

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

Complaint no. : 568 of 2018
First date of hearing: 18.09.2010
Date of Decision : 13.03.2019

Mr. Ritesh Malhotra,
R/o I -86, ground floor, Ivory block, Sector -65,
Emerald Hills, Gurugram- 122001, Haryana

Complainant

Versus

1.Parsvnath Developers Ltd ,
Office :6th Floor, Arunanchal Building, 19
Barakhamba Road, New Delhi
2. Supertech limited.
Office: Super tech house, B-28-29, sector 58,
Noida
3. V.K. Jain proprietor of M/s Home Positive
Office :7310, DLF city, phase IV, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vijender Parmar Advocate for complainant

Shri Rishabh Gupta Advocate for the respondent

ORDER

1. A complaint dated 19.07.2018 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 Mr. Ritesh



Malhotra, against the promoter M/s Parsvanath Developer Ltd.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	Hill Town, Sector 2, Sohna Road, Gurugram
2.	Nature of project	Residential plot
3.	Unit no.	R04500B0K0167
4.	Unit measuring	250 sq. mtrs
5.	RERA registered/ not registered.	Registered (258 of 2017)
6.	Revised date of completion as per registration certificate	02.10.2020
7.	Date of execution of apartment buyer's agreement	Not executed
8.	Date of provisional allotment	07.01.2015(annex C6)
9.	Payment plan	Construction linked plan
10.	DTCP licence no.	124 of 2014
11.	Total amount paid by the complainant till date	Rs. 15,00,000 /-(annex C2)
12.	Total consideration amount	Rs.75,00,000/-
13.	Date of delivery of possession	Cannot be determined
14.	Delay in handing over possession till date	2 years 4 months

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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up on hearing on 13,12.2018, 24.01.2019,

05.03.2019 and 13.03.2019. The reply has been filed on behalf of the respondent and the same has been perused.

Facts of the complaint

5. The complainant submitted that respondent no.1 and 2 are the companies and working in field of construction and development of residential and commercial projects across the country in the name of Parsvnath Developers Limited and Supertech Limited and respondent no. 3 is a agent of respondent no. 1 and 2 and is a real estate agent/broker.
6. The complainant submitted that in October 2012 respondent no. 3 who is a real estate agent has approached the complainant with an offer to invest in the proposed project of respondent no. 1, which the respondent no. 1 was going to launch in the Sector-2, Sohna Road, Gurugram (hereinafter referred to as "Said Project"). The respondent no. 3 being a real estate agent had further assured to the complainant that the respondent no. 1 has already secured all the necessary sanctions and approvals form the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. Respondent no. 3 had also shown the brochures and advertisement material of the said project to the complainant



given by the respondent no. 1 and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking of made by the complainant.

7. The complainant submitted that he has also issued a cheque dated 12.10.2012 bearing no. 000026 drawn on Bank of India, MGF Plaza Branch, DLF Phase-II, Gurugram for an amount of Rs. 15,00,000/- in the name of respondent no. 1 for the booking of aforesaid residential plot with respondent no. 1 and the said cheque was duly received and acknowledged by respondents.
8. The complainant submitted that upon the encashment of aforesaid cheque issued by the complainant, the respondent no. 1 issued a receipt dated 20.10.2012 bearing no. NZ000339 to the complainant for Rs. 15,00,000/- confirming his booking of the aforesaid residential plot and with an assurance that as promised, within one week of booking the complainant will get the allotment letter and builder buyer agreement as a confirmation of the allotment of said residential plot in his name.
9. The complainants submitted that respondents in the document named "Expression of interest for a residential



plot” executed at the time of booking made by the complainant has assured that the allotment of said residential plot in the name of complainant would be made expeditiously and not later than 12 months. Though the complainant was not agreed to the timeline of 12 months, but the respondents has threatened the forfeiture of booking amount paid by the complainant if he refuses to sign the unilateral document prepared by them. Therefore, the complainant under threat and duress had signed the document as unilaterally prepared by the respondent no. 1 and 3.

