arguments advanced by the parties, the authority is not inclined to grant relief sought by the complainant as the complainant himself has failed to protect

his interests being in dual state of mind on the issue of allotment of unit/shop and by not aggressively raising grievances before the respondents and he too failed to make timely/due payments to the respondents and the respondent was well within his right to issue pre-mature cancellation on account of not receiving due payments from the complainant. However, keeping in view the interests of both the parties and in the interest of natural justice, it is directed that respondent to refund the amount deposited by the complainant by deducting only 10% of the total sale consideration within a period of 90 days from the date of issuance of this order.

Complaint stands disposed of in above terms. File be consigned to the Record Room. Detailed order follows.

Samir Kumar
(Member)
19.12.2018

Subhash Chander Kush
(Member)
19.12.2018

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

Complaint no. : 754 of 2018
First date of hearing : 15.10.2018
Date of decision : 19.12.2018

Mr. Manmohan Singh

R/O 08, Mausam Vihar Vikas Marg
New Delhi

Complainant

Versus

M/s Elan Buildtech Pvt. Ltd.
Office: 3rd Floor, Golf View Corporate Tower,
Golf Course Road, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ajit Kakkar Advocate for the complainant
Shri Ganesh Kamath Advocate for the respondent

ORDER

1. A complaint dated 09.10.2018 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 Mr. Manmohan



Singh, against the promoter M/s /s Elan Buildtech Pvt. Ltd., on account of violation of the section 11(4)(a) of the Act ibid.

2. Since the allotment letter dated 04.11.2016 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act ibid for non-compliance of obligation on the part of the respondent.
3. The particulars of the complaint are as under: -
 - **Nature of the project- commercial project**
 - **DTCP license no.- 82 of 2009 dated 19.12.2014**

1.	Name and location of the project	"ELAN MERCADO", sector 80 on NH-8, Gurugram, Haryana.
2.	Project area	2.9875 acres
3.	Date of execution of buyer's agreement	Not executed
4.	Allotment letter dated	04.11.2016
5.	Unit no.	FF-1006, first floor (in provisional application form the complainant was originally allotted the unit no. 1005)



6.	Unit measuring	300sq. ft.
7.	Payment plan	Construction linked payment plan
8.	Booking application	10.09.2013
9.	Basic sale price	Rs. 24,08,000/-
10.	Total consideration amount	Rs.31,93,624/-
11.	Total amount paid by the complainant till date	Rs.8,77,657/-as per statement of complainant
12.	Date of pre cancellation letter	09.08.2018
13.	Date of delivery of possession as per clause 11(a) of buyer's agreement i.e. 48 months from the execution of buyer's agreement +12 months grace period)	Cannot be ascertained
14.	Delay in handing over possession till date	Cannot be ascertained
15.	Penalty clause 14 as per buyer's agreement	The respondent shall pay compensation of Rs. 30/- per sq. ft. of the super area .



4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 19.12.2018. The case came up for hearing on 19.12.2018. The reply was filed on behalf of the respondent.

Brief facts

6. The complainant submitted that the grievance of the complainant started when the complainant received the acknowledgment letter dated 18.10.2013. In the said acknowledgement letter sent by the respondent, the shop no. was intentionally mentioned with ulterior motive as 1006 instead of 1005 with super area 344 sq. ft.
7. The complainant submitted that the complainant regularly approached the promoter through the real estate agent to rectify the blunder made by respondent. The respondent gave assurance that his grievance would be resolved and the discrepancy will be rectified in the provisional allotment letter.



8. The complainant submitted that he waited for the final allotment letter with hope and faith that his grievances will be addressed and letter will be issued with the correct details.
9. The complainant submitted that on 23.05.2016, complainant had paid excavation charges amounting to Rs. 1,31,982/- vide cheque dated 20.05.2016 to respondent with a hope that his grievance will be addressed in the provisional allotment letter.
10. The complainant submitted that on 04.11.2016 complainant received a provisional allotment letter without any changes, as was assured by promoters. It is submitted that respondent had knowingly and in the most cunning manner, allotted the wrong property to the complainant.
11. The complainant submitted that complainant had made various payments in lieu of the demands of the respondent regularly without any default.
12. The complainant submitted that on 31.01.2017, respondent sent a builder buyer agreement to the complainant for attesting the signature of the complainant and for further payment of money. However, respondent again intentionally



mentioned the wrong description of the shop and the respondent in the clause 10 on page 13 of the buyer's agreement.

13. The complainant submitted that complainant was deeply aggrieved by this severe and intentional breach of agreement by the respondent, he again pointed out the error and discrepancy to the respondent through email dated 21.04.2017 to the respondent.
14. The complainant submitted that after repeated requests made by the complainant, the respondent finally took note of the said discrepancy and offered to settle the matter through negotiation between the parties.
15. The complainant submitted that after the negotiation were finalized the complainant accepted to buy shop no. 1006 instead of 1005 measuring super area 300 sq. ft. and also agreed to pay the remaining payments towards the said property.
16. The complainant submitted that the respondent in utter disregard to the pending grievances of the complainant, in the



most arbitrary and illegal manner, sent a reminder dated 15.03.2018 for execution of the buyer's agreement.

