

**HARYANA REAL ESTATE REGULATORY AUTHORITY,  
PANCHKULA**

Complaint No. RERA-PKL-387/2018

Anita Mehta & Ors.

(Complainants)

Versus

M/s Lotus Infraestates Pvt. Ltd

(Respondent)

Date of Hearing:- 23.01.2019

Hearing: 5<sup>th</sup>

CORAM:

Shri Rajan Gupta

Chairman

Shri Anil Kumar Panwar

Member

APPEARANCE :

Shri Amarpal, Counsel for Complainant.

Shri Ashish Chopra, Counsel for Respondent.

**Order:**

The complainant in this case is seeking refund of Rs. 55,08,577/- along with interest averring that he had paid the said amount to the respondent out of the basic sale price of Rs. 63,87,540/- for purchasing a plot bearing number C2/010 measuring 250 square yards in his real estate project named "Lotus Green City" situated at Dharuhera. The claim for refund is based on the ground that the respondent, who had executed a buyers' agreement in his favour on 14.09.2013 for sale of said plot, had not kept his promise to deliver the



possession within the agreed time, which had since lapsed on 21.10.2014 and therefore, he is entitled to the refund along with interest.

2. The respondent has not disputed the payment of the amount of Rs. 55,08,577/- and execution of buyers' agreement. However, he has resisted the complaint inter alia on the grounds that this authority has no jurisdiction to deal with the present complaint because the project in question was never registered with this Authority; that interest relationship between parties as promoter and allottee of project has terminated because the complainant through a legal notice dated 14.12.2017 had already cancelled the agreement entered between the parties; that the proper remedy for complainant in terms of the agreement is to initiate arbitration proceedings rather than filing the present complaint; that the present complaint is maintainable only before Adjudicating Officer and not before this Authority and that the possession in terms of buyer agreement was required to be given by 20.04.2015 and not 20.10.2014

3. Learned counsel for the parties have been heard and record has been perused.

4. Learned counsel for the respondent at the outset has argued that this Authority has no jurisdiction to deal with the complaint because the project in question is not a registered project and there was an arbitration clause in the



agreement executed between the parties. The argument is not acceptable because this Authority vide a detailed judgement rendered in Complaint No. 113 of 2018 titled Madhu Sareen Versus BPTP Ltd. has ruled that the Authority will have jurisdiction to adjudicate the disputes pertaining to even an unregistered projects if its promoter has not discharged his subsisting liabilities towards the allottee. In the present case, the respondent despite receiving a substantial amount of the sale consideration has not discharged his obligations of handing over possession and execution of sale deed in favour of the complainant. So, mere fact that respondent's project is not registered project, will not exclude the jurisdiction of this Authority to adjudicate the present complaint.

5. This Authority has been created by an act of Parliament for adjudication of disputes between allottees and promoters of real estate projects. Even a person who had been earlier litigating in some other court/ forum with respect to such dispute before the coming into force of Real Estate (Regulations and Development) Act, 2016, is entitled to knock the door of this Authority after withdrawing the litigation so pending before the commencement of Act. So, in the present case, when the arbitration proceedings were not even initiated by either of the parties in terms of buyers' agreement, mere existence of arbitration



clause, by itself, cannot be treated as an impediment for institution of complaint before this authority. Thus construed, the authority has no hesitation in concluding that it has the jurisdiction to adjudicate the present complaint.

6. Learned Counsel for the respondent has conceded during arguments that the respondent had applied to the Town and Country Planning Department, Haryana for migration of the land, on which plot allotted to the complainant situates, to a Deen Dayal Jan Awas Yojana Scheme of Affordable Plotted Housing Scheme, 2016. It is no-where the respondent's case that he had obtained the consent and concurrence of the complainant for migration of the land to a group housing scheme. This would imply that the respondent by his unilateral act and without the consent of complainant, had abandoned the development of plot allotted to the complainant. In other words, the respondent has virtually rendered the plot allotted to the complainant as non-existent by his own unilateral act. Such conduct of the respondent, in the considered opinion of the Authority, entitles the complainant to claim refund of the amount which he had deposited with the respondent.

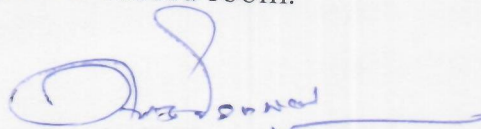
7. Learned Counsel for the respondent while taking this Authority through various clauses of the buyer's agreement has contended that the allotment of plot number C2/010 to the complainant was only a tentative allotment and the




respondent has absolute right to offer him another plot in such part of the project which was not migrated to Deen Dayal Jan Awas Yojna scheme. The Authority does not agree with the counsel because there was no clause in agreement permitting the respondent to render the plot allotted to complainant as non-existent by his unilateral act. So, the Authority will hold the complainant entitled for refund of the amount already paid, along with interest.

8. Accordingly, the respondent is directed to refund the amount of Rs. 55,08,577/- to the complainant along with interest at the rate prescribed in Rule 15 of HRERA, Rules, 2017. The amount shall be refunded in two installments within 60 days. The first installment shall be paid within 30 days from the date of uploading of the order and the balance amount within next 30 days. In case the respondent fails to pay the refund amount within aforesaid stipulated period, then he shall be liable to pay interest @ 18% per annum on the balance outstanding amount till its actual payment and also for penal action under Section 63 of the RERA Act.

9. The complaint is accordingly disposed of in the above terms. File be consigned to record room.

  
**Anil Kumar Panwar**  
Member

  
**Rajan Gupta**  
Chairman