

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 31.01.2019
Complaint No.	1597/2018 Case Titled As Sanjay Jain Kokila Jain V/S M/S Experion Developers Pvt Ltd
Complainant	Sanjay Jain Kokila Jain
Represented through	Shri Shashikant Advocate for the complainant.
Respondent	M/S Experion Developers Pvt Ltd
Respondent Represented through	Shri Ashok Kumar authorized representative on behalf of the respondent company with Shri Ishaan Dang Advocate
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

The unit No.E3/05 Block-E, in project "Westerlies" in Sector 108, Gurugram allotted to the complainant has been cancelled vide memo dated 27.4.2017. However, the respondents have deducted an amount of Rs.55 Lakhs (15% towards earnest money alongwith GST and other charges) which is against the regulation No.202-2018/Ext. dated 5.12.2018 as notified by HRERA authority and is also against the provisions of Act and Apex Court ruling in Brhimjit's case, as such, the respondent is directed to deduct earnest money only 10% of the basic sale price and refund the balance amount within a period of 90 days from the date of this order.

Complaint stands disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)
31.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 1597 of 2018
Date of first hearing : 31.01.2019
Date of Decision : 31.01.2019

1. Sh. Sanjay Jain
2. Smt. Kokila Jain
Both R/o 1302, New Jai Bharat Apartments,
Plot no. 5, Sector-4, Dwarka,
New Delhi-110075

...Complainants

Versus

M/s Experion Developers Pvt. Ltd. (through
its Director/ Authorised Signatory)
Office at: Plot no. 18, 2nd Floor, Institutional
Area, Sector 32, Gurugram

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shashikant
Shri Ashok Kumar

Advocate for the complainants
Authorised representative on
behalf of the respondent
company

Shri Ishaan Dang

Advocate for the respondent



ORDER

1. A complaint dated 14.11.2018 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 complainants Sh. Sanjay Jain and Smt. Kokila Jain , against the promoter M/s Experion Developers Pvt. Ltd. (through its Director/ Authorised Signatory) for plot described below in the project “The Westerlies” for non-fulfilment of obligations of the promoter under section 11(4)(a) and section 11(5) of the Act ibid.

2. Since the plot buyer agreement has been executed on 11.11.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligations on the part of promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

Note: Out of the two complainants, only complainant no.1 has filed the affidavit. There is no affidavit in the name of complainant no. 2.

1.	Name and location of the project	“The Westerlies” in Sector 108, Gurugram
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2.	Nature of real estate project	Residential plotted colony
3.	Plot no.	E3/05, Block 'E'
4.	Project area	100.48125 acres
5.	Plot area	300 sq. mtr. / 358.8 sq. yards
6.	Registered/ not registered	Registered (103 of 2017) Registration of project area 4787.579 sq. mtrs. of residential plotted colony-14 nos. villas ("Westerlies")
7.	Revised date of completion as per RERA registration certificate	23.08.2019
8.	DTCP license	57 of 2013 dated 11.07.2013
9.	Date of booking	28.10.2013 (as per complaint, pg 4 of the complaint)
10.	Date of provisional allotment	07.11.2014
11.	Date of plot buyer agreement	11.11.2014
12.	Total consideration	Rs. 2,13,51,409/- (as per payment plan, schedule IV of the agreement, pg 71 of the complaint)
13.	Total amount paid by the complainant	Rs. 64,04,713/- (as per applicant ledger dated 25.04.2017, annexure R-42, pg 164 of the reply) Rs.84,99,272/- (as per pg 27 of the complaint)
14.	Payment plan	Development linked payment plan



		(similar to milestone payment plan, pg 45 of the reply)
15.	Date of delivery of possession	05.05.2020 Clause 1 of Article IX – 4 years from date of receipt of last of all project approvals for the commencement of development of project from the competent authorities or within such other timelines as may be directed by the DGTCP, i.e. 05.11.2015 (approval of zoning plan) + 6 months grace period i.e. by 05.05.2020
16.	Date of part completion certificate	31.07.2017 w.r.t. 46.257 acres of the project 22.03.2018 w.r.t. 44.178 acres of the project
17.	Delay of number of months/ years upto 31.01.2019	No delay
18.	Penalty clause as per plot buyer agreement dated 11.11.2014	Clause 1 of Article IX- Rs. 200/- per sq. mtr. of the plot for the period of delay



3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A plot buyer agreement dated 11.11.2014 is available on record for plot no. E3/05, block 'E', admeasuring 300 sq. mtr. / 358.8 sq. yards.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 31.01.2019. The reply has been filed on behalf of the respondent and the same has been perused.

