

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PANCHKULA

- Complaint Nos: (1) 13/2018- Om Prakash Sethi **Versus** Universal Buildwell Pvt. Ltd.
- (2) 14/2018- Rajiv Sethi **Versus** Universal Buildwell Pvt. Ltd.
- (3) 16/2018- Rajiv Sethi **Versus** Universal Buildwell Pvt. Ltd.
- (4) 17/2018- Amit Sethi **Versus** Universal Buildwell Pvt. Ltd.
- (5) 18/2018- Bhawna Sethi **Versus** Universal Buildwell Pvt. Ltd.

Date of hearing : 21.08.2018, 7th Hearing

Present : 1. Shri Om Prakash Sethi, complainant.
2. Shri Kamal Jeet Dahiya, Advocate on behalf of respondent.

ORDER:-

1. All captioned five complaints shall be disposed of through this common order because the core dispute in all the cases are similar. This order, however, is being passed in view of the facts of the lead case Complaint No.13 of 2018 Om Prakash Sethi Versus Universal Buildwell Pvt. Ltd.



2. This matter first came up for hearing before the Authority on 08.03.2018 when none appeared on behalf of both the parties. Thereafter it was heard on 04.04.2018 when the complainant was present in person and Shri Anshul Jindal, Advocate was present on behalf of the respondent. The respondent was directed to file reply before the next date of hearing. Thereafter on two subsequent dates the respondent did not file his reply due to which costs were imposed upon him. Shri Kamal Jeet Dahiya, Advocate put in appearance on behalf of the respondent 03.07.2018 when the matter was posted for today i.e. 21.08.2018 for arguments.

3. Learned counsel for the respondent deposited draft of Rupees one lakh as costs for the Authority and paid Rs.35,000/- in cash to the complainant. He assured that remaining cost of Rs.1.5 lakh to the Authority and Rs.25,000/- to the complainant shall be paid later.

4. The case of the complainant in brief is that in April, 2006 he booked an apartment in the real estate project Universal Greens, Sectors-85&88, Faridabad being developed by the respondent Universal Buildwell Pvt. Ltd. Between the years 2006 and 2014 the complainant paid an amount of Rs.31,16,012/- to the respondent against basic consideration of Rs. 28,18,650/- Building-buyer agreement was signed by both the parties on 01.10.2011 in which it was stipulated that possession of the project will be



handed over within 42 months from the date of approval of building plan+300 days grace period i.e. by 23rd May, 2014. According to the complainant license of the project has expired since January, 2014 and no effort has been made by the respondent to renew the same. Up to July, 2016 the respondent made nearly 35 communications to the respondent to know the status of the project but none of their communications were replied to. The complainant has made 95% payment but only 35% work has been done at the site. Further the work is at complete stand-still for the last 4-5 years, consequently, entire site is in disarray. Even the structures already erected are falling apart. The complainant has even filed an FIR under Section 406/420 against the respondent in the police. The complainant has prayed for refund of the money paid, along with due interest and also compensation for mental harassment etc.

5. The reply of the respondent does not address the issues raised by the complainant. It is vague and non-specific. In brief, they have stated that the project could not be completed due to the circumstances beyond their control and because of the fact that a large number of allottees have been making default in payment of their dues resulting in jeopardising the project. Further, the real estate industry is under pressure due to non-availability of skilled manpower and materials. Therefore, the delay caused in completion of the



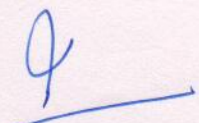
project is unintentional and for the reasons and circumstances beyond their control.

The respondent has also challenged the jurisdiction of this Authority for the reason that the agreement between the complainant and the respondent was entered much before promulgation of The Haryana Real Estate Regulatory Authority, (Regulation and Development) Act, 2016. Further, this being a complicated matter, it requires detailed investigation and leading of evidence, therefore, it cannot be adjudicated in a summary manner by this Authority.

6. During the course of hearings the complainant presented a public notice dated 03.08.2018 issued by the Director, Town & Country Planning Department Haryana which is reproduced as follows:-

“Licence No.10 of 2010 dated 23.01.2010 was granted to Universal Buildwell Pvt.Ltd. in collaboration with Landmark Apartment Pvt. Ltd. for setting up of Group Housing Colony over an area measuring 10.931 acres Sector 85 & 88, Faridabad, which was valid up to 22.01.2014. Due to failure of the licensee to get renewed the said licence and to pay the deficit EDC and to rectify the deficiencies conveyed to him from time-to-time, the aforesaid licence has been cancelled vide this office memo no.22080 dated 2507.2018 and the administration of this colony has been taken over by Director, town & Country Planning, Haryana.

The colonizer has been restrained from selling of any unsold property in the said colony. The general public is advised not to indulge in any sale/purchase/transaction with the licensee in respect of the said colony with above named developer. For further clarification, they may contact the office of Senior Town Planner, Faridabad/District Town Planner, Faridabad.”



