

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

Complaint No. : 28/2018- Kanta Sharma & Others
Versus
The Shalimar Estates Pvt. Ltd.

Date of hearing: 05.03.2019

QUORUM:

Shri Rajan Gupta	Chairman
Shri Anil Kumar Panwar	Member
Shri Dilbag Singh Sihag	Member

APPEARANCE:

1. Sh. Keshav Gupta & Ms. Stuti Bamba, Advocate for the complainant
2. Shri R K Aggarwal, Managing Director on behalf of respondent.

Order:

1. This matter was heard and decided on 27.03.2018 wherein it was held that the respondent had already received occupation certificate in respect of the project in question, therefore the Authority does not have jurisdiction to proceed further with this complaint. Relevant part of the order dated 27.03.2018 is reproduced below: -

"Learned counsel for the complainant has today conceded that the respondent has already received a completion certificate in respect of his project. So, this authority is of considered opinion that it has no jurisdiction to further proceed with the complaint. However, learned counsel for the complainant states that he wants to submit written arguments in the matter and is accordingly may be allowed to do so within 5 days' time . "

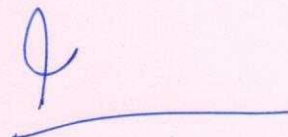


2. Since the complainant failed to file written arguments within time, therefore the above orders attained finality. Feeling aggrieved, an appeal was filed by the complainant before Hon'ble Real Estate Appellate Tribunal which has been allowed vide order dated 22.10.2018. Accordingly, this matter has been remitted back to this Authority, with certain observations. The operative part of the order is reproduced below:-

" The above report received from Ld. Authority shows that no further order has been passed by Ld. Authority after the impugned order dated 27.03.2018. This fact is not disputed that the written arguments were filed by the appellants. However, it is mentioned that it seems, the written arguments were not received by the office within the stipulated period and therefore, the said file was not put up before the Authority. This recital in the report shows that though the written arguments were received but those were not received within the stipulated period of five days.

The function of the quasi judicial Authority is to adjudicate upon the lis by providing the fair opportunity to the parties. If delay of one or two days had occurred in submitting the written arguments, that is no ground to extinguish the rights of the appellants. Once the Ld. Authority has given liberty to the appellants to file written arguments, it was required to wait for filing the written arguments for a reasonable period. The file was not been taken up by the Ld. Authority after expiry of five days. Ld. Counsel for the appellant stated at bar that the written arguments were submitted by him in the office of Ld. Authority on 02.04.2018, so there was a delay of only one day in submitting the written arguments. But it is pertinent to mention that 4th day (31st March, 2017) and 5th day (1st April 2018) were holidays being Saturday and Sunday. In that case, the written arguments filed by the appellants were well within five days from the date of the order. So, it was incumbent upon the office of Ld. Authority to put up the file before the Authority and Ld. Authority was also duty bound to pass the final order after taking into consideration the written arguments so submitting by the appellants.

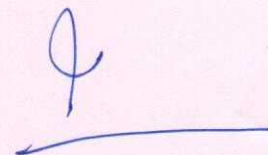
Thus, in these circumstances, it cannot be construed that the complaint filed by the appellants was finally disposed of by



passing the impugned order dated 27.03.2018. Ld. Authority is required to pass the fresh/ final order after taking into consideration the written arguments already submitted by the appellants and affording them the fair and proper opportunity of being heard.

Consequently, the present appeal is hereby allowed. The matter is remitted to Ld. Authority to proceed further in accordance with law and the aforesaid observation."

3. Accordingly, a notice dated 03.12.2018 was issued to the respondent to file his reply and the matter was taken up for hearing on 20.12.2018. On that day the complainant was directed to deliver Dasti summon to the respondent so that he could file his reply. Acknowledging the summons, the respondent filed his short reply on 22.01.2019.
4. On the last hearing the matter was adjourned for arguments on the issue of jurisdiction. The respondent vide his short reply dated 15.01.2019 is seeking dismissal of the present complaint on the following grounds: -
 - a. As the said project had already received occupation / completion certificate on 20.06.2008 so it is not covered under the definition of ongoing project as incorporated under clause (o) of section 2 of HRERA Rules,2017.
 - b. The Authority does not have jurisdiction to issue notice to proceed further with this complaint as it does not have power to review its orders.
 - c. Registration under section 3 is not required as the said project is covered by sub-section 2 (b) of section 3, as reproduced below :-



“Notwithstanding anything contained in sub-section 1 no registration of the Real estate project shall be required

b. where the promoter has received completion certificate for a real estate project prior to commencement of this Act”

d. The project was completed and made operational in year 2008 after receiving of occupation certificate on 20.06.2008, whereas RERA Act came into force on 01.05.2017 therefore the present complaint does not fall within the ambit of this Authority.

5. The Authority observes that this matter will be heard on its own merits later on after setting the issue relating to the jurisdiction of this Authority. This Authority in complaint case No.144 of 2018 titled as Sanju Jain Versus TDI Infrastructure Ltd. had given a detailed judgement on the issue of jurisdiction of the Authority. It is relevant to reproduce the operative part of the order as follows: -

“The underlying object for enacting the Act is two folds. Firstly, it is aimed at ensuring sale of plot/apartment/building in the real estate sector in an efficient and transparent manner. For serving of such purpose, the registration of the real estate project has been made compulsory before a promoter is allowed to put his project on sale. Elaborate provisions concerning the process of registration have been laid in Chapter-II of the Act; thereby, requiring the promoter to disclose and bring to the public domain all such information as is reasonable necessarily for prospective purchaser of property, of effectively decide on the question as to whether or not he should invest his money with the promoter in his proposed project. The registration process is also aimed at ensuring that 70% of the money collected from the prospective



buyers is invested in the project without its diversion for other purpose.

The second purpose for enacting the Act is to establish an adjudicating mechanism for speedy redressal of the grievances of allottees and promoters. The legislature in order to achieve this purpose has laid provisions detailing out the functions and duties of the promoters in Chapter-III, rights and duties of the allottees in Chapter IV and also by creation of Real Estate Regulatory Authority and Appellate Tribunal as per the provisions contained in chapter-V and in Chapter-VIII of the Act. There is chapter VIII relating to the offences emerging from different kind of violations committed in respect of various provisions of the Act and vesting of powers in the Authority/Appellate Tribunal for punishing those offences.

Section 11 of the Act defines and elaborates the functions and duties of a promoter. Nowhere in this section is used the expression 'Promoter of a registered project' and since the expression used everywhere in the Section is 'Promoter', it cannot be legitimately argued that the duties cast upon the promoter will be an unregistered project and not to the promoter of an unregistered project.

Sub section (4) of Section 11 of the Act manifests that a host of responsibilities and the obligations which are cast upon the promoter under the Act, rule and an agreement of sale shall extend much beyond the date of completion of the project. For example, the obligation for executing conveyance deed extends till the actual execution of the instrument; the obligation for delivery of possession extends till transfer of physical possession to the allottee; the obligation to rectify structural defects in the sold property extends for a period of five years from the date of handing over the possession; the obligation for maintenance of essential services extends till taking over of the maintenance of project by the association of allottees; the obligation to pay all outgoings extend till the transfer of physical possession of project to the association of the allottee etc.

Simultaneously, Section 34(f) of the Act enjoins a duty upon the Authority to ensure compliance of all the obligations by the stake holders in the real estate project as envisaged under the Act, Rules and Regulations made thereunder. There is no provision in the act which expressly or impliedly provides that

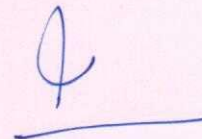


duties, responsibilities and obligations of a promoter towards his allottees will cease to exist upon grant of completion or occupation certificate. So, no promoter can be allowed to argue that he stands absolved of discharging his statutory obligations after receipt of completion certificate or that the Authority after grant of completion certificate will have no jurisdiction to adjudicate the complaints of the allottees.

The completion certificate is a requirement of Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 (HDRD Rules) or under sub code 4.10 of Haryana Building Code, 2017 and its grant is aimed at certifying that the project has been laid in accordance with the said Rules. So, grant of completion or occupation certificate can at the most absolve the promoter only of the obligation towards the State under the provisions of HDRD Rules and not in respect of the obligations which such promoter has towards the allottees under the provisions of the Act.

