

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA**

Date: 22.01.2019

Hearing :5th

Complaint. No.256/2018

Gautam Bathla

...Complainant

Versus

Vatika Ltd.& others

...Respondents

Coram: - 1. Shri Rajan Gupta
2. Shri Anil Kumar Panwar
3. Shri Dilbag Singh Sihag

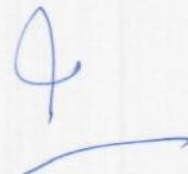
...Chairman
...Member
...Member

Appearance: - 1. Shri.Kunal Thapa, Advocate for Complainant
2. Shri.Kamal Dhaiya, Advocate for Respondents

ORDER: -

This case had come up earlier before this Authority on 25.09.2018,
when following interim orders were passed:

1. "The case of the complainant is that his father & the performant respondent Shri Virendar Thakral had jointly booked a plot in respondent's project namely "Vatika City Central" situated in Ambala on 03.03.2010 and allotted Plot No 4/ Block A/St. A-3. He states that the possession of the plot had to be delivered by 06.07.2018 but the respondent no 1 has not handover the possession within the stipulated time. Father of the Complainant had expired in 2011. He further states that his father executed a registered will in his favour on 29.12.2011, making him the absolute owner of the moveable and immoveable property.



The complainant apprised the Authority that on 13.01.2018, the performa respondent received a Termination-cum-refund letter from OP No.1 in respect of the plot. The complainant through performa respondent got to know about the plot which the complainant's father and performa respondent had purchased in **VATIKA CITY CENTRAL**, where they have already paid 9 out of 10 installments against the said plot but the OP No.1 has served the termination-cum-refund letter to the Performa respondent only stating that due to non-deposit of installment, the said plot is terminated.

The complainant approached OP No-1 in this regard when he was informed that all the communications were done with the Performa respondent said cancellation is final. The complainant is ready to deposit the final instalment pending but the Op NO-1 is adamant on his stand.

The Authority asked the complainant to show receipts of the payments made by his father and bank statements of his father to claim that he is the rightful successor-owner of the plot and his claim is superior to that of the performa respondent. Ld. Counsel for the complainant was unable to show the the same and seeks permission to place them before the Authority on the next date of hearing. He further requested the Authority to serve a notice to the performa respondent to appear before the Authority.

2. The respondent plea is that the complainant has not approached this Authority with clean hands and is deliberately misleading this authority. The complainant has no locus standi, as neither he is the original allottee nor a subsequent purchaser. The complainant has filed this case without having any legally enforceable right in his favour. The complainant has no relationship, contractual or otherwise, either with the respondent company or with the project. Thus, the complaint is liable to dismissed solely on this ground as the complainant is not an aggrieved person and has no locus standi. As per Annexure-3 of the complaint, the complainant's father died on 29 Dec. 2011. However, till date the complainant has not informed the respondent regarding the death of his father for reasons known best to him.

That the complainant (even if presumed as legal heir of (Mr. Ashok Bathla), has not requested or contacted the respondent, for endorsement or substitution of his name or claiming rights in his favour, as per law, therefore, the complainant has no cause of action against the respondent.

From the sequence of the facts, it is clear that, the instant complainant has no locus standi as there has been no concluded



contract between instant complainant and respondent, from which a legally enforceable right may accrue in favour of the complainant. That the respondent has issued, demand notice for payment as per agreement, from to the performa respondent, but they remained silent and did not respond to any of the demands.

After waiting for reply for more than 4 months the respondent has issued the termination cum refund letter dated 13th January, 2018. Ld counsel for the respondent no 1 promoter denies the statement of the complainant counsel. He states that the complainant counsel is only relying on the documents presented by the respondent but the complainant himself has not presented a single document in his complainant to substantiate his claim before the Authority He further states that the respondent no 1 has been approaching the performa respondent by way of various communication because it has been clearly mentioned in the buyer agreement in clause 38 "that in case of joint allottees all communication shall be sent by the promoter to the allottee whose name appears first and at the address given by him which shall for all purposes be considered as served on all the allottees."

3. Arguments of both the parties have been heard and written pleadings have been perused. It is observed that since the complainant counsel was unable to furnish any reliable documents to substantiate his claim, the Authority directed him to present all receipts and bank statements related to payments for the said plot. The Authority further decided to serve notice to the performa respondent i.e. Respondent no. 3 Shri Virendar Thakral (R/O House No. 1234 Sector 1 Shahabad Markanda District Kurukshetra) to file his reply and present his case.

Adjourned to **17.10.2018**"

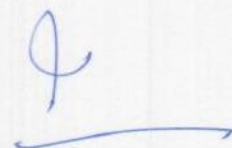
2. The matter there-after was listed on 17.10.2018, 2811.2018, 18.12.2018 and finally today i.e.21.1.2019.
3. On 17.12.2018 the proforma respondent No.3 Shri Virender Thukral also filed his reply. He, however, failed to appear before this Authority to argue the matter today. In his reply, the proforma respondent No. 3 states that an amount of Rs, 13,77,653/- had been paid



by him in the year 2010-11. The plot was to be delivered by the year 2014. The cancellation of plot by the respondent no. 1 is unjustified. In his payer, he has stated that "to accept the complaint in toto and direct the respondent no. 1 to deliver the actual physical possession after obtaining the completion certificate from the concerned quarters".

4. The Authority after consideration of the matters observes and orders as follows:

- i. In his reply, the proforma respondent no. 3 is asking for acceptance of the complaint in toto without specifying the relief that he seeks for himself. The complainant has argued at great length and detail to prove his title over the allotted allotment of plot by virtue of being heir to his father's property. The Authority has repeatedly asked the complainant to furnish reliable documents to substantiate his claim for directing the respondent to deliver the plot to the complainant. Strangely, the proforma respondent no. 3 is praying the Authority to accept the complaint in toto but he has chosen not to become a co-complainant with the main complainant. It is strange that the co-allottee who appears to have made all the payments is now refusing to become a co-complainant or seek any relief for himself. This complaint has been filed and is being perused by the complainant who has no proof of having made

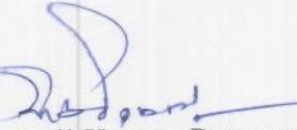


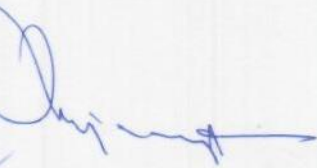
payments to the developer. There is obviously something wrong. Despite repeated opportunities, the complainant has failed to substantiate his claim for issuing directions to the respondent no. 1 to deliver the plot to him.

- ii. There appears to be a civil dispute between the complainant no. 1 and respondent no. 3. They should approach the appropriate court of law and obtain a decree with regard to the succession of the property in question. If they wish to invoke the jurisdiction of RERA for issuing directions to the developer for delivering them the plot, both the allottees should jointly file a complaint because it is both of them together that will constitute an allottee. At this stage, in the absence of adequate material being placed before this Authority to enable it to issue appropriate directions to the developer, this complaint is dismissed. However, the complainants shall be free to file a fresh complaint in case they are able to arrange better document or any proof to substantiate their claim.

Disposed of. File be consigned to record room after uploading of this order on the website of this Authority.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman