

PROCEEDINGS OF THE DAY

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| Day and Date | Wednesday and 09.01.2019 |
| Complaint No. | 373/2018 Case titled as Mr. Vibhor Goel & anr. Vs. The CMD International Land Developers(ILD) |
| Complainant | Mr. Vibhor Goel & anr. |
| Represented through | Complainant No2 in person |
| Respondent | The CMD International Land Developers (ILD) |
| Respondent Represented through | Shri Shrikant authorized representative on behalf of respondent-company with Shri Venkat Rao, Advocate. |
| Last date of hearing | 29.11.2018 |
| Proceeding Recorded by | Naresh Kumari & S.L.Chanana |

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 be issued to the respondent. Registration branch is directed to do the needful.

No Builder Buyer Agreement was executed inter-se the parties. As per averments made by the counsel for the respondent, the project is 65% complete. Licence of the builder has been renewed and copy of the same has

been placed on record. Project is not registered. However, application for registration of the project is pending with the authority.

Complainant is seeking refund alongwith interest.

Complainant booked the flat bearing No.B-703 in project "ARETE" Sector 33, Sohna, Gurugram on 15.2.2013. He has paid Rs.19,12,500/- to the respondent against a total sale consideration of Rs.91,89,095/-. It was a construction linked plan.

Since no BBA was executed inter-se the parties, as such complainant is well within his right to claim refund alongwith prescribed rate of interest i.e 10.75%. Respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited to the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
9.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 373 of 2018
Date of institution : 6.9.2018
Date of decision : 9.1.2019

Mr. Vibhor Goel and
Mr. Surinder Kumar Goel,
R/o – 2199/168 Tri Nagar
Delhi 110035

Complainant

Versus

The CMD (Mr. Alimuddin Rafi Ahmed)
M/s International Land Developer (ILD)
Office at:901, 9th floor,
ILD Trade Centre
Sector-47, Sohna Road,
Gurgaon- 122018

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vijay Siwach
Shri Satya Prakash Singh

Advocate for the complainant
Advocate for Respondent



ORDER

1. A complaint dated 4.6.2018 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 complainants Mr. Vibhor Goel and Mr. Surinder Kumar Goel, against the CMD (Mr. Alimuddin Rafi Ahmed), M/s International Land Developer in respect of apartment/unit described below in the project 'ARETE', on account of violation of the section 11(4)(a) of the Act *ibid*.
2. Since, the allotment letter was issued on 6.4.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

| | | |
|----|----------------------------------|---|
| 1. | Name and location of the Project | 'ARETE' project, Sector 33, Sohna, Gurugram, Haryana. |
| 2. | Registered / Not Registered | Not Registered |
| 3. | Unit/ Villa No. | Flat no. B-703, tower-B |



| | | |
|-----|---|---------------------------------------|
| 4. | Unit measuring | 1765 sq. ft. |
| 5. | Date of booking | 15.2.2013 (page no.24) |
| 6. | Booking amount | Rs.6,00,000/- (page no.24) |
| 7. | Date of execution of ABA | Not executed |
| 8. | Amount paid by the complainant till date (as alleged by complainant) | Rs.19,12,500/- |
| 9. | Total consideration | Rs.91,89,095 (page no.36) |
| 10. | Percentage of amount paid | 20% |
| 11. | Date of allotment | 6.4.2014 (page no.36) |
| 12. | Date of delivery of possession. | Cannot be ascertained |
| 13. | Type of plan | Construction linked plan (page no.36) |
| 14. | Delay of number of months/ years | No delay |
| 15. | Letter for refund by complainant (Followed by seven reminder letters annexed) | 21.9.2017 (page no.39) |

4. The 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 on 3.8.2018 to the respondent to appear before the authority on 6.9.2018. The respondent filed the reply on 23.8.2018. the case came up for hearing on 2.8.2018, 5.9.2018, 26.9.2018, 17.10.2018, 26.10.2018, 29.11.2018 and 9.1.2019.