Facts of the complaint

5. On 28.10.2013, the complainants booked a plot in the project named "The Westerlies" in Sector 108, Gurugram by paying an advance amount of Rs. 11,00,000/- to the respondent. Accordingly, vide provisional allotment letter dated 07.11.2014, the complainants were allotted a plot bearing no. E3/05, block 'E'. On 11.11.2014, a plot buyer agreement was executed between the parties.
6. The complainants submitted that they made payments of all instalments demanded by the respondent amounting to a total of Rs. 84,99,272/- till the year 2016.
7. The complainants submitted that after going through the contents of the agreement, they observed that the respondent specified the period of possession of plot would be handed over within four years plus six months grace period after receipt of all the statutory approvals from the govt. The



complainants further observed that the payment plan offered is quite difficult as the respondent intended to receive the entire payment within the span period of 2-1/2 years approx. The complainants visited the site after completion of more than 1-1/2 years and observed that at the spot there was no sign of any development nor any sewerage line has been earmarked. On this, the complainants took a serious view and asked respondent's officials at site office as to when the development of project would be started or whether respondent will be able to handover the physical possession of the plot according to schedule given under the buyer's agreement. It was answered by respondent's officials that the complainants should release the payment as per schedule and should not bother about the completion of the project as this is entirely respondent's responsibility. According to status of the project, the complainants had apprehensions that the development would not take place according to schedule and as such the complainants withheld further payments.



8. The complainant submitted here that the complainants had already made 40% (Rs.65,45,606/- approx.) out of the entire payment within one year from the date of execution of agreement. But there was no sign of progress on the project

site. Then the complainants decided that they will release the payment according to the development of the project.

9. The complainants submitted that during January 2016, when they visited the site, they were astonished to see that till that time, only sand had been put on the road side. On this, the complainants took a serious note and approached the representatives of the respondent and explained that the respondent is not making good efforts to develop the project and there is every apprehension he will not be able to handover the physical possession of the plot by the scheduled date. On this, respondent very kindly replied that they will complete the project and will hand over the plot strictly according to schedule. The complainants approached respondent's office again and explained that they are not going according to schedule and as such they are no longer required to keep complainant's hard-earned money for such long period and requested for refund of the same. However, respondent did not consider the request of complainants.

10. The complainants submitted that they were shocked to observe during one of their visits during January 2017 that there is no progress on the project at all. Moreover, in the midst of the project land, farmers had sown their wheat crops.



The complainants contacted one of the farmers who were working at the site and enquired whether this land belongs to them, to which they replied that the said land was very much owned and possessed by the farmers and they have not transferred the said land to any of the developers so far. This left the complainants in humiliation and shock. Subsequently, the complainants took a tour of the entire project boundary and observed that there is no boundary wall at all and all over the land, there were animals roaming.

11. The complainants submitted that they again contacted respondent's representative and enquired whether there will be any boundary wall or not. To this, the respondent's representative replied that on different plots being built by the buyers, the walls so raised would be considered as boundary wall of the project. The complainants further observed that respondent had not demarcated any of the plot numbers as well as area till April, 2017.

12. The complainants submitted that they had already paid most of the payment amounting to approximately Rs.84,99,272/- and the respondent has not made any progress in the project till April, 2017. The developers thereafter sent various reminders regarding release of payment, but not uttered a



single reminder regarding development of the project. That on 27.04.2017, the developers all of a sudden issued a cancellation notice in which they forfeited the amount to the extent of 90% payment of the complainants which according to law is unfair trade practice. The complainants were shocked to receive the cancellation letter in which it had been mentioned that the complainants so far paid a sum of Rs.64,04,713/- whereas the complainants had paid more than Rs.84,99,272/-. The complainants after receiving the cancellation notice, approached the respondent on many occasions to make necessary refund but the respondent gave evasive replies and the complainants made an alternative request to handover possession of the plot/flat which is readily available to move in against the payment already received by the respondents. The respondent did not convey his willingness to the just and appropriate request of the complainants.



