

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

1. **Complaint No. 937 of 2018**
Sipra Raheja and Seth Saurabh Raheja
through authorized Representative Vijay Raheja

...Complainants

Versus

M/s Adel Landmark (India) Pvt. Ltd.
(Formally known as Era Landmarks Limited)

...Respondent

2. **Complaint No. 939 of 2018**
Hemant Raheja
through authorized Representative Shilpika Raheja

...Complainant

Versus

M/s Adel Landmark (India) Pvt. Ltd.
(Formally known as Era Landmarks Limited)

...Respondent

Date of Hearing: 13.12.2018

QUORUM:

Shri Rajan Gupta
Shri Anil Kumar Panwar
Shri Dilbag Singh Sihag

**Chairman
Member
Member**

APPEARANCE:

1. Ms. Srishti Girdhar, Advocate for the complainant
2. None for the respondent

Order:

Both cases listed above have been taken up together as the grievances involved therein are similar in nature and against the same project of the respondent. This order is passed by taking **complaint no. 937/2018- Sipra Raheja and Seth Saurabh Raheja Vs M/s Adel Landmark (India) Pvt. Ltd.** as the lead case.

2. The complainant states as follow: -

(i) The complainants were allotted the unit no. C-166 measuring 1470sq ft. in the real estate project "Redwood Residency, Sector-78, Faridabad" on 21.11.2007 after payment of booking amount Rs 6,24,750/-. Separately, buyer agreement between complainants and the promoter respondent was executed on 10.12.2007 and unit no. C-166 was allotted to complainant for basic sale price of Rs 24,99,000/-, against which Rs 32,33,108/- have already been paid by complainants between November,2007 to July,2018. As per the agreement dated 10.12.2007 possession of the unit was to be delivered by 10.12.2010. Besides, a separate Memorandum of Understanding dated 06.02.2017 was signed between the parties, the relevant part of which is produced below:

i. "WHEREAS the First Party is a group company and part of the ERA Group of companies and is inter-alia engaged in the business of real estate development and construction of commercial/residential



building/complexes and has developed and constructed many commercial malls and residential complexes in various parts of India.

ii. AND WHEREAS the second party is a group of buyers (collectively referred to as the "GROUP") of flats in Redwood residency in Tower A, Tower B, Tower C sector-78, Faridabad (collectively referred to as the "TOWERS") incorporated for the purpose of construction of flats and to provide and/ or to facilitate ADEL for smooth Construction of flats in "TOWERS" by paying an advance payment of Rs. 50,000/- (by each member of GROUP) followed by installments against the stage of work agreed and decided by GROUP members."

- (ii) The complainant's grievance is that the respondent has neither kept his promise to deliver the possession within stipulated time i.e. by 10.12.2010 nor was able to complete the project despite the fact that he has raised finance by entering into Memorandum of Understanding and availing loan facility.
- (iii) Learned Counsel for complainant submits that the a petition under section 7 of the Insolvency and Bankruptcy Code,2016 has been allowed by National Company Law Tribunal, Special Bench, New Delhi against the respondent company and vide its order dated 05.12.2018 Mr.Udayraj Patwardhan has been appointed as Interim Resolution Professional, wherein he has been directed to make public announcement with regard to admission of this application under section 7 of the code within 3 days. Learned Counsel requested that this matter may be taken up for consideration in the light of the judgement dated 30.10.2018 of this Authority passed in bunch matter pertaining to M/s ABW Infrastructure Pvt Ltd in complaint no. 383/2018 tilted as Gurbaksh & Another Vs M/s ABW Infrastructure Pvt Ltd because after the order dated 05.12.2018 of NCLT, Delhi, there is a

possibility that no one would appear on behalf of respondent to pursue these complaints.

- (iv) Complainants also states that they have come to know of a loan raised by the respondents from M/s Capri Global Capital Ltd. for completion of the project against which the flats of the project have ~~not~~ been mortgaged. Since the complainants have paid almost entire consideration amount, the respondents could not have mortgaged the flats without their express approval. So much so even land of the project has also been mortgaged for raising the loans. This is clearly a malafide act on the part of the respondents.
- (v) The complainants also have grievance against several unjustified charges levied by the respondent including GST and service tax. These levies are in violation of the orders of this Authority passed in Madhu Sareen Versus BPTP Ltd.
3. Facts of the complaint No.937 Sipra Raheja Versus Adel Land mark (India) Pvt. Ltd. are being taken into action for disposal of these two complaints. In their orders Hon'ble NCLT has observed that respondents have defaulted to their financial creditors for an amount of Rs.663,62,44,312/-. After examination of the arguments of the respective parties, the NCLT is satisfied that a default has occurred on the part of the respondents. They have ordered that in pursuance of Section 13(ii) of the Insolvency and Bankruptcy Code,2016 the



interim Insolvency Resolution Professional is directed to make a public announcement with regard to the admission of this application under Section 7 of the court. A moratorium under Section 14 of the Code has also been declared. It has however been clarified that provisions of moratorium are not to apply to the transactions which might be notified by the Central Government and a surety in contract of guarantee to a corporate debtor. The NCL has further ordered that additionally the supply to essential goods or services to the debtor as may be specified are not to be terminated or interrupted during the moratorium period.