10. The respondent submitted that thereafter the respondents had neither provided the allotment letter to the complainant nor allotted any plot in the name of complainant as assured by them at the time of booking. The complainant had on various occasions contacted the respondent no. 1 and 3 to know the status of his booking as well as the status of project sold by the respondent no. 1 through respondent no. 3. Complainant had requested to the respondent no. 1 and 3 repeatedly and continuously to issue him the allotment letter and execute the builder buyer agreement for his booking but the respondent no. 1 and 3 used all the delaying tactics to defraud the complainant using unfair trade practices. Complainant thereafter demanded the refund of money with



interest as assured by the respondents but that too proved futile.

11. The complainant submitted that somewhere in January 2015 got an information and came to know from the newspapers and other sources that the project of respondent no.1 in which he had booked the residential plot and had made the payment of Rs. 15,00,000/- has been taken over by respondent no. 2. This news was severely shocking for the complainant as the same had been done by the respondent no.1, secretly and arbitrarily without seeking the prior approval of two-third allottees and without the prior consent of hon'ble authority in contravention of section 15 of The Real Estate (Regulation and Development) Act, 2016.

12. The complainant submitted that in the e-mail respondent no. 2 had also attached a letter dated 07.01.2015 having title as letter of offer of provisional allotment of plot in "Hill Town" situated at Sector-2, Sohna Road, Gurugram for plot no. R04500B0K0167 admeasuring 250 sq. mtr. In the said letter dated 07.01.2015 the respondent no. 2 has again mentioned about his agreement with respondent no. 1 for the development of said residential project and again demanded Rs. 16,37,553/- as payment for provisional allotment of said plot @ of Rs. 29900/- per sq. mtr. However, in the said letter



also respondent no. 2 did not revealed the relevant information to the complainant and arbitrarily demanded the money from complainant even without providing the basic details of said plot and its other specifications. That the demand raised by the respondent no. 2 in connivance with other respondents was an act of fraud on part of respondents and comes under the category of unfair and fraudulent trade practice.

13. The complainant submitted that he wrote an e-mail to the concerned officials of respondent no. 2 in respect of the suspicious and arbitrary provisional offer of allotment letter dated 07.01.2015 and raised his queries in respect of said take over of the said project by respondent no. 2 and also about the status of licenses and other approvals secured by the respondent no. 2. The complainant had wrote the further e-mail on 23.01.2015 as an reminder when his aforesaid e-mail was not replied by respondent no. 2 to conceal its misdeeds. In these e-mails the complainant had again requested and reminded the respondent no.2 to provide the specification and details of the said plot and reasoning behind raising the demand of money as mentioned in the said letter.

14. The complainant submitted that the he had again written e-mails dated 28.01.2015 and 31.01.2015 to the officials of



respondent no. 2 as reminders to provide the answers and solutions to the questions and queries raised by the complainant in his previous mails and again demanded the refund of his money. However, the respondent had again decided not to respond to the complainant and did not provide the details of said flat and project.

15. The complainant submitted that respondents have provided false and incorrect statements in respect of said plot and said project and the complainant had thereby lost his hard earned money facing humiliation and harassment, physical as well as mental in the hands of respondent and therefore the respondents are liable to compensate the losses of complainant caused to him due to the fraud and unfair trade practice on the part of respondents as per Section 12 of the Real Estate (Regulation and Development) Act, 2016 and rules thereunder.

16. The complainant submitted that on 02.06.2015 the official namely Amit Solanki of respondent no. 2 had reverted to the aforesaid e-mail of complainant after much follow up and assured that the refund request of the complainant is under consideration with the higher management of respondent no. 2. That despite the on-going communication for the refund of Rs. 15,00,000/- to the complainant, the respondent no. 2 with



malicious and ulterior motives had sent a letter dated 17.11.2015 via e-mail and raised an arbitrary demand of Rs. 49,84,962/- for the plot no. B0K0167 situated in "Hill Town" residential project. In the said letter also, the respondent chose not provide any details and specification and also the reasoning for the alleged demand of money. The said conduct on part of respondents was the clear-cut manifestation of the malicious intention on the part of all the respondents to cheat and defraud the complainant. That upon realizing the cheating and fraud done with the complainant and the false assurances given to him the respondent no. 2 had sent a letter dated 18.11.2015 to the complainant as withdrawal of letter dated 07.01.2015 issued as the offer of provisional allotment of plot in "Hill Town" for the reasons best know to it.

17. The complainant submitted that for next one and half year, the complainant had chased respondent no. 2 and its concerned officials for refunding his hard-earned money and had visited the respondent no. 2 on various occasions but the respondent no. 2 had not refunded the money of complainant on one pretext or other. The respondents all having hand in gloves have criminally misappropriated the hard-earned



money of complainant by falsely assuring the complainant in respect of the allotment and delivery of the said plot.

18. The complainant submitted that on 04.05.2017 he written a detailed e-mail to the concerned officials of respondent no. 2 narrating the entire unfair, fraudulent and wrongful acts and omissions of respondent no. 1, 2 and 3 and demanded the refund of his booking amount of Rs. 15,00,000/- on immediate basis with interest as promised by the respondents. In the said e-mail complainant had categorically specified the incidents and details of fraud and unfair trade practice on the part of respondents and demanded in money back with interest as on the date.

19. The respondent no.2 vide his e-mail dated 09.05.2017 replied to the e-mail dated 04.05.2017 written by complainant in a very arbitrary, illegal, unethical and fraudulent manner and while refusing to refund the money of complainant had again tried to induce the complainant illegally to further invest in the projects of respondent no. 2, which it never intended to complete as per its assurances to the consumer at large.

20. That the conduct on part of respondents regarding non-allotment said plot has clearly manifested that respondent(s)



never ever had any intention to the deliver the said project on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved plot were fake and false. Respondent had made all those false, wrongful and fraudulent promises just to induce the complainant to purchase the said plot basis its false and frivolous promises, which respondent never intended to fulfil.

21. The complainant submitted that the respondent no. 1 and 3 has acted in a very deficient, unfair, wrongful, fraudulent manner by not allotting the said plot to the complainant and respondent no. 2 by not refunding the money of complainant. Respondents are therefore, liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainant due to the aforesaid illegal and wrongful acts of respondents.

22. The complainant submitted that respondents are guilty of deficiency in service, unfair trade practice, giving incorrect and false statement while selling the said unit to the complainant within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 and applicable rules. The complainant has suffered losses on account deficiency in service, unfair trade practice, giving incorrect and false statement. As such the respondents are



fully liable to pay/reimburse the payment claimed by the complainant by returning his entire investment along with the applicable interest along with the compensation for the losses incurred by the complainant due to the wrongful and fraudulent acts of respondents.

23. The complainant submitted that the cause of action accrued in favour of complainant and against the respondent on 12/10/2012 when the complainant booked the said residential plot and it further arose when respondent failed/neglected to deliver the goods/services and failed to refund the amount as demanded by the complainant. The cause of action is continuing and is still subsisting on day-to-day basis.

24. That the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law and any other authority or any other tribunal.



Issues raised by the complainant are as follow:

- a. Whether the document titled as “Expression of Interest for Residential Plot” is one sided and unilateral?
- b. Whether the complainant is entitled for the refund of sale consideration amounting to Rs. 15,00,000/- along

with interest @18% PA on the booking amount paid for the said plot?

- c. Whether the respondents, jointly and severally, are liable to be prosecuted for contravening Section 11,12,14 and section 15 of The Real Estate (Regulation and Development) Act, 2016 for giving incorrect information at the time of selling of flat and non-adherence of sanction plan?

Relief sought:

The complainant is seeking the following relief:

- a. Pass an order to direct the respondents, jointly and severally, to return/refund an amount of Rs. 15,00,000/- paid by the Complainant at the time of booking of said plot along with future and pendent-lite interest @12% from the date of payment till its final payment.



Respondent's reply

25. The respondent submitted that the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds.

26. The respondent submitted that complainant has not come with clean hands before this Hon'ble Form and has suppressed the true and material facts from this hon'ble forum.
27. The respondent submitted that the complainant has no locus standi to file the present complaint. It is submitted that the allotment of plot was cancelled / withdrawn by the respondent no. 2 on 18.11.2015 as the complainant failed to pay the remaining sale consideration even after repeated reminders.
28. The respondent submitted that after taking over project and ongoing process to check the status of the said allotment, the respondent no. 2 came to know that the complainant has paid Rs. 15,00,000/- out of total sale consideration in the year 2012 and executed expression of interest form. The respondent no. 2 wrote a letter dated 7.1.2015 to the complainant, making him aware of his allotment and calling upon him to pay Rs. 16,37,553/- to make his allotment final which will be adjusted at the time of possession, so that no dispute may rise in future. The same letter was also sent through email to the complainant. After sending this letter, the complainant raised some issues/ queries about his allotment.



29. The respondent submitted that the respondent no. 2 vide email dated 11.02.2015, clearly and elaborately answered the queries of the complainant. The complainant was also called upon to visit the office of respondent no. 2 to clarify all his queries and doubts in one go. Instead of visiting the office, the complainant started making false allegations upon respondent no. 2 and with malafide intention and to create evidence, started emailing again and again and making allegations upon respondent no. 2 to pressurize them.
30. The respondent submitted that after many reminders on calls, on 17.11.2015, the respondent no. 2 again issued a demand letter / outstanding statement of Rs. 49,84,962/- and called upon the complainant to pay the remaining sale consideration and make his allotment final, so that no dispute may arise in future. No heed was paid towards the request made by the respondent no. 2, rather false allegations were made upon them. It is submitted that the said letter was issued after the completion of sewer line and other formalities. It is submitted that, non- payment of outstanding amount which is to be paid by the complainant, cannot stop construction work of respondent no. 2 and spoil reputation of respondent no. 2 in the market as well as breach the promises made to other allottees. The respondent



no. 2 has completed their works on time and has also executed conveyance deeds to those allottees who have paid full sale price consideration and a few such allottees have also started living with their families after making construction.

31. The respondent submitted that after awaiting more than 7 months from January 2015, for the complainant to make payment of the remaining sale consideration, the respondent no. 2 had cancelled the said allotment and wrote a letter to the complainant about the cancellation.

32. The respondent submitted that the allotment was cancelled by the respondent no. 2 in the year 2015 and the complainant also accepted the said cancellation by remaining silent as he was well aware of his financial capacity for which he was not able to pay the remaining sale consideration. The complainant remained silent till 2017 and again wrote a letter narrating same facts with malafide intention and to create evidence so that the complainant may seek refund from the shelter of RERA Act. The respondent no. 2 also sent the reply to this email and clearly informed that refund as being sought by you is not viable option right now.



33. The respondent submitted that after making the complainant aware of the terms and condition of the company of respondent no. 2 through emails and letters, the complainant never shown interest for his allotment and never tried to pay heed to the request made by respondent no. 2.
34. The respondent submitted that the project “Hill Crest Project” situated at Sector- 2 Gurugram, is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 258 of 2017 dated 3.10.2017.
35. It is also submitted that the plea of allottees in all the complaints for refund is not tenable in the eye of law. If, for example, the rates of property (flat/ plots) be the same as were in 2010 to 2014, no allottee/ purchaser/ buyer would have come to knock the door of this Hon'ble Form and seek relief of refund. Thus, due to insufficient funds as well as huge down fall in the Real Estate market, all the allottees have planned to seek refund of the invested money and let the promoter suffer for all the aforesaid circumstances. Conduct of the allottees such as the complainant shows that they are just gamblers in the real estate market who used to pay small amount of money to hold that property and whenever price rises, sell to others and book profit of it and if price falls , seek refund from builders / promoters by filing frivolous



compliant by making false allegations upon builders/promoters.

