

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

Complaint No. : 69 of 2018
First date of hearing: 17.04.2018
Date of Decision : 26.07.2018

Mr. Satpal Thakran,
R/o. J-121 GF , Mayfield Gardens, Sector 51,
Gurugram -122018

Complainant

Versus

1. M/s Sheetal Infrastructure International
Pvt. Ltd.

Regd. Office: G-81/A, 2nd floor, Vijay Chowk,
Laxmi Nagar, New Delhi-110092

2. M/s. Satsudha Investments Pvt. Ltd.
Address- R/o 19 Old Palme Marg, Vasant Vihar,
New Delhi

3. M/s New India City Developers Pvt. Ltd.
Address- B-44, 2nd floor, Jangpura, B, New
Delhi-110014

4. M/s. Noerth Star apartment Pvt. Ltd.
Address- B-4/43, Safdarjung Enclave, New
Delhi-110029

5. M/s. Ajay Impex Pvt. Ltd.
Address- 31, Shivaji Marg, Westend Greens,
Rangpuri, New Delhi

Respondents



CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Satpal Thakran
Shri Shri J.K. Dang and Shri
Ishaan Dang

Complainant in person
Advocate for the respondents

ORDER

1. A complaint dated 27.03.2018 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. Satpal Thakran, against the promoters M/s Sheetal Infrastructure International Pvt. Ltd and others. in respect of apartment/unit described below in the project 'Mayfield Gardens', Sectors-47,50,51,52 and 57, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

2. Since, the agreement to sell has been executed on 19.06.2004 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 case are as under: -

1.	Name and location of the project	"Mayfield Gardens", Sectors- 47,50,51,52 and 57 , Gurugram
2.	RERA registered/ not registered.	Unregistered



3.	Plot no.	J-121, Ground floor
4.	Plot measuring	1400 sq.ft.
5.	Total sales consideration	Rs. 20,18,800/- As per clause 1 of the agreement to sell
6.	Date of agreement to sell	19.06.2004
7.	Occupation Certificate received on	29.02.2006(Annexure 2)
8.	Total amount paid by the complainant till date	Cannot be ascertained since, no statement of account annexed.
9.	Date of delivery of possession Clause 19- 18 months from the date of the agreement	19.12.2005
10.	Delay in handing over possession	12 years 7 months 7 days
11.	Penalty clause	Rs.5/per sq.ft. per month for the period of such delay after expiry of initial period of 60 days from the stipulated date for delivery of possession

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An agreement to sell dated 19.06.2014 is available on record for the aforesaid plot. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 17.04.2018. The case came up for hearing on 17.04.2018, 03.05.2018,



31.05.2018,14.06.2018 and 26.07.2018. The reply was filed by the respondent and has been perused by the authority.

Facts of the complaint

6. Briefly stated, the facts of the case of the complaint the complainant submitted that as per the interim order dated 20.03.2015 of Appellant Authority ACSTCP the colonisers were to remove all deficiencies by May 2015 and DGTCP was to be take decision for grant of part completion certificate by June 2015 subject to renewal of licenses.
7. It is further admitted that the colonizers were to deposit 50% license renewal fee by end of April 2015 after which the department was to issue approval of community building % zoning plans. As a matter of fact the colonizers neither removed the deficiencies nor deposited the license renewal fee.
8. Request was made to DGTCP through CM window portal for transfer of colony to MCG but the request was turned down by DGTCP stating that the colony cannot be transferred to MCG without the colonizers obtaining the completion certificate. The completion certificate has not been issued yet to the colonizers as the renewal license, clearance of dues, revalidation of bank guarantee and compliance of rules



24,26,27 and 28 of the Rules 1976 are mandatory for grant of completion/part completion certificate and the colonisers have not complied with these pre-requisites.

9. The promoters of Mayfield Gardens have contravened the provisions of section 3(1) of the Act 2016 by not registering themselves under HRERA and are liable to a penalty as per section 59(1) of the Act ibid which may extend up to ten percent of the estimated cost of the real estate project as determined by the authority.

10. **Issues raised by the complainant is as follow:**

- i. Whether the respondent has registered themselves with Real Estate (Regulation and Development) Act, 2016 ?

11. **Relief sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to pay a penalty of ten percent of the estimated cost of the real estate project as determined by the authority for have contravening the provisions of section 3(1) of the Act ibid by not registering themselves.



Respondent's reply

12. The respondents company has contended in its reply that the present complaint is not maintainable in law or facts. In terms of section 3 of the Act, read with rules 2(o) and 4(5) of the Haryana Real Estate (Regulation and Development) rules, 2017, a project in respect of which an application for part completion certificate has been made to the competent authority, on or before the date of publication of the rules, does not require registration under the Act ibid and consequently the provisions of the Act ibid are not applicable to the such a project.
13. The respondents submitted that the rules were notified in the official gazette on 28.07.2017 whereas the respondents had already applied for issuance of part completion certificate in respect of the project in question as far back as in the year 2010. It is submitted that although the application for part completion certificate was rejected by the competent authority on 05.02.2018, the said order has been challenged in appeal and operation of the said order has been stayed by the appellate authority vide order dated 20.02.2018.
14. It is submitted that until and unless the appeal is finally decided by the appellate authority, it cannot be presumed



that the application for issuance of part completion certificate has been rejected by the competent authority. Even after, assuming without in any manner admitting that the appellate authority upholds the order dated 05.02.2018, in that event also, the developer is entitled is entitled to pursue further remedies provided under the Haryana Development and Regulation of Urban Areas, Act 975 and otherwise, challenging such an adverse order.

15. The respondents submitted that the present complaint is thus grossly premature and based on surmises and conjectures regarding the possible outcome of litigation which is yet to attain finality. Such a conduct on the part of the complainant ought to be severely deprecated, more so, when the factum of the pendency of the appeal before the appellate authority has been fully within the knowledge of the complainant, as is evident from the order whereby the complaint made by the complainant before the CM window was disposed off.

16. The respondents submitted that the complainant has got no locus standi or cause of action to file the present complainant. The complainant is not an aggrieved person under section 31 of the Act *ibid*. The complainant can be rightly termed as a mischief maker than aggrieved person.



17. The respondents submitted that the complainant has not come before the authority with clean hands, the complainant herein has encroached upon the common area/lawn adjoining the unit of the complainant. The complainant has been asked time and again to remove the encroachment and to refrain from any illegal acts.

18. The respondents submitted that the project in question is a vast project that has been developed over land holding ad measuring more than 350 acres. Out of the said area, development work has already been completed for an area of 323.148 acres as far as on 27.08.2010. As per the report of the chief engineer-I HUDA submitted on 29.07.2016, most of the development work stands completed. Internal roads have been laid out except over a length of 2800 metres. Sewerage has been laid and is functional except for a length of about 700 meters. Internal storm water drainage system has been laid out and is functional except over a length of 700 meters. Thus, the allegations levelled by the complainant are totally baseless and do not merit any consideration by this hon'ble authority.



Determination of issues:

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

19. With respect to the **sole issue** after considering the facts submitted by counsel of both the parties and perusal of record on file, the finding of the authority on the issue is that as per proviso to section 3(1) of the Act *ibid*, ongoing project on the date of commencement of this Act have to be registered with the authority. Proviso to section 3(1) of the Act *ibid* which provides as under:-

“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”

20. Rule 2(o) of the rules *ibid*, defines ongoing project as a project for which development works are going on and for which no completion/ part occupation certificate has been granted on or before publication of these rules. Rule 2(o) is reproduced as hereunder:

“on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on



or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules."

Keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act ibid and the respondents have not registered the project with the haryana real estate regulatory Authority as on date. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act ibid. Section 59(1) provides as under:-

"If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority."



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

34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The complainant 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 which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

22. The respondent admitted the fact that the project Mayfield Gardens is situated in Sectors-47,50,51,52 and 57, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by



Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction

23. 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 complainant at a later stage.

24. The authority is of the view that the counsel of respondent has submitted brief note with regard to status of the development works undertaken by developer in Mayfield Colony which has been perused by the authority and noticed that as per technical committee report constituted under the chairmanship of Chief Engineer-I HUDA which has submitted its report on 29.07.2018, 600 meters road length, 2800 meters water supply lines, 700 meters sewerage line, 700 meters storm water drainage have not been completed in the colony. It has been finally concluded by the committee that internal development works on an area 31.946 acres in the colony are still incomplete. On the basis of report submitted



by the Committee regarding deficiency in development works in the colony, director Town and Country Planning Haryana before taking final decision on the request of colonizer for issue of completion certificate offered an opportunity of personal hearing on 04.01.2018 in accordance with the provisions under Act/rules and rejected application for issuance of completion certificate on the following grounds:

- (i) The licenses in question stands lapsed and are no more valid as on date.
- (ii) Revised service plan estimates have not been got approved after depositing additional BG on account of IDW as demanded vide memo dated 02.07.2015.
- (iii) The internal development works in the colony are not complete as per verified by the committee constituted under chairmanship of chief Engineer-1, HUDA, Panchkula.

25. Aggrieved with the rejection order of DTDC Haryana, the promoter filed an appeal no. 44 of 2015 under section 10 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 under section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975 before Additional Chief Secretary of Government of Haryana, Town and Country Planning and Department. After



hearing the submissions by the developer for short adjournment, ACS Haryana allowed their request and fixed case on 20.03.2018 and with the further orders that in the meanwhile the order of rejection of the application passed by the DTCP vide this order dated 05.02.2018, is kept in abeyance. The bank guarantee will be revalidated by the appellants in the meantime.

Decision and directions of the authority

26. 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) Its is clear that till date no completion certificate has been issued by the competent authority for the colony under reference . The developer is required to get the project registered with Real Estate (Regulation and Development)Act, 2016, Gurugram in accordance with the provisions under section 4 of the Act rea with rule 9 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within a



period of 15 days failing which penal action as per provisions under section 59 of the Act ibid shall be initiated by the authority.

27. The order is pronounced.

28. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.07.2018

Judgement Uploaded on 08.02.2019

HARERA
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