

ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 785 of 2018
First date of hearing : 08.02.2019
Date of decision : 08.02.2019

1. Sh. Rajesh Soni
 2. Sh. Akshay Kumar (through his authorised representative Sh. Rajesh Soni)
Both R/o 103, Mariners Home, Plot no. GH-36-D, Sector-56, Gurugram, Haryana
- Complainants**

Versus

1. M/s Ansal Properties and Infrastructure Ltd. (through its Directors)
R/o 115, Ansal Bhawan, 16 KG Marg, New Delhi-1
 2. M/s Ansal Townships Infrastructure Ltd. (through its Directors)
R/o 115, Ansal Bhawan, 16 KG Marg, New Delhi-1
 3. M/s Star Facilities Management Ltd. (through its Directors)
R/o 1110, Ansal Bhawan, 16 KG Marg, New Delhi-1
- Respondents**

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Rajesh Soni Complainant in person
Shri Ajit Singh Thakur and
Shri A.K. Singh Advocate of the complainants
None for the respondent Advocate of the respondents

EX-PARTE ORDER

1. A complaint dated 28.08.2018 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. Rajesh Soni and Sh. Akshay Kumar (through Sh. Rajesh Soni), against the promoters M/s Ansal Properties and Infrastructure Ltd, M/s Ansal Townships Infrastructure Ltd. and M/s Star Facilities Management Ltd. in respect of unit described below on account of non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the plot buyer agreement was executed on 17.06.2010, prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Esencia" sector-67, Gurugram
2.	Nature of real estate project	Residential colony
3.	DTCP licence no.	21 of 2011
4.	Registered/ not registered	Registered (336 of 2017)
5.	Registration certificate valid upto	31.12.2019



6.	Payment plan	Development linked plan
7.	Date of booking	20.04.2010
8.	Date of execution of builder buyer agreement	17.06.2010
9.	Plot no.	0711-E-2075
10.	Plot area	250 sq. mtr.
11.	Total consideration amount	BSP- Rs. 41,86,000/- (as per agreement, pg 25 of complaint)
12.	Total amount paid by the complainants	Rs. 54,62,524/- (as per complaint) Note: Receipts attached with the paper book are not legible.
13.	Date of delivery of possession	Clause 5.1 – within 24 months + 6 months grace period from the date of execution of the agreement, i.e. 17.12.2012
14.	Date of offer of possession	26.05.2012
15.	Delay in handing over possession till 26.05.2012	No delay

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor file their reply to the complaint. Therefore, their right to file reply has been struck off and case is being proceeded ex-parte against the respondent.



Facts of the complaint

5. The complainants submitted that on 17.06.2010, respondent no.1 and respondent no.2 entered into a plot buyer agreement with Mr. Surinder Kataria for plot no. E-2075 in block E having area of 250 sq. mtrs. in the project named as "Esencia "situated at Golf Course Extn. Road, Sector-67, Gurugram, Haryana for a total sale consideration of Rs. 41,86,000 /- out of which an amount of Rs. 21,32,020/- had been paid by the said buyer to the respondent no. 1. Thereafter, on 27.08.2010, the said plot was purchased by complainant no. 1 and the aforesaid plot had been transferred to complainant no. 1 and amount of Rs. 21,32,020/- was paid by the complainant no. 1 to the said buyer directly and same has been consented and treated as paid by the complainant no. 1 vide endorsement letter dated 31.08.2010 issued by respondent no. 1 in respect of said agreement to sell dated 17.06.2010. Later, on 04.09.2014, at the request of complainant no.1, the name of complainant no.2 was added as a joint owner vide letter dated 04.09.2014 duly issued by respondent no.1 after receipt of Rs.1,17,585/- by way of 'admin charges' which was also a purely illegal demand.



6. The complainants submitted that they had made total payment of huge sum of Rs. 54,62,524/- by way of cheques to the respondents way back in the year 2012 and proper receipts were issued by respondents under the said agreement. It is pertinent to mention that that complainants had made payment of Rs. 54,62,524/- against the total alleged dues of Rs. 51,75,989/-, which in turn is over and above of the total sale consideration of Rs. 41,86,000/- under the said agreement.
7. The complainants submitted that the respondents have issued the proper receipts against the receipt of Rs. 54,62,524/- in terms of said agreement, which itself is a proved fact on the face of the records of the respondents. It is pertinent to mention that the respondents had taken undue advantage of the complainants by receiving of quantity more than the agreed upon consideration on one or another pretext. It is pertinent to mention that that amount of Rs. 1,50,000 /- and Rs. 1,80,000 /- by way of cheques had been received by the respondent no. 1 and receipt is issued by the respondent no.1 showing "unapplied amount" and no reasons have been assigned by the respondent no.1 to the complainants when they asked the reason for doing so in the aforesaid receipt.



8. The complainants submitted that after payment of huge amount of Rs. 54,62,524/- which is also more than the agreed sale price, they requested to respondents for registration of title documents in order to use the said plot for their basic residential needs, which was flatly refused by the respondents and respondents had illegally demanded an amount of Rs. 27,33,111/- on account of holding charges, miscellaneous charges, interest and registration fee despite charging maintenance charges regularly from the complainants.
9. The complainants submitted that the respondents have exploited them by way of illegally taking more than the agreed total sale consideration and also by way of asking holding charges, registration charges, miscellaneous charges and also the interest thereon to the tune of Rs. 27,33,111/- and maintenance charges as well. It is also pertinent to mention herein that respondents cannot escape from their liability to execute the registration of aforesaid plot and to refund the extra amount charges and received from the complainants on one pretext or other.
10. The complainants submitted that the cause of action has arisen in favour of complainants and against respondents on 17.08.2010



when the aforesaid plot was allotted by the respondents to the complainant no.1 against the receipt of sale consideration. The cause of action further arose on 04.09.2014 when the name of complainant no.2 as a joint owner was recorded by way of endorsement letter by the respondents in their records against the receipt of amount towards sale consideration. The cause of action further arose when demand letters were issued and when the respondents issued offer of possession of the said plot to the complainants. The cause of action further arose on 24.07.2018 when the respondent no.1 sent the reply and demanded illegal payments. The cause of action further arose on 31.07.2018 when complainants had visited the office of respondents and met with the official of the respondents regarding illegal holding charges, miscellaneous charges, registration charges and maintenance charges were held. The cause of action is still subsisting and continues in favour of the complainants and against the respondents.



11. Issues to be determined

- i. Whether the respondent is liable to execute the registration title documents including conveyance deed in

favour of complainants without payment of holding charges in terms of section 17, 18 and 19 of the Act ibid?

- ii. Whether the respondent is liable to refund the excess amount over and above the sale consideration along with interest?
- iii. Whether the respondent is liable to refund the amount of Rs. 2,37,585/- in the name of administrative charges along with interest?

12. Relief sought

- i. Pass the order in favour of complainants and against the respondents to execute the registration of title documents including conveyance/ sale deed in favour of complainants by the respondents without payment of any holding charges, miscellaneous charges or any interest thereon in terms of section 17,18 and section 19 of the RERA Act, 2016.
- ii. Pass the order in favour of the complainants and against the respondents to refund the excess amount along with interest being the over and above the sale consideration received by the respondents from the complainants in terms of section 17,18 and section 19 of the RERA Act, 2016.



- iii. Pass the order in favour of the complainant and against the respondents to refund the amount of Rs.2,37,585/- along with the interest @18p.a received by respondents as administrative charges for addition/endorsement of names of complainant in the books of respondents in terms of section 17,18 and section 19 of the RERA Act 2016.
- iv. Pass the order in favour of the complainants and against the respondents for appropriate legal action for playing fraud, threat for illegal demands etc.
- v. Pass the order to DTCP, Haryana or any other competent authority against the respondents to enquire about the huge amount collected by the respondents from the innocent and gullible customers including the present complainant on the pretext of holding charges, miscellaneous charges, EDC/IDC and registration charges etc.

Determination of issues: -

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:



13. With respect to the **first issue**, as per section 17 of the Real Estate (Regulation and Development) Act, 2016, the promoter is under an obligation to execute a registered conveyance deed in favor of allottee within a period of 3 months from the date of issue of occupancy certificate. However, the said Act is not applicable on retrospective transactions. Thus, in such case, the agreement dated 17.06.2010 will be binding upon the parties as it was executed prior to the coming into the force of the Act *ibid*. As per clause 6.1 of the said agreement the respondent is liable to execute the sale deed in favor of the buyer subject to buyer having paid the entire sale consideration and other charges and dues to the company as per the payment plan. Clause 6.1 of the agreement dated 17.06.2010 is reproduced below:

6.1 " After the completion of development of the residential colony, the company shall, subject to the buyer having paid the entire consideration and other charges and dues to the company as per the payment plan, execute the sale deed in favour of the buyer for sale of the plot as per applicable laws, including inter-alia all the rules, regulations and bye-laws of the government, and shall be executed in the form as prescribed or approved by the company."

Thus, the sale deed must be executed by the respondents in favour of the complainants. Also, the complainants are



directed to materialize the offer of possession and to take over the possession within a period of 30 days of this order.

14. With respect to the **second and third issue**, the respondents are directed not to charge any holding charges from the complainants and to refund the excess amount, if any, received from the complainants along with prescribed rate of interest @10.75% p.a.
15. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
16. 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.
17. 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

18. 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.

19. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs.10,000/-.
20. Such notices were issued to the respondent on 22.09.2018, on 16.11.2018 and on 29.11.2018. Further, a final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.
21. As the respondent has failed to be present before the authority or to submit the reply in such period, despite due and proper service of notices, it appears that the respondent does not want to pursue



the matter before the authority by way of making personal appearance by adducing and producing material particulars in the matter. Thus, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.

22. The ex-parte final submissions have been perused at length. As per clause 5.1 of the agreement dated 17.06.2010 for a plot admeasuring 250 sq. mtrs., possession was to be handed over to the complainant within a period of 24 months with an extended period of six months from the date of execution of agreement which comes out to be 17.12.2012. The respondents have offered the possession to the complainants only on papers on 26.05.2012 but the complainants have not taken over the possession. Complainants have already paid Rs.54,62,524/- to the respondent against a total sale consideration of Rs.41,86,000/-.

23. 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 respondents:



- (i) The complainants are directed to materialize the offer of possession and to take over the possession within a period of 30 days of this order.
- (ii) The respondents are directed not to charge any holding charges from the complainants and to refund the excess amount, if any, received from the complainants alongwith prescribed rate of interest @10.75% p.a.
- (iii) All the formalities on the parts of the parties should be completed within a period of 30 days positively.
24. The complaint is disposed of accordingly.
25. The order is pronounced.
26. Case file be consigned to the registry.

HARERA
GURUGRAM



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 08.02.2019

Judgement uploaded on 18.03.2019