36. The respondent submitted that due to non - payment of remaining sale consideration, the respondent no. 2 has cancelled the said allotment of the complainant and forfeited his earnest money as per terms and condition of the company policy. The complainant cannot use the shelter of RERA Act , for his refund. No provision of RERA Act is applicable upon the respondent no. 2.

37. Hence, the complainant is not entitled for any relief as prayed for. Thus, the compliant may kindly be dismissed with heavy cost.

38. The respondent submitted that the allotment of complainant was cancelled on 18.11.2015, and when no other remedy left with the complainant, he planned to take the shelter of RERA Act, which is not applicable upon the respondent no. 2. The brief facts are already reproduced in preliminary objections and by looking into brief facts, the complainant has no locus standi to file the present compliant. No legal remedy has been availed by the complainant from the year 2012 to year July 2018. The present compliant has been filed with malafide



intention just to try his luck by using shelter of RERA Act , to get refund of his invested money.

Determination of issues

39. With regard to **first issue** raised by the complainant has failed to adduce any evidence on document to the effect that terms and conditions incorporated under Expression of interest for residential plot and furthermore there is no communication/ correspondence addressed to the respondent for the same whereby the complainant protested the terms of agreement. Hence, it can be inferred that complainant has signed the form voluntarily without any protest.

40. With respect **second issue** raised by the complainant as there is nothing on record to prove the builder buyer relationship as on date and as such builder has no right to retain his amount of Rs.15 Lakhs. It is advisable that the amount be refunded to the complainant without interest

41. With respect to **third issue** raised by the complainant, as the complainant is left with no legal rights or interest in the said project, the issue raised by him become infructuous.

Inferences drawn by the authority



42. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

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

44. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.

45. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required

46. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed that the respondent has submitted written reply along with annexures which have been placed on record, perusal of which reveals that a deal



w.r.t. taking over of possession of area of 300 square yards in a project area of 100 acres vide mutual agreement executed in the month of September, 2014 which had been acknowledged by Directorate of Town and Country Planning in the form of grant of permission No.6201-6211 dated 17.4.2015. However, no completion certificate is available on record on the basis of which the builder-respondent could hand over the possession of plot/unit in question to the innocent buyer for which the respondent had already charged Rs.15 Lakhs. It is fortified by clause 7.2 (a) of Haryana Real Estate Regulation & Development Rules, 2017, as such builder has not committed any impropriety in this context. However, buyer is impinging upon for refund of amount. No document has been executed in this context, as such, there is nothing on record to prove the builder buyer relationship as on date and as such builder has no right to retain his amount of Rs.15 Lakhs. It is advisable that the amount be refunded to the complainant without interest



Decision and directions of the authority

47. After taking into consideration all the material facts as adduced and produced by both the parties, 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 in the interest of justice and fair play:

- i. The respondent is directed to refund the amount paid by the complainant.

48. The order is pronounced.

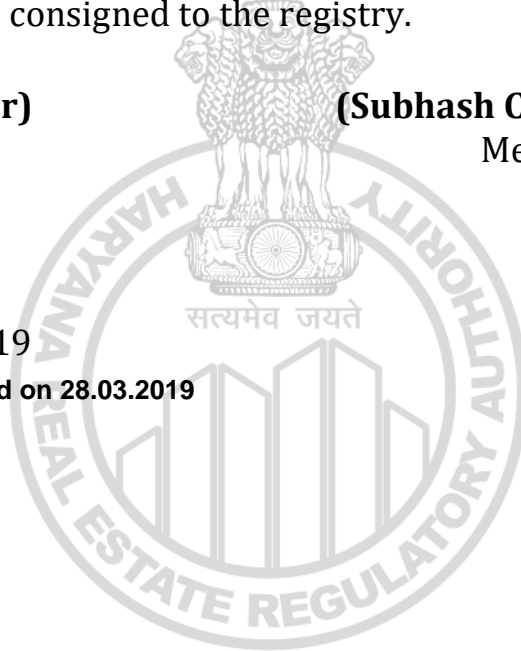
49. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 13.03.2019

Judgement Uploaded on 28.03.2019



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