17. The complainant submitted that on 31.05.2018 the complainant sent a legal notice to the respondent to amend the above said grievances but again no reply has been received by the respondent till date. Pre- cancellation letter dated 09.08.2018 was sent as an ultimatum to pay the outstanding amount of Rs. 13,17,806/- along with interest on delay payment before 28.08.2018.

18. **Issues raised by the complainant are as follow:**

- i. **Whether the developer demanded more money than agreed in the agreement without any justification?**
- ii. **Whether the interest cost being demanded by the developer is unreasonable?**
- iii. **Whether the facilities and amenities as agreed upon in the layout plan have been provided?**
- iv. **Whether there has been deliberate, misrepresentation on the part of the developer**



wherein lesser covered area was promised whereas higher covered area has been given?

- v. Whether any addition and alterations in the sanctioned plans, layout plans and specifications, fittings and amenities described therein in respect of the apartment, as case may be, which agreed to be taken, can be made without the previous consent of that person?

Relief sought

19. The complainant is seeking the following reliefs:
- To allot the commercial shop no. 1005 with cover area 285 sq. ft. and hand over the possession to complainant of the same.
 - To refund the money with 24% interest rate along with pendente lite.

Respondent's reply:

20. The respondent submitted that that various statements made by the complainant are couched with malice, fraud and material suppression of facts. The complainant has



deliberately suppressed various material facts which will have substantial bearing on the outcome of the present proceedings. The complainant has thus not come with clean hands before this hon'ble tribunal and the present claims are a clear afterthought to acquire a wrongful gain for himself and extract money of the respondents illegally.

21. The respondent submitted that the complainant is a classic example of "suppresio veri suggestio falsi". It is most humbly submitted that suppression of truth is (equivalent to) suggestion of what is false. It is the rule of equity, as well as law, that a suppresio veri is equivalent to suggestio falsi; and where either the suppression of truth or the suggestion of false can be proved, in a fact material to the contract, the party injured may have relief against the contract. In the present case, the Complainant has purposely hidden various material and relevant facts including but not limited to, -

The complainant himself in sub para xiv at page 11 of his complaint expressly mentions-



“it is submitted that after the negotiations were finalized, the complainant accepted to buy shop no ‘1006’ instead of ‘1005’ measuring super area 300 sq. ft.”

Further in sub para xiv at page 12, the Complainant mentions that-

“The change in shop number and size was reluctantly accepted by the complainant, as an attempt to avoid litigation”

And in para 6 at page 73 of the complaint (extracts of the legal notice), the Complainant mentions that-

“Therefore, under the goodwill and assurances by the authorities involved in the negotiations my client forgo the earlier erroneous mistake and agreed to buy a different shop from the one selected earlier.”

22. The respondent submitted that had voluntarily and consciously admitted, agreed and accepted the allotment of shop number ‘1006’ and agreed to make further payments against such allotment. Accordingly and in pursuance of his decision to take the allotment of shop number 1006, the complainant had, in his own handwriting, made specific



amendments and alterations in various documents and signed his signature to expressly record that he had agreed and accepted the allotment of shop number 1006 and not 1005. Can he be allowed to arbitrarily and whimsically change his mind and turn back to claim a shop number 1005 and because of non-availability of such shop number 1005, to institute these proceedings to claim an unworthy relief by making wild, frivolous and almost contemptuously disparaging allegations and claims that have no basis in fact and the law.

23. The respondent submitted that the provisional application form filled in by the complainant for shop number 1005, a copy of which is attached at pages 24-29 in the present complaint has no validity presently. The same does not bear any authentic approval of the developer. The complainant had infact accordingly filled in another application form again dated 10.9.2013 that he had signed. Even in this application form, the complainant first wrote shop number 1005 but he himself corrected the number from 1005 to 1006 and as a matter of abundant precaution, the complainant even circled 1006 and signed alongside the correction showing that he



applied for and accepted shop number 1006. This application form for shop number 1006 was accepted by the respondent

24. The respondent submitted that further the receipt No 71 dated 18.10.2013 mentions the shop number as 1006. The first email received from complainant in this respect was on 21.04.2017. Presuming (without admitting) that there was any problem to the complainant as regards allotment of shop number 1006 that he had himself agreed and accepted nearly four years earlier on 10.9.2013, what made him wait for so many years that he chose to write an email dated 21.04.2017. The fact is that in April 2017, the complainant, seeing no appreciation in the Real Estate market, treacherously and mischievously planned a strategy to seek a refund by alleging unsustainable allegations and vexatious claims that have no relationship with actual facts of the matter. Thus he wants to take advantage of his own wrongdoings.