FACTS OF THE CASE

6. That the petitioner booked the flat B-703 in ARETE project on 15.2.2013. The construction slowed down after 1.5 years and then stopped and no work has been done from past 2 years. The petitioner submitted a letter for refund with interest on 21.9.2017 and several reminders were made afterwards. The complainant along with other flat buyers met the representatives of ILD and didn't get any satisfactory reply and the construction didn't start till 15.5.2018.
7. M/s ILD developer accepted 20% cost but didn't make any agreement. Also, they gave false statements about best architect and workforce and has completed only 10-15% of work in last 5 years.

8. ISSUES TO BE DECIDED

- I. Whether there are differences in project promised and that is being developed?
- II. Whether the developer has upgraded the brochure by deleting the main attractions and highlights of the 2014 brochure?
- III. Whether there is misrepresentation on the part of developer?

9. RELIEF SOUGHT

Deposit the refund of Rs.19,12,500



10. REPLY ON BEHALF OF THE RESPONDENT

That it is admitted that Mr. Vibhor Goel booked a flat and paid only Rs.19,12,500 out of Rs.91,89,095. It is denied that construction work is stopped and it is under progress.

It is denied that complainant gave reminders for refund and the complainant is in default of due instalment. It is admitted that ARETE project is developed by WOW architect and it is a very impressive project.

REJOINDER ON BEHALF OF THE COMPLAINANT

11. The respondent is providing false information regarding construction and possession. A penalty of upto 5% of the estimated cost shall be imposed as per section 60 of RERA Act.
12. That the respondent didn't execute the ABA and was running from his responsibilities. The respondent submitted completion details of only 1 tower and not of others.
13. There was deficiency in service as only 10-15% of work was done and no reply was ever given to the complainant. Also, the project is not registered with RERA and HUDA has cancelled licence of the project because the company failed to comply with its obligation.



14. The arbitration provision is a standard clause in the agreement but the SC didn't take it in Jaypee's case or Unitech case or in Sahara case.

DETERMINATION OF ISSUES

15. With respect to the **first and third issue**, the respondent cannot deliver something else which was not agreed or provided by it in the beginning. Here, the respondent has attached a letter from the town and country planning department dated 25.5.2015 as per which new building plan was approved and no objection was there from any of the allottee(s). Further, Annexure R-8 provided by the respondent gives details regarding construction details of tower 2. The complainant has concern that the respondent didn't disclose construction status of all the buildings and gave information only about one of them. As per the photos provided by the complainant dated 11.2.2018, it is not clear as to what is the current status of the project.

16. Regarding the issue of change in brochure, the older brochure has been annexed on page 33 whereas only the first page of the new brochure has been annexed on page 44. So, it can't be



ascertained whether any changes were made in the new brochure or not.

17. For the issue of arbitration clause raised by the respondent, the amendment of section 8 of the arbitration and conciliation act does not have the effect of nullifying the ratio of catena of judgments of the hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

FINDINGS OF THE AUTHORITY

18. The project 'ARETE' is located in Sector-33, Gurugram, thus the authority has territorial jurisdiction to entertain this complaint.
19. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding 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.

20. Keeping in view the fact that no buyer's agreement was signed inter-se the parties, complainant is well within his right to claim refund along with prescribed rate of interest i.e. 10.75%. Respondent shall forfeit 10% of the total sale consideration amount and refund the balance amount deposited to the complainant along with prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

Decision and directions of the authority

21. 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) 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 be issued to the respondent. Registration branch is directed to do the needful.



- (ii) No builder buyer agreement was executed inter-se the parties. As per averments made by the counsel for the respondent, the project is 65% complete. Licence of the builder has been renewed and copy of the same has been placed on record. Project is not registered. However, application for registration of the project is pending with the authority.
- (iii) Complainant is seeking refund along with interest. Complainant booked the flat bearing No.B-703 in project "ARETE" Sector 33, Sohna, Gurugram on 15.2.2013. He has paid Rs.19,12,500/- to the respondent against a total sale consideration of Rs.91,89,095/-. It was a construction linked plan.
- (iv) Since no BBA was executed inter-se the parties, as such complainant is well within his right to claim refund along with prescribed rate of interest i.e. 10.75%. Respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited to the complainant along with prescribed rate of interest i.e. 10.75% per annum within 90 days from today.



22. The order is pronounced.

23. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 9.1.2019

Judgement uploaded on 29.01.2019



HARERA
GURUGRAM

