

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 30.01.2019
Complaint No.	866/2018 case titled as Lalita Yadav Vs M/s SS Group Private Limited
Complainant	Lalita Yadav
Represented through	Shri Sandeep Aneja, Advocate for the complainant.
Respondent	M/s SS Group Private Limited
Respondent Represented through	Ms.Richa Tuteja, Legal Officer on behalf of respondent-company with S/Shri Aashish Chopra and Swati Dayalan, Advocates.
Last date of hearing	18.12.2018
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.

Arguments heard.

It is a proven feature of law that the complainant should come with clean hands while submitting his complaint for seeking justice. However, in the present case, the buyer has taken a plea that he was allotted a flat No.25-A, Tower-II at 7th floor in project "The Leaf" Sector 85, Gurugram. However, the respondent/builder gave her flat No.25A, 25th floor, tower No.2. The case

has been thoroughly examined as per BBA (at page 19) wherein the buyer in all her consciousness has signed a BBA dated 19.10.2013, photographs too have been appended for the tower wherein the flat No. 25A, 25th floor, Tower-II has been allotted to her. The BBA bears her signatures as well as that of respondent, as such plea taken by the counsel for the complainant has no legs to stand. It has been corroborated by virtue of registration form at page 31, preference has been shown for 25th floor. As such, this plea of the counsel for the complainant cannot be believed into. However, if we look into the details of memo dated 11.4.2014 (at page 104) wherein the Senior Business Manager has shown and confirmed the fact w.r.t the refund of the money deposited by the complainant subject to the condition that refund will be allowed to the complainant after handing over all the original papers of the flat.

It amply shows that deal inter-se both the parties could not materialize as on date, the respondent is well within his right to deduct 10% of earnest money of the total basic sale price. Complainant is directed to return the original documents to the respondent-company besides this complainant is entitled for prescribed rate of interest i.e. 10.75% on the balance amount subject to return of original papers.

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

Samir Kumar
(Member)
30.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 866 of 2018
Date of first hearing : 20.12.2018
Date of Decision : 30.01.2019

Mrs. Lalita Yadav w/o. Mr. Vijay Kumar
R/o 1080-B, LIG, 2nd floor,
Sector -31, Gurugram,
Haryana- 122001.

Complainant

Versus

M/s SS Group Pvt. Ltd
Regd. office : SS House, Plot no 77, Sector
44, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sandeep Aneja Advocate of the complainant
Shri Ashish Chopra and Ms. Swati Advocates of respondent
Dayalan

ORDER

1. A complaint dated 14.09.2018 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 Mrs. Lalita Yadav, against the promoter M/s SS Group Pvt. Ltd, on account of not cancelling the allotted unit described below, as per the



terms of flat buyer's agreement dated 19.10.2013 which is an obligation of the promoter under section 11 (5) of the Act *ibid*.

2. Since the flat buyer's agreement dated 19.10.2013 and cancellation of allotment dated 11.04.2014 was made prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively, so the authority has decided to treat this complaint as an application for non-compliance of obligation on behalf of the complainants as per section 34 (f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The leaf", Sector 85, Gurugram.
2.	Date of booking	26.06.2012
3.	Date of allotment letter	10.09.2012
4.	Flat/unit no.	25A,25 th floor, tower no. 2
5.	Unit area	1620 sq. ft.
6.	Nature of project	Group housing complex
7.	Total area of the project	11.093 acres
8.	RERA registered/ unregistered.	Unregistered
9.	DTCP license no.	81 of 2011
10.	Nature of payment plan	Construction linked payment plan
11.	Total consideration amount as per agreement	Rs. 88,57,800/-
12.	Total amount paid by the Complainant till date	Rs 17,33,525/-



13.	Date of flat buyer's agreement	19.10.2013 (Annx R/3)
14.	Date of delivery of possession. (As per clause 8.1 of FBA: 36 months + 90 days' grace period from date of execution of agreement)	19.01.2017
15.	Date of cancellation of allotment	11.04.2014 (Annx R/9)

4. The details provided above have been checked as per record of the case file. A flat buyer agreement dated 19.10.2013 is available on record for flat no. 25A, tower 2, 25th floor according to which the possession of the aforesaid unit was to be delivered by 19.01.2017. It is pertinent to note herein that allotted flat of the complainant was cancelled by the respondent vide letter dated 11.04.2014 on account of non-payment of outstanding dues by the complainant.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 20.12.2018. The case came up for hearing on 20.12.2018 and 30.01.2019. The reply has been filed by the respondent on 15.10.2018 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint are that the on 23.06.2012, the complainant booked a flat in the respondent's project namely 'the leaf'



located at sector 84-85, Gurugram by paying Rs. 7,50,000/- as booking amount. The complainant thereafter made another payment of Rs. 9,83,525/- to the respondent vide cheque no. 041412 dated 27.10.2012.

7. Pursuant to aforesaid booking of the complainant, respondent vide allotment letter dated 10.09.2012 allotted unit no. 25-A in tower II of the project in favour of the complainant. It was alleged by the complainant that the respondent has cheated the complainant on account of not allotting the flat/unit upto 7th floor in the project.
8. It was further alleged by the complainant that the respondent has neither allotted the unit as per the requirement of the complainant nor refunded the paid amount till date despite repeated reminders from the complainant.
9. Hence, the complainant was constrained to file the instant complaint.

Issues raised by the complainant:-

- i. **Whether the complainant has been cheated by the respondent by allotting unit in a wrong tower?**
- ii. **Whether the complainant is entitled for the refund of the paid amount alongwith interest?**



- iii. Whether the respondent has not handed over the possession to the allottee within the stipulated period of 3 years?
- iv. Whether the respondent is entitled to forfeit the paid amount of the complainant?
- v. Whether the builder/promoter has obtained insurances as prescribed under section 16 of the Act?

Reliefs sought:-

Direct the respondent to refund the paid amount to the complainant alongwith interest @ 24% p.a. from the respective date of payment till its realization.

Respondent's reply:-

14. The preliminary objection raised on behalf of the respondent is that the authority does not have the jurisdiction to decide the complaint as the said flat buyer agreement dated 19.10.2013 was executed between the parties much prior to the coming into force of the Act. Moreover, the jurisdiction of this authority cannot be invoked as the said agreement contains an arbitration clause whereby the parties resolve to settle the dispute amicably failing which the same is to be settled way of arbitration.



15. The respondent submitted that the complainant is claiming for the refund of the amount along with interest as also the compensation, which, from reading of the provisions of the Real Estate (Regulation and Development) Act, 2016 and 2017 rules, especially those mentioned herein above, would be liable for adjudication, if at all, by the adjudicating officer and not this authority. Thus, on this ground alone, the complaint is liable to rejected.

16. The respondents submits that the project in respect of which the complaint has been made, is not even registered as on date with this authority, though the respondent no.1 has applied for its registration. Until such time the project is registered with the authority, no complaint, much less as raised by the complainant can be adjudicated upon.

17. From the conjoint reading of the sections/rules, form and annexure-A, it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in annexure-A, which is required to be executed inter-se the promoter and the allottee.

18. It was further submitted by the respondent that it is a matter of record and rather a conceded position that no such agreement as referred to under the provisions of 2016 Act and 2017 Haryana rules, has been executed between respondents and



the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complainant, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint of interest and compensation, as provided under sections 12,14,18 and section 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana rules and no other agreement.

19. The respondent contended that the complainant has never approached or has sent any emails to the respondent seeking cancellation of unit/flat. It was further contended by the respondent that the complainant has defaulted in making payments as per the demand and payment schedule despite several reminders via emails dated 18.04.2015, 04.11.2015, 17.02.2016, 23.06.2016, 27.02.2018, 07.04.2018, 07.06.2018 and 31.07.2018. The respondent has also issued final notice dated 06.12.2013 and cancellation letter dated 11.04.2014 to the complainant to clear the dues but the respondent's requests fall on deaf ears of the complainant and did not clear the outstanding dues pending against the said unit.



20. The respondent contended that all the reliefs claimed by the complainant are false and hence denied and the complaint is liable to be dismissed.

Determination of issues: -

21. In regard to **first issue** raised by the complainant, the complainant has failed to adduce any evidence in support that she made a request for allotment of flat upto 7th floor, moreover no protest letter/email has ever been send to the respondent to show that the complainant has not accepted the subject unit no. 25A so allotted by the respondent. Rather from the perusal of annexures attached by the respondent with their reply it could be seen that the flat buyer's agreement was executed between the parties on 19.10.2013 for flat no. 25A. Hence, this issue becomes infructuous.

22. In regard to the **second, third and fourth issues** raised by the complainant, it is clear from the submissions and arguments tendered by the respondent that the complainant has defaulted in making payments of the installments as per the payment schedule despite several reminders via emails dated 18.04.2015, 04.11.2015, 17.02.2016, 23.06.2016, 27.02.2018, 07.04.2018, 07.06.2018 and 31.07.2018. The respondent has also issued final notice dated 06.12.2013 for clearance of outstanding dues of Rs. 9,05,109/- but the complainant did not



turn up. So, the respondent has cancelled the allotment of flat vide letter dated 11.04.2014 in terms of clause 15(a) of the flat buyer's agreement dated 19.10.2013. Hence, the authority is of the view that the complainant herself was at fault and therefore cannot take benefit of her own wrongs. The detailed findings on the said issues are given in the succeeding paras under the head findings and decision of the authority.

Findings of the authority: -

23. The preliminary objection raised by the respondent regarding jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district,



therefore this authority has complete territorial jurisdiction to deal with the present complaint.

24. Keeping in view the facts and circumstances of the case, the authority is of the view that the complainant herself was at fault by not paying the instalments as per the terms of flat buyer's agreement dated 19.10.2013. Moreover, there is no supportive documents filed by the complainant in support of her allegation of allotment of wrong unit by the respondent. However, cancellation of booking of flat by the respondent vide letter dated 11.04.2014 is well within the agreed terms of agreement but forfeiture of entire paid amount by the respondent is not justified until and unless the loss to that extent is proved by the respondent with documentary evidence. Similar view has been taken by the NCDRC in the case of **DLF Ltd. v. Bhagwanti Narula [I (2015) CPJ 319 (NC)]** wherein it was held that forfeiture of more than 10% of the sales consideration amount on cancellation is not reasonable.

25. It is a proven feature of law that the complainant should come with clean hands while submitting her complaint for seeking justice. However, in the present case, the buyer has taken a plea that she was allotted a flat no. 25A, tower II at 7th floor in the project 'the



leaf, Gurugram. However, the respondent gave her flat no. 25A, 25th floor, tower no. 2. The case has been thoroughly examined as per flat buyer's agreement wherein the buyer in all her consciousness has signed a BBA dated 19.10.2013, photographs too have been appended for the tower wherein the flat no. 25A, 25th floor, Tower II has been allotted to her. The flat buyer's agreement bears her signatures as well as that of respondent, as such plea taken by the counsel for the complainant has no legs to stand. It has been corroborated by virtue of registration form at page 31, preference has been shown for 25th floor. However, if we look into the details of memo dated 11.04.2014 (page 104 of the complaint) wherein the senior business manager has shown and confirmed the fact with respect to the refund of the money deposited by the complainant subject to the condition that refund will be allowed to the complainant after handing over all the original papers of the flat.

It amply shows that deal inter-se both the parties could not materialize as on date, the respondent is well within his right to deduct 10% of the earnest money of the total consideration.



Decision and directions of the authority:-

25. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-

- (i) The respondent is directed to pay prescribed rate of interest @ 10.75% from the date of cancellation on the balance amount of Rs. 8,47,745/- which comes out after deducting 10% of the sales consideration as earnest money from the paid amount of the complainant.
- (ii) The complainant is also directed to return the original papers to the respondent.

26. Since, the respondent has failed to get the project registered which is in violation of section 3(1) of the Real Estate (Regulation and Development) Act, 2012, so the authority decides to take suo moto cognizance of initiating penal proceedings against the respondent under section 59 of the Act *ibid*.

33. The order is pronounced.

34. The file is consigned to the registry. Copy of this order be consigned to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated :-.....





HARERA
GURUGRAM