25. The respondent submitted that the complainant desired to include his wife Mrs. Gurmeet Kaur's name as a co-allottee of shop number 1006 and in pursuance thereof, he submitted documents among which, in one document titled "Application



for addition of name” attested by a notary dated 22.6.2017, the complainant again in his own handwriting, wrote the shop number as 1005 but corrected the error himself with the same pen and in his handwriting by overwriting 1005 to make it 1006 and, as a matter of abundant precaution, he separately wrote 1006 alongside such correction, circled the 1006 and signed it signifying that the application for addition of name was for shop number 1006 of a super area of 300 sq. ft. and not shop number 1005. Further, in another document titled “NOC-indemnity for addition of name” again duly attested by a notary dated 22.6.2017, the complainant again made the same mistake and in his own handwriting, again wrote shop number as 1005 but corrected the error himself with the same pen and in his handwriting by overwriting 1005 to make it 1006 and, as a matter of abundant precaution, he separately wrote 1006 alongside the correction, circled 1006 and signed it signifying that the NOC-Indemnity for addition of name was in the context of shop number 1006 and not shop number 1005. A copy of the said “application for addition of name” duly attested by notary on 22.6.2017 and a copy of the “NOC-



indemnity for addition of name” duly attested by a notary dated 22.6.2017.

26. The respondent submitted that ample opportunities were given to the complainant to fulfil his reciprocal obligations of making timely payments as well as signing the builder buyer agreement, but despite repetitive reminders, he failed to make the necessary payments due to the respondent after which the respondent was forced to issue the pre cancellation notice dated 09.08.2018.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

27. With respect to the **first, second, third and fifth issues** raised by the complainant, the complainant has provided no proof but made only assertion with respect to the demand, interest cost, facilities and amenities and addition and alteration in the layout plan. The complainant has made baseless allegations without any supportive documents to prove that the



respondent has misrepresented. Hence, these issues are answered in negative.

28. With respect to the **fourth issue** raised by complainant, he himself in sub para xiv at page 11 of his complaint expressly mentions-

“It is submitted that after the negotiations were finalized, the complainant accepted to buy shop no ‘1006’ instead of ‘1005’ measuring super area 300 sq. ft.”

Further in sub para xiv at page 12, the complainant mentions that-

“The change in shop number and size was reluctantly accepted by the complainant, as an attempt to avoid litigation”

Therefore, there is no misrepresentation on part of the developer.

Findings of the authority

29. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated



14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

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

31. The complainants 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

32. Since the project is not registered, as such notice under section 59 of the RERA Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

33. Main grievance of the complainant is with regard to allotment of exact number of shop/unit that was allotted to him by the



respondent. Contentions of the complainant are that he had signed a provisional allotment form for shop/unit no. 1005 with super area 285 sq. ft. in project "MERCADO", Sector 80, Gurugram but the respondent intentionally allotted/ mentioned shop no. 1006 instead of 1005 with super area of 344 sq. ft. provisionally and despite raising objection to this effect, respondent failed to rectify the mistake in their records and raising demands on account of allotment of shop no. 1006 instead of 1005. Respondent also sent a copy of BBA for attesting the signature of the complainant by mentioning the allotment of shop/ unit no. 1006.

34. Complainant further submits that instead of rectifying the mistake, the respondent unilaterally and arbitrarily sent a pre-cancellation letter dated 09.08.2018 demanding outstanding amount along with interest on delayed payment payments. By way of the present complaint, complainant seeks directions from the authority to direct the respondent to allot shop no. 1005 with covered area of 285 sq. ft. or alternatively refund the deposited amount with 4% interest.



35. Countering the allegations levelled by the complainant, counsel for the respondent submits that complainant himself had agreed and accepted the allotment of shop no. 1006 which is apparent on the face of record where the complainant himself had corrected and written the number of shop as 1006 and as matter of abundant precaution even circled 1006 and signed alongside the correction and accordingly the complainant accepted the allotment of shop no. 1006.
36. Considering the pros and cons of the matter and hearing the arguments advanced by the parties, the authority is not inclined to grant relief sought by the complainant as the complainant himself has failed to protect his interests being in dual state of mind on the issues of allotment of unit/shop and by not aggressively raising grievances before the respondents and he too failed to make timely/ due payments to the respondent and the respondent was well within his rights to issue pre-mature cancellation on account of not receiving due payments from the complainant. However, keeping in view the interests of both the parties and in the interest of natural justice, it is directed that respondent to refund the amount



deposited by the complainant by deducting only 10% of the total sale consideration within a period of 90 days from of the date of issuance of this order.

Directions of the authority

37. 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 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. It is directed that respondent to refund the amount deposited by the complainant by deducting only 10% of the total sale consideration within a period of 90 days from of the date of issuance of this order.



Total sale consideration	10% of total consideration	Amount paid by complainant
Rs.31,93,624/-	Rs.3,19,362.4/-	Rs.8,77,657/-
Balance after deducting 10% of total consideration from paid amount	Interest payable @10.75% on balance and from date of last	

	payment 28.08.2018 till 19.12.2018
Rs.5,58,295/-	Rs. 18,457.19/-

38. Since, the respondent has failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

39. The order is pronounced.

40. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 19.12.2018

HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019