That apart, the issuance of a part or full completion certificate will not be a conclusive proof of the fact that the project has been developed as envisaged under the agreement of sale executed between the promoter and the allottee. Unless the development of the project is carried out in the manner as promised to the allottee under the agreement of sale, the allottee may have some genuine grievance against the promoter and will have a right to invoke the jurisdiction of this Authority for redressal of his grievance, irrespective of the fact that the promoter had obtained a completion/part completion or a occupation certificate for his project. The actual status of the project in such eventuality shall always remain a subject for verification by the Authority in order to determine whether or not the promoter has discharged his obligations in respect of development works. Thus viewed, no promoter can save himself from discharging his obligations on the ground that he has obtained a completion/occupancy certificate in respect of his project and this Authority has jurisdiction to adjudicate upon the complaint filed against a promoter regarding non performance of his obligations.


The respondent's learned counsel while referring to the provisions of Section 71 of the Act, has next argued that since the complainant is seeking relief for refund of his money alongwith interest and interest being a component in the nature of compensation payable to an aggrieved person, the



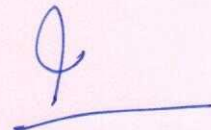
Adjudicating Officer alone and not this Authority has the jurisdiction to adjudicate the complaint. This argument too is not acceptable.

Section 71 of the Act vests jurisdiction in the Adjudicating Officer for adjudging the compensation after holding enquiry and ascertaining the factors as elaborated in Section 72 of the Act. Said provisions do not restrict the power of Authority for grant such relief to the allottees which do not require determination on the basis of detailed enquiry and can be ascertained summarily on the basis of plain language of the Act, Rules or an agreement of sale. The present case is one in which the complainant is seeking refund of money which the respondent had received towards purchase of a residential unit. The respondent has not disputed the money so paid to him and since the money has been paid against receipts, the relief of refund can be granted without making detailed enquiry. The compensation is claimed in the form of money payable on account of damage and harassment caused to a person. Interest claimed on refund is not a compensation for harassment and it is rather a claim for return of earning, which the holder has derived by unlawful withholding the money paid to him by the person claiming refund. So, the interest payable on refund amount would not be in the nature of compensation and the Authority will have jurisdiction to grant relief of refunding the amount alongwith interest to the complainant. "

6. The Authority has further ordered in several cases that where ever the obligations on the part of the parties still subsists, this Authority will have jurisdiction to settle disputes relating to fulfilment of those obligations. Admittedly, in this case even though the possession was offered in 2008 but actually the complainant did not take the possession on account of various deficiencies in the building. Consequently, sale deed of the property has also not been executed. Accordingly, the core of the contract between the parties still remains to be performed. The



principal contractual obligation on the part of the respondent remains to be discharged. RERA Act has been enacted to not only settle the disputes relating to future projects, but also to settle the disputes which were existing on the date when the RERA came into force. It would be a legal absurdity if existing disputes were not to be handled by the Authority. Such an interpretation would simply defeat the purposes of the law enacted by the parliament. Such an interpretation would amount to creation of an Authority which would start its real functioning on a future date. There is nothing in the statute to show that legislature had such an intention. As has been ruled in the above quoted complaint case No.144 of 2018 the completion certificate is a requirement of Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 and the sub code 4.10 of Haryana Building Code. Under the provisions of these rules/code the completion/occupation certificate only certifies that the building has been constructed in accordance with the said rules. It does not certify that the developer has discharged his obligations towards the apartment allottees. The obligations of the promoters towards the allottees have to be examined under the agreement made between them and the prevailing law of the land. As observed earlier, the core of the contract is yet to be performed and without it the contract cannot be said to have been discharged. This Authority has been created to settle all such disputes



between the developers and the allottees. For the foregoing reasons, it is ordered that this Authority has full jurisdiction to hear the matter on merits and pass appropriate orders.

7. The respondent has also raised an objection that this Authority does not have jurisdiction to proceed further as it does not have powers to review its own orders. It is correct that this Authority does not have powers to review its own orders but the present matter is being decided in accordance with the orders dated 22.10.2018 passed by the Hon'ble RERA Tribunal. This Authority is duty bound to follow the judicial orders passed by the Hon'ble Tribunal.

8. For the aforesaid reasons the objections of the respondent regarding jurisdiction of this Authority are overruled. The respondents are now directed to file a detailed reply on merits of the case and supply a copy directly to the complainants.

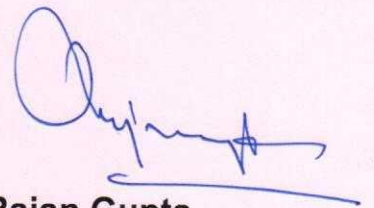
Adjourned to **02.04.2019** for arguments on merits.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman