



**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Date of Hearing: 14.03.2019
3rd Hearing

Complaint No.3/2019
Rashmi Bathla & Anr
Versus
M/s CHD. Developers Ltd.

...Complainant

...Respondent

Coram:

1. Shri. Rajan Gupta
2. Shri. Anil Kumar Panwar
3. Shri. Dilbag Singh Sihag

...Chairman

...Member

...Member

Appearance:

1. Kamal Dahiya, Counsel for Complainant
2. Anup Gupta, Counsel for Respondent.

ORDER:

The complainants had booked a floor bearing no. O/B-GF 198 having an area of approx. 1090 sq. ft in residential group housing project named M/s CHD Paradiso Floors at CHD city, sector 45, Karnal, Haryana under construction link plan. Total sale consideration of the floor was Rs.34,95,885/- against which the complainants had already paid a total amount of Rs. 35,87,507 /- till march 2018.

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2. Floor Buyer's agreement was executed on 7th March 2015 between complainants and respondent /promoter. As per agreement, the possession of the said floor was to be delivered within a period of 24 months from the date of building plan approval and accordingly the deemed date of handing over the possession was 7.03.2017 but the letter of offer of possession was issued by the respondent on 31st Jan 2018, while demanding outstanding amount of Rs. 1,96,482.3/-.

3. The complainants further contended that the quality of the paint was bad and thin, tiles are variant as well as the finishing work was not properly done. The respondent has used pathetic and cheap materials for the construction of the said floor and the ~~concerned~~ project and keep on demanding the pending payment of Rs.1,96,482.3/-. Therefore, he refused to take over the possession unless and until all above deficiencies stated be rewarded. He further made a submission to order for compensation for delay possession and restrain the respondent from additional demands.

4. On the other hand, the respondent had averted that this authority has no jurisdiction to adjudicate this case on following grounds: -

- (a) The instant complaint has not filed through legally authorised GPA holder, as at the time of execution of said GPA, both the complainants were residing at Dubai, UAE and therefore the said GPA was required to be properly notarized/attested at Dubai and in the said GPA, it was nowhere mentioned that

at the time of execution of the said GPA, the Complainants were present at Karnal.

(b) Secondly, he also averred that in the view of provision of section 3(2) of RERA Act, there is no jurisdiction of the authority as the area of the plot is 170.463 sq. mt. i.e. less than or minimum area of 500 sq. mt.

5. The respondent further denied that it is residential group housing project rather the plot No. O/B-198 was earmarked for independent floors in "CHD Paradiso Floors" at CHD city, Sector-45, Karnal. Haryana consisting of three floors (G+2) built on said plot having area approx. 200 sd.yds, so, no need to get registered as per RERA Act.

6. The respondent has further submitted that the complainant is under obligation and liable to pay a sum of Rs. 1,11,282/- including an amount of Rs. 43,600 towards IFMS, delay interest towards 7,732 and a sum of Rs 59,950/- towards holding charges along with interest as on 31.01.2019.

7. The respondent conceded that the possession was to be given in 24 months but due to severe slumps in the real estate market and demonetization, the possession was got delayed and the complainant is entitled to a reasonable compensation which is provided in Floor Buyer's agreement. The complainant is not entitled for any refund/interest/compensation because the offer of possession was already sent to him and the complainant has failed to take the possession.

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8. Before delving upon the merits of the case, the Authority will decide an objection raised by the respondent regarding maintainability of the complaint. The complainants have filed the above-mentioned complaint through Shri Sushil Bathla, to whom they have appointed as their attorney vide General Power of Attorney (GPA) dated 06.10.2018.

9. According to respondent, the complainants who were residing in UAE at Dubai, were not present in India on the day when the General Power of Attorney is shown to have been notarized by a notary public. It has been further submitted that the GPA ought to have been notarized in Dubai and GPA in question thus cannot be acted upon for any lawful purpose much less for filing a complaint before this Authority, through the alleged attorney.