7. The complainant Shri Om Prakash Sethi argued that they have been badly cheated and repeatedly misled by the respondent. The respondent has fraudulently collected huge amount of money from them as well as from several other people and they have not invested that money in the project. They have collected the money from the complainant with fraudulent intention because they have not even applied for renewal of their license since January, 2014. There is no possibility of completion of this project keeping in view its history and state of finances of respondents and the multiple statutory defaults being made by them. The complainant prayed for refund of their entire amount along with applicable interest. They have further sought appropriate compensation for the delay and the harassment caused to them.

8. Shri Kamal Jeet Dahiya, learned counsel for the respondent, who also presented today the power of attorney authorising him to appear before the Authority had nothing much to argue except that the respondent has full intentions of completing the project and they should be given time to exhibit those intentions. Also that the project could not be completed due to circumstances beyond their control.

9. Arguments of both sides have been heard, written pleadings have been perused and documents placed in the file have been examined. It is ordered as follows:-



- I. First, the plea of the respondent that this Authority lacks jurisdiction to deal with matter because the Builder Buyer Agreement much pre-dates the coming into force of the RERA Act. This plea of the respondent cannot be accepted because the provisions of the Act extends not only to the new projects but also to the projects which were ongoing on the date of commencement of Act for which a completion certificate has not been issued. Admittedly, the project of the respondent is not complete and only 35% work has been carried out. Therefore, it is an ongoing project, therefore, the promoters are duty bound to get the project registered as well as they have to fulfil all the obligations cast upon them under the Act, the Rules and the agreement. This Authority in Complaint No.144 of 2018, Sanju Jain Versus TDI Infrastructure has passed detailed orders that the jurisdiction of this Authority will extend even to the projects in respect of which the part occupation certificate has been issued if the obligations to be discharged by the respondents are still subsisting. Mere fact that the agreement between the parties was made prior to coming into force of the Act will not preclude the jurisdiction of the Authority in entertaining complaints for redressal of the grievances of the apartment buyers in



accordance of the provisions of the Act. The said order in Complaint No. 144 of 2018 shall be read as a part of this order and the challenge to the jurisdiction of the Authority stands settled accordingly.

- II. Regarding the plea that this dispute should not be decided in a summary manner, it is observed that all the proceedings under the Act are to be conducted in a summary manner and principles of Code of Civil Procedure are not strictly applicable on the proceedings before the Real Estate Regulatory Authority. Since the Authority has jurisdiction to deal with complaints of this nature, therefore, the summary procedure being adopted by the Authority is fully in order.

10. The facts pleaded by the complainant have not been contradicted by the respondent. Admittedly, an amount of Rs 31,16,012/-, which amounts to 95% of the total sale consideration of the apartment, was paid to the respondent over time, from 2006-2017. Admittedly, only a small amount of work has been executed at the site. Further, admittedly, the work is at stand-still since 2014 and the respondents have not even got their licence renewed from the Director, Town & country Planning Haryana. The plea of shortage of skilled manpower and the shortage of construction material is nothing but lame excuses made by the respondents. There is no doubt, therefore, that the

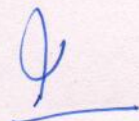


respondent has severely defaulted in performance of his duties and responsibilities cast upon him under the builder-buyer agreement of October, 2011. In view of the fact of non-renewal of licence and construction work being at complete stand-still, there appears little possibility of completion of this project in near future.

11. In view of the aforesaid facts the complainant is entitled to get his money refunded, along with interest and compensation. Accordingly, provisions of Section 18 of the Act are fully and squarely applicable on the fact of this case.

12. The circumstances of this matter have undergone a drastic change recently on account of the public notice dated 03.08.2018 issued by the Director, Town & Country Planning Department, Haryana vide which the licence of the colony has been cancelled and administration of the colony has been taken over by the Director. Under the RERA Act, the remedies can be enforced against a promoter of the project. Now the respondent no longer remains promoter of the project. The project stands taken over by the Director.

13. Be that as it may this Authority holds that the complainant is entitled to get refund of his entire money along with interest @ specified in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 which is the State Bank of India highest, marginal cost of lending rates +2% on the

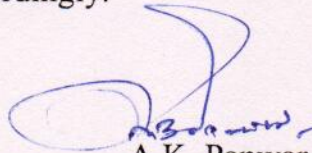


entire amount deposited by the complainant. Regarding the compensation as provided for in Section 71 of the Act, the complainant may approach the Adjudicating Officer for determining the quantum of compensation payable to him. The complainant will be at liberty to enforce these orders against the respondent company or the Director, Town & Country Planning Department, Haryana jointly or separately.

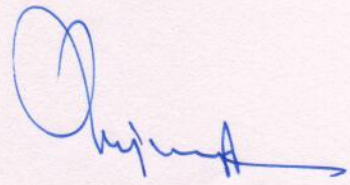
Disposed of accordingly.



Dilbag Singh Sihag
Member



A.K. Panwar
Member



Rajan Gupta
Chairman