13. The complainants further submitted that from the date of booking till date, the respondent is utilizing the hard-earned money of the complainants and regularly giving false assurances and malafidely with conspiracy cheating and defrauding the complainants. Also, neither the respondent is

making repayment nor developing the project or delivering the possession to the complainants as they have not completed the site till now and it looks like an abandoned place wherein no development is going on so there is no possibility of possession of the plot in favor of complainants within stipulated period. Due to the said lacunas and negligence, the complainants are suffering from losses and mental harassment.

14. Issues raised by the complainants

The relevant issues raised in the complaint are:

- I. Whether the complainants made the payment of Rs.84,99,272/- or not?
- II. Whether the respondent has completed project as per schedule?
- III. Whether the promoter has the right to forfeit the entire amount or not?



15. Relief sought

- I. Direct the respondents to refund a sum of Rs. 84,99,272/- along with interest @ 18% per annum from the date of receipt of payments.

Respondent's reply

16. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The project in question is not an ongoing project as per definition provided under the rules as the respondent had applied for part completion certificate for the project vide application dated 10.04.2017 and 27.07.2017 and received part completion certificate on 31.07.2017 (for 46.257 acres) and on 22.03.2018 (for 44.178 acres). Completion certificate for the plot in question was applied on 27.07.2017 and the same was received on 22.03.2018. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the rules. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.



17. The respondent submitted that that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules,

2017, and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

18. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint. The complainants have not been able to establish the contravention of any provision of the Act by the respondent. In fact, no such averment even finds mention in the entire complaint.

19. The respondent submitted that the so called cause of action on the basis of which the present complaint has been filed, arose prior to the coming into force of the Act. The allotment in favour of the complainants was cancelled on 27.4.2017, prior to the Act coming into force. Hence, this hon'ble authority does not have the jurisdiction to hear and decide the present complaint.

20. The respondent submitted that the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is pertinent to mention herein that the complainants have not challenged the cancellation of allotment and hence shall be deemed to have accepted the same. In other words, the complainants have



admitted and accepted their defaults and violation of the plot buyer agreement dated 11.11.2014. This being the case, no relief whatsoever can be granted to the complainants and the complaint is liable to be dismissed in limine.

21. The respondent submitted that the disputed and complicated questions of fact are involved which shall require leading of evidence and cannot be decided in summary proceedings under the Act.

22. The respondent submitted that the complainants had approached the respondent through channel partner, M/s Investor Home Solutions Private Limited, and had evinced an interest in purchasing a residential plot in the said project. Prior to making the booking, the complainants had made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of undertaking the development/implementation of the residential project referred to above. The complainants took an independent and informed decision, uninfluenced in any manner by the respondent to book the plot in question.

23. The respondent submitted that the complainants were provided with the application form containing the terms and



conditions of provisional allotment and the complainants were given the opportunity to familiarize himself with the same. Clause 11 of the terms and conditions of booking was specifically brought to the complainant's notice which provided that timely payment of amounts payable by the complainants, shall be the essence of the contract. It was specifically emphasized by the officials of the respondent that interest @ 18% per annum, shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was liable to be cancelled and earnest money along with delayed payment interest and other applicable charges was liable to be forfeited.

24. The respondent submitted that the attention of the complainants was also drawn to clause 15 of the terms and conditions of booking that specifically provided that subject to timely payment of all amounts payable by the complainant and subject to reasons beyond the control of the respondent, possession of the plot was proposed to be offered by the respondent, within 4 years (excluding grace period of 6 months) from the date of receipt of the last of all the project approvals required for the commencement of development of



the project. The terms and conditions as set out in the application form were accepted by the complainants and the complainants agreed and undertook to scrupulously comply with the same.

25. The respondent submitted that the complainants had opted for a payment plan that was partly time bound and had agreed and undertaken to pay the instalments as and when demanded by the respondent. It is pertinent to mention that the complainants have deliberately failed to annex the copy of the application form and the terms and conditions of allotment which form part of the application form, with malafide intention.

26. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by the complainants. Demand notices /reminders dated 27.12.2013, 27.01.2014, 20.02.2014 were sent, followed by final notice dated 06.03.2014 and demand letter dated 25.004.2014. Part payment of demanded amount was made by



the complainants. The complainants made payment of Rs. 7 lacs only out of demanded amount of Rs. 53,50,499/-. Thereafter, demand notice dated 27.05.2014 was sent. The aforesaid demand notice was also ignored by the complainants and hence the respondent vide cancellation letter dated 09.06.2014, cancelled the provisional allotment made in favour of the complainants.

27. The respondent further submitted that the complainants approached the respondent and conveyed vide letter dated 23.06.2014 that they had defaulted in making payments as per the payment plan on account of personal reasons. The complainants requested for restoration of the allotment in their favour and undertook to pay the entire due amount, along with interest in a short span of time. However, despite the undertaking given by the complainants to pay the entire outstanding amount along with interest, the complainants sought waiver of interest, which request was refused by the respondent and the respondent instructed the complainants to make due payment as per agreed terms of the agreement. Post restoration, the plot buyer agreement dated 11.11.2014 was executed by the parties.



28. The respondent that thereafter, letter dated 01.06.2015, demand notice dated 30.11.2015, reminder dated 29.12.2015, second reminder dated 21.01.2016, final notice dated 04.02.2016, demand notice dated 03.03.2016, letter dated 3.3.2016, reminder dated 01.04.2016, final notice dated 09.05.2016, letter dated 16.06.2016 and demand letter dated 16.06.2016 were sent. Part payment of demanded amount was made by the complainants vide cheque dated 30.6.2016 for which receipt dated 6.7.2016 was issued by the respondent. Following this, reminder dated 15.07.2016 and second reminder dated 08.08.2016 were also sent.
29. The respondent submitted that in view of the wilful and persistent defaults by the complainants, eventually, after affording innumerable opportunities to the complainants to pay its outstanding dues, the respondent was left with no option but to issue final notice dated 23.08.2016 and thereafter cancel the provisional allotment in favour of the complainants. The respondent issued last & final opportunity letter dated 11.11.2016, vide this letter the complainants were informed that in case of non-payment of pending dues along with interest allotment of the plot shall stand cancelled without any further notice and the earnest money along with



other applicable charges would be forfeited, the amounts refundable, if any, shall be refunded only after resale of the plot. . The complainants were given the final opportunity to regularise their allotment by payment of outstanding amount of Rs. 90,09,558/- along with delayed payment interest @ 18%, within 30 days of the said communication, which was also sent by email. The complainants were further informed that balance amount, if any, after forfeiture and adjustments shall be refunded to them after resale of the plot. The allotment of the complainants was cancelled vide final letter of cancellation dated 27.04.2017.

30. The respondent submitted that despite receipt of the aforesaid cancellation notice, the complainants did not even bother to get in touch with the respondent and after an unexplained delay of more than one and a half year, the complainants have proceeded to file the present false and frivolous complaint.

31. The respondent submitted that he has acted strictly in accordance with the terms and conditions of the plot buyer's agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint that the respondent has failed to complete construction of the plot and deliver possession of the same



within the stipulated time period, are manifestly false and baseless. On the contrary, it is the complainants who are in clear breach of the plot buyer's agreement by unilaterally stopping payment of installments as per the payment plan, without any cause or justification.

32. The respondent submitted that as a matter of fact, there has been no delay in so far as the respondent is concerned. In fact, the respondent has completed the development of the plot/project in question even much prior to the agreed date of completion. As per agreed terms of the plot buyer agreement dated 11.11.2014, article IX, clause-1, the respondent was liable to offer possession of the plot in question within 04 (four) years from the date of receipt of the last of all the project approvals for the commencement of development of the project from the competent authorities further the respondent was also entitled to 6 months grace period. The last project approval i.e. zoning plan was granted on 05.11.2015. Hence as per agreed terms of the agreement the project in question was to be completed by the respondent on or before May 2020. The respondent has obtained completion certificate for the plot in question on 22.03.2018. If the allotment of the plot in question would not have been cancelled, the respondent would have



been offered the possession of the plot in question to the complainants, even much prior to the agreed date of completion.