4. Since nobody is present on behalf of the respondent despite receipt of notice by them on 23rd November,2018 and in the light of the above quoted orders of the NCLT, this matter is being proceeded with ex-parte.
5. After detailed consideration of the facts placed on file, the orders of Hon'ble NCLT, and the oral submissions of the learned counsel for the complainant it is observed and ordered as follows:-

- (i) It is proved from Annexure C-II that an agreement dated 10.12.2007 was executed between the parties vide which apartment No.C-166 measuring 1470 Sq.ft. was allotted to the complainants for consideration amount of Rs.24.99 lacs. The due date for delivery of the apartment was 36 months



i.e.10.12.2010. The assertion regarding payment of Rs.32,33,108 is adequately proved from the copies of the receipts annexed by the complainant with the complaint vide Annexure C-3, C-4, C-5, C-7 and C-8. It is evident that the apartment has neither been delivered nor is there any possibility of its delivery in near future.

- (ii) After receiving the amount the allottees have become deemed owner of the proportionate part of the real estate project. By raising loan against the project from Capri Global Pvt.Ltd. respondents have jeopardised the interest of the allottees without seeking their consent. It has already been held by this Authority in complaint case No.383 of 2018 Gurbax Versus ABW Pvt .Ltd. that, the rights of the allottees cannot be alienated without their consent, and if such an act is made by the respondents, the same shall be deemed void-abinitio. The act of raising loan by the respondent against the apartments allotted to the complainant and other similarly placed persons is completely illegal. Such a loan could not have been raised without express consent of the allottees.
- (iii) This Authority has laid down certain principles for protection of the interest of the allottees in real estate



projects in complaint case No.383 of 2018 titled Gurbax Versus ABW Infrastructure Pvt. Ltd. The relevant part of the judgement is reproduced below:-

“12. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a valuable right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.

However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

13. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows:-

- (i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk



factors involved Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

- (ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.

The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

- (iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 18: Return of amount and compensation-

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date



specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section 19(3): Rights and Duties of allottees- The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Section 79: Bar of Jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken



in pursuance of any power conferred by or under this Act.

Section 89: Act to have over-riding effect- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall be treated superior most. The money paid by the allottees shall be refunded before entertaining claim, if any, of the commercial creditor.

15. Another question that arises at this juncture is whether by granting a superior right to the allottees compared with other creditors whether purposes of the RERA Act are fully served or not? This Authority observes that RERA Act is supposed to provide expeditious remedy to the allottees and also ensure that real estate sector develops in a systematic manner and ongoing projects are completed within a time bound manner. This necessarily brings us to the question of responsibilities of the State Government, through the Town

& Country Planning Department, which is the license/approving authority for development of a real estate project.

16. In a situation like the facts of the case, it must be determined whether the State Government and its agencies have faithfully discharged the duties cast upon them by law? Have the State agencies monitored the project in a proper manner through the course of its development? Why did they allow the project to slip in the manner that it has become a stuck project to the prejudice of the allottees as well as society in general?

17. It can be safely said that there must have been failure of some organs of the machinery of the State which resulted into the state of affairs that are being faced here. The promoters have been defaulting in payment of dues to the Government. In this situation, especially when the project promoters have turned serious defaulter of other financial institutions and criminal cases are pending against them, the Town & Country Planning Department should have taken timely steps to safeguard interests of the allottees. The allottees purchased the apartments on the basis of the sovereign assurances held out to them by the State Government. Now, it is an equal duty of the State Government to come to their rescue and take all steps necessary to get the project completed by taking it over or in any other manner considered appropriate. The Town & Country Planning Department cannot allow a licensee to collect money from the allottee and abandons the project. The Department is duty bound to take coercive action.

We hereby direct that for safeguarding interests of the allottees, Director, Town & Country Planning Department, Haryana shall immediately make an assessment of the assets of the project and take appropriate decision for getting the project completed by taking it over themselves or through any other appropriate agency. They shall take these steps regardless of the claims of the other financial creditors against the project promoters or the project land. After cancellation of the licence, once the project is taken over by the Town & Country Planning Department, the rights of the allottees can be secured. The financial institutions or other creditors, however, may get their claims satisfied from the remaining assets of the project or from the other assets and properties of the promoters or by involving guarantees and

securities. It is only by taking over of the project by Town & Country Planning Department that the purposes of the RERA Act will be served and interest of the allottees can be protected.

18. The directions issued in the foregoing Paras are summarized as follows:-

- (i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.
- (ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.
- (iii) The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licenced land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate. The Director shall take over the project regardless of any other proceedings pending against the project assets including under the SARFAESI Act, 2002 or the "Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013".
- (iv) While all the captioned complaints are being disposed of by this final order, Executive Director shall file a suo-moto complaint against respondents No.1 & 2 and also implead Director, Town & Country Planning Department, Haryana as a respondent for monitoring of follow up actions taken on these directions.
- (v) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on



priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.”

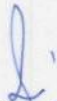
6. In the light of the above observations and the law laid down by this Authority in complaint No.383 of 2018 it is ordered as follows:-

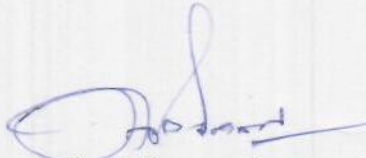
- (i) The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions could not alienate the ownership rights of the allottees at their own level without their consent. Therefore, now the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors.
- (ii) If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question.
- (iii) The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or of the respondents and




seek satisfaction of their claims on priority. It is, however made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in rule 15 of the HRERA Rules, 2017.”

- (iv) The Director, Town & Country Planning Department, Haryana is duty bound to protect interest of the allottees and to ensure that the project on the licensed land is completed in accordance with sanctioned plans. The Director shall immediately take steps to take over the project and get it completed in the manner considered appropriate.
- (v) Disposed of. File be consigned to the record room and orders be uploaded on the website of the Authority.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman