

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

Complaint. No. 545/2018- Ganesh Kumar
Versus
Suncity Projects Private Limited

Date of Hearing: 19.12.2018 (3rd hearing)

Coram: - Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance: - Sh. Vishwender Singh, Proxy Counsel for Complainant
Sh. Kamal Dahiya, Counsel for Respondent

ORDER:

1. The complainant's case is that he was allotted a plot no. D3, measuring 326.505 sq. yds @ Rs. 10,500/- per sq. yd. by the respondent company vide an application form dated 15.12.16 in a Residential project named "Suncity Rohtak I", Sector 35, Rohtak, Haryana. The complainant stated that the application form dated 15.12.16 by which the said plot has been allotted to him belongs to the respondent company. The said form bears signature of a broker who had been duly authorized by the respondent company to sell the plot in question to the complainant. The complainant has already paid an amount of Rs. 34,28,303/- to the respondent company. Last payment



was made on 05.02.17. The complainant had made the said payment in four instalments. First payment of Rs. 6.50 lacs was made on 15.12.16 vide cheque no. 08434; followed by second payment of Rs. 8.50 lacs on 23.12.16 vide cheque no. 014721; third and fourth payments of Rs. 11 lacs and Rs. 8,28,303 were made on 05.02.17 vide cheques no. 014723 and 084343 respectively. The complainant further stated that the said cheques were duly accepted by the respondent company and were got encashed by them.

The grievance of the complainant is that after receiving the payment, no communication has been made by the respondent with regard to allotment of plot or conveyance of sale-deed, despite making repeated calls to the company officials. The complainant further states that he has visited the office of respondent company number of times but without any response. The respondent company had promised to deliver the possession within shortest possible time, but even after a period of 2 years there has been no word from the respondent company regarding possession of the plot. The complainant further states that the plot was booked at the rate of Rs. 10,500/- per sq. yd, hence, the allotment is supposed to be made at the said rate, but the respondent company is making illegal demands and threatening to cancel the plot if the complainant doesn't accede to such demands. Hence, the complainant prays for possession of the plot in



question at the said rate and compensation on account of harassment, mental agony and undue hardship.

2. The respondent's case is that the present complainant has no locus standi to file the present complaint as he doesn't fall under the definition of "allottee" as given in Section 2(d) of the RERA Act, 2016, therefore, the present complaint is liable to be dismissed. The respondent further submitted that he is ready and willing to refund the amount paid by the complainant. Respondent has also challenged the jurisdiction of this Authority in entertaining this complaint.
3. During verbal arguments, the complainant stated that he doesn't want refund of his money. He only prays for allotment and possession of the plot for which he has given his hard-earned money.

The Learned Counsel for respondent admitted the fact of payments having been made by the complainant, however, he stated that the complainant is not an allottee in the project. He is only an investor and he invested his money for future returns. The respondent company and the complainant have neither entered into a plot buyer's agreement nor any booking application form has been signed. Learned Counsel for respondent stated that in real estate sector, people come forward to invest their money in various kinds of properties, which doesn't make them allottee in the project. The present complainant invested his money only for the purpose of investment and not for allotment. Therefore, the complainant doesn't

fall within the definition of “allottee”. Learned Counsel for the respondent further stated that the respondent company has never acknowledged the application form signed by the complainant. It doesn't even bear signatures of any officials of respondent company and the signature on the said form belongs to a broker, who is not an authorized official of the respondent company. He further stated that the complainant did give his money to the respondent company but he never came forward for booking of the plot. However, the respondent admits to the payments having been made by complainant and he is ready to refund the amount along with interest as prescribed under Rule 15, HRERA Rules, 2017.

4. The Authority, after considering the respective submissions, observes as follows:
 - (i) The respondent has explicitly admitted that they have received the money paid by the complainant by way of cheques. The payments have been made by the complainant on three different dates starting from 15.12.16 till 05.02.17. The payments were made for allotment of a plot as shown in the application form, measuring 326.505 sq. yds. While the respondent company kept taking money from the complainant by way of cheques and got the same encashed but why they were receiving the money has not been clarified. The respondent has declared the complainant an investor and not an allottee, but the reasons for his argument have not been cited before



this Authority. They are denying having authorized the broker to sell plots in their behalf, but no action has been shown to have been taken by them against the alleged broker for selling their plots unauthorizedly. For this reason, it is to be presumed that the broker was duly authorized by them because respondent kept accepting the cheques. The respondent, at this stage, cannot take the plea that the complainant is not an allottee. The Authority observes that the process of signing of application form by the respondent company through broker and acceptance of payments made by the complainant gives rise to a presumption in favour of the complainant that he is an allottee of the plot.

- (ii) In real estate transactions, it is the duty of builder to call the complainant to enter into plot buyer's agreement and for further completion of necessary requirements, however, no efforts were made to enter into any plot buyer's agreement or sign an allotment letter despite receipt of substantial amount of money.
- (iii) The respondent has failed to substantiate his argument that the money paid by the complainant was made for purpose of investment only and not for allotment of plot. No document has been produced in this regard to substantiate their claim. The respondent is ready to refund the entire amount paid by the complainant, but the same is not acceptable to the complainant. As per Section 18 of the RERA



Act, 2016, it is the choice of complainant to opt for refund of the amount or ask for possession of the unit. In the present case, the complainant prays for possession of the plot for which money has been paid by him.

5. The Authority, after going into the written and verbal submissions made by both the parties, orders as follows:

- (i) The Authority has already settled the dispute regarding jurisdiction of this Authority in **Complaint no. 144 of 2018 Sanju Jain V TDI**. Hence, the reasons cited in the said complaint shall be applicable as far as the dispute regarding jurisdiction is concerned.
- (ii) The complainant deserves the possession of plot as he has not defaulted in making payments and it is his choice as per Section 18 of the RERA Act, 2016 to opt for refund of the amount or seek possession of the plot. The Authority, during the verbal arguments, was apprised by the Learned Counsel for respondent that this project consists of two phases, and Occupation Certificate for Phase-1 has been received by the respondent company. The Occupation Certificate for Phase 2 has been applied for and same is likely to be received in near future. Hence, the Authority directs the respondent company to allot the




plot in question to the complainant within a period of 60 days from uploading of this order.

Disposed of accordingly. The file be consigned to the record room and order be uploaded on the website.



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