33. The respondent submitted that as per the terms and conditions of the buyer's agreement, specifically article-XII, clause 2 thereof, the respondent is entitled to forfeit earnest money amounting to 15% of the sale price, delayed payment interest, service tax, brokerage and other amounts of a nonrefundable nature and the balance amount shall be refunded to the complainants after resale of the plot. The present application is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

34. The respondent further submitted that the complainants had paid Rs. 64,04,713/- only and not Rs. 84,99,272/- as claimed. It is submitted that the complainants are trying to take undue advantage of a receipt bearing no. REC0005/01784/16-17 dated 06.07.2016, which was issued mistakenly by the respondent in favour of the complainant. It is submitted that the said receipt was issued against payment of Rs. 19,53,666/- paid through demand draft number 753320 dated 30.06.2016 drawn on ICICI Bank, which was submitted by Mr. Puneet



Alagh, allottee of plot no. E3/07 of the same project. However due to bonafide clerical error, the respondent issued receipt in favour of the complainants although the said amount was never paid by the complainants. Subsequently, when the error came to light, the said amount was credited in the account of Mr. Puneet Alagh. The said amount was disbursed from the ICICI bank loan account in the name of Mr. Puneet Alagh, who had obtained home loan from the ICICI Bank. It is pertinent to mention herein that the plot allotted to the complainants was not financed by any financial institution hence there can be no question of disbursement of said amount in favour of the complainant by the ICICI bank. Copies of the said demand draft and the emails exchanged with Mr. Puneet Alagh along with the statement of account of Mr. Puneet Alagh, documents of sanction of his loan from ICICI Bank are annexed.

35. The respondent submitted that the so-called statement of account submitted by the complainants as annexure C-1 (page no. 27 of the complaint) is a forged document and was never issued by the respondent, even the same is not in the format as the respondent issues/prepares statement of account for its customers.



36. The respondent submitted that it is wrong and denied that the time lines for handing over of possession of the plot came to the knowledge of the complainants only after execution of the buyer's agreement. In fact, the time lines for possession were fully known and accepted by the complainants at the time of booking itself. The time lines for delivery of possession are the same as set out in the booking application at clause 15, admittedly signed and submitted by the complainants.
37. The respondent submitted that it is wrong and denied that the payment plan offered to the complainants was different. It is wrong and denied that the complainants visited the site after 2-1/2 years or found that at the spot there was no sign of any development or that no sewerage line had been earmarked. It is wrong and denied that the complainants questioned the officials of the respondent about the development of the project or that the officials told the complainants not to bother about completion of the project or that they only asked the complainants to release the payment. No such interaction took place between the complainants and the respondent in the manner alleged in the corresponding para of the complaint. False and fabricated allegations are being levelled by the complainants in order to try and divert the attention of this



hon'ble authority from the wilful breaches and violation of the plot buyer's agreement by the complainants.

38. The respondent further submitted that the so-called apprehensions of the complainants that the respondent would not be able to develop the plot according to schedule are clearly false and baseless. It is wrong and denied that the complainants had made payment of 40% of the sale consideration within one year from the date of execution of the plot buyer's agreement or that there was no sign of progress at the project site.

39. The respondent denied that the complainants approached the office of the respondent to demand refund or that the respondent allegedly did not consider such imaginary request. No such conversation/interaction took place in the manner claimed. On the contrary, the complainants had been avoiding all communication with the respondent since the respondent had been demanding payment of outstanding dues and the complainants were in default of the plot buyer agreement. It is submitted that the development on the project site was as per schedule and accordingly the respondent has completed the development of the project and offered possession to the respective allottees.



40. The respondent submitted that the entire story pertaining to the so-called site visit, growing of wheat crops by farmers, roaming animals etc. is a concocted story fabricated by the complainants in order to falsely impute lapses to the respondent while attempting to cover up their own defaults. It is wrong and denied that the complainants contacted any farmer supposedly working at the site or was informed that the site was owned or in the possession of the farmers or that the same had not been transferred to the respondent. The complainants are trying to make false excuses only to misguide the hon'ble authority and to any how get refund of the amounts paid by them for which they are not entitled. It is denied that the respondent is liable to construct boundary wall around the project. It is submitted that as per laws applicable in the state of Haryana in plotted township project the developer has no obligation to construct the boundary wall and the same was never promised by the respondent the complainants.



41. **List of books on behalf of the respondent-** The respondent submitted that the contention that earnest money cannot be more than 10% is absolutely fallacious and erroneous. In support of this averment, the respondent submitted list of

books namely, *Hanuman Cotton Mills Vs Tata Air Craft Ltd (AIR 1970 SC 1986)*, *Mary vs. State of Kerala and Ors. (22.10.2013 - SC): MANU/SC/1087/2013* and other citations in his support namely *AIR 1990 SC 699*, *AIR 1996 SC 2508*, *AIR1980 SC 738*, *AIR 1975 SC 1121*.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

42. In respect of the **first issue**, as per the per applicant ledger dated 25.04.2017(annexure R-42, pg 164 of the reply), the complainants have paid Rs. 64,04,713/-. However, the complainants alleged that as per receipt dated 06.07.2016 attached with the complaint, an amount of Rs.19,53,666/- was paid by them. However, it has been specifically refuted by the respondent that the complainants have misused a wrong receipt accidentally issued in the name of complainants. This is evident from the fact that as mentioned in the abovesaid receipt, the DD no. 753320 dated 30.06.2016 drawn on ICICI bank was actually not in favour of the complainants. Rather, the said amount was disbursed from the ICICI bank loan



account in the name of Mr. Puneet Alagh, who had obtained home loan from the ICICI Bank, as evident from annexure R-51 attached with the respondent's reply. Thus, the issue is decided in negative and the complainants have made a payment of Rs.64,04,713/-.

43. In respect of the **second issue**, as per clause 1 of article IX, the possession was to be handed over within 4 years from date of receipt of last of all project approvals for the commencement of development of project from the competent authorities or within such other timelines as may be directed by the DGTCP, i.e. 05.11.2015 (approval of zoning plan) + 6 months grace period i.e. by 05.05.2020. It is pertinent to mention here that the respondent has already received the part completion certificate on 31.07.2017 (for 46.257 acres) and on 22.03.2018 (for 44.178 acres). Thus, the completion of project is well ahead in time as far as the due date for delivery of possession is concerned. Thus, the respondent has completed the project as per the schedule, rather even before that.

44. In respect of **third issue** raised in the complaint, as per article I, clause 1(xiii) of the plot buyer agreement, earnest money means 15 % of BSP rate X plot area + PLC. The respondent



forfeited an amount of Rs.55,54,904/- out of the total amount paid of Rs.64,04,713/-. However, as per the NCDRC judgment **DLF Ltd. v. Bhagwanti Narula** (RP/3860/2014 decided on 06.01.2015), not more than 10% of the total consideration can be forfeited as earnest money as the forfeiture of amount exceeding 10% of the sale price would be unreasonable and only the amount which is paid at the time of concluding the contract can be said to be the earnest money. As such, in the present complaint, the total sales consideration of the plot in question is Rs. 2,13,51,409/-. Out of this, only 10%, i.e. Rs.21,35,140.9/- can be forfeited by the respondent on account of cancellation of the plot in question. Thus, forfeiture of an amount of Rs.55,54,904/- is not justified.

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

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

46. The complainants reserve their right to seek compensation



from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

47. **Jurisdiction of the authority-** The project “The Westerlies” is located in Sector 108, Gurugram. 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 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.

48. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.



49. The unit no. E3/05, block-E, in project “Westerlies” in sector 108, Gurugram allotted to the complainants has been cancelled vide memo dated 27.04.2017. However, the respondents have deducted an amount of Rs.55 lakhs (15% towards earnest money alongwith GST and other charges) which is against the regulation no.202-2018/Ext. dated 05.12.2018 as notified by HRERA authority and is also against the provisions of Act and NCDRC judgment in **DLF Ltd. v. Bhagwanti Narula** (RP/3860/2014 decided on 06.01.2015) wherein it was laid down that not more than 10% of the total consideration can be forfeited as earnest money as the forfeiture of amount exceeding 10% of the sale price would be unreasonable and only the amount which is paid at the time of concluding the contract can be said to be the earnest money, as such, the respondent is entitled to deduct earnest money only to the tune of 10% of the basic sale price and must refund the balance amount within a period of 90 days from the date of this order.



Decision and directions of the authority

50. 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:

(i) The respondent is directed to deduct only 10% amount out of the total sale price as earnest money and refund the balance amount within a period of 90 days from the date of this order.

51. The complaint is disposed of accordingly.

52. The order is pronounced.

53. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 31.01.2019

Judgement uploaded on 26.02.2019

HARERA
GURUGRAM