10. It is nowhere the respondent's case that the GPA is not signed by the complainants and it bears forged signatures of the complainants. So, the Authority in the absence of such allegation will presume that GPA has been signed by the complainants. Further, the respondent has not produced any proof to establish that the complainants were not present in India on the date of execution of GPA. Still assuming for the sake of arguments that the complainants had signed the GPA in Dubai and it was subsequently notarized at Karnal, then in such eventuality, it can at the most be concluded that the GPA is not a properly notarized document. Such defect is purely technical and should not be used for dismissal of a



complaint before this Authority because the procedural laws are not strictly applicable to the proceedings before this Authority. This Authority has been created for redressal of the disputes between promoter and the allottees of the real estate project. The provisions of RERA Act casts a duty of the Authority to disposed of the case summarily without going into the technicalities of law.

11. In the present case, complainants vide a written document had authorized Shri Sushil Bathla to file complaint on their behalf. The complaint has also been filed by the person to whom they had so authorized. So, the complaint, which going by its contents, is filed for the benefits of the complainants, deserves to be disposed of on merits rather than dismissing it on the technical grounds.

12. Accordingly, the Authority will reject the objection raised by the respondent and will ~~not~~ proceed to disposed of the present complaint on merits.

13. The Authority has observed that the pleadings of the learned counsel of the respondent that the Authority does not have jurisdiction is not correct rather he had tried to mislead the Authority by quoting the provision of Section 3(2) as Floor no. O/B-GF-198, 2BHK+S is a part of larger colony and which is required to be registered as per provision of section 3^{1D} of the RERA Act.




As far as jurisdiction⁹ discharging of other obligation of the promoter are concerned, the jurisdiction issue had been deliberated and decided in **Complainant Case No. 144-2018 Sanju Jain Vs TDI Infrastructure Pvt. Ltd** and many other complainants. In nutshell, the promoter has to fulfill certain obligations towards allottees' as per provision of section 11(4). In case, there is any deficiency, then the RERA Authority has jurisdiction to adjudicate any matter being referred in complaint of the allottees against promoters. Therefore, there is no merit in the argument of the respondent that Authority does not have jurisdiction to adjudicate the case.


14. The Authority further observed that the respondent had not refuted the date of handing over possession i.e. 7.03.2017. whereas the respondent had offered the possession letter on 31.01.2018 but he had further apprised the Authority that the occupation certificate has been granted on 21.03.2018, meaning thereby the possession was offered without having valid occupation certificate. Therefore, the respondent is liable to pay the delay compensation from the deemed date of possession i.e. 07.03.2017 till he offered the actual possession after having occupation certificate and removal of other defects, if any, as alleged by the complainant and referred in Para 3 of the order. So, the case is disposed of and the respondent is directed to pay delay compensation to the complainants as per order passed by this Authority in a bunch of

petitions with the lead **Complaint Case No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd** and in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructure Pvt. Ltd.** as the logic and facts of the case are identical to those of afore said complaints. While offering possession he will also issue fresh statements of account to the allottees/complainants.

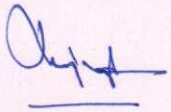
Disposed of. File be consigned to record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman

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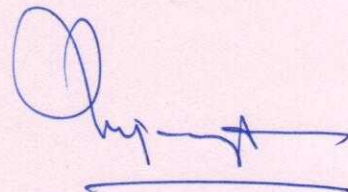


ORDER: (RAJAN GUPTA- CHAIRMAN)

1. In so far as the delay compensation is concerned, admittedly, the possession has been offered with a delay of 9 months. In real estate projects of this nature, delay of 9 months is quite reasonable as it could happen for several reasons. The respondents basically have discharged their responsibility of offering possession after construction of the project. The delay in completion of the project being reasonable, the delay compensation shall be awarded as agreed in clause 21 of the agreement which stipulate that in the event of delay the compensation shall be paid at the rate of Rs. 5 per Sq. Ft. of the super area per month.

2. Regarding second grievance relating to quality of construction and deficiency in services, the respondents are directed to carry out the requisite repair and maintenance works within a period of 3 months failing which the complainants will have again a right to approach this Authority for redressal of the grievance and to seek compensation for having not carried out the repairs and maintenance works of their apartment as well as of the colony.

I order accordingly,



(Rajan Gupta)
Chairman