

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

**Complaint No. : 999 of 2018**  
**Date of First  
Hearing : 08.02.2019**  
**Date of Decision : 13.03.2019**

Mr. Rajiv Kumar Dagar

Smt. Khazani Dagar

R/o- flat no. 45, The Palma, plot no. 138,  
Sector-6, Dwarka, New Delhi-110075

**Complainants**

Versus

1. Chief Administrator HUDA,  
Regd Office: Sector-6, Panchukla
2. Administrator HUDA  
Regd. Office- Sector-14, Gurugram
3. Estate Officer-I, HUDA  
Regd. Office- Sector-14, Gurugram

**Respondents**

**CORAM:**

Shri Samir Kumar

Shri Subhash Chander Kush

**Member**

**Member**

**APPEARANCE:**

Shri Vinay Pratap

Shri B.P. Gaur

Advocate for complainant

Advocate for respondent-HUDA



**ORDER**

1. A complaint dated 25.09.2018 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. Rajiv Kumar Dagar and Smt. Khazani Dagar, against the promoter Chief Administrator HUDA, Administrator HUDA and, Estate Officer-I, HUDA in respect of plot/unit described below in the project 'Urban Estate', on account of violation of the section 3 of the Act *ibid*.

2. Since, the sale deed has been executed on 06.10.2005 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the 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: -

1.	Name and location of the project	"Urban Estate", Sector-21, Gurugram
2.	Plot no.	320-M
3.	Registered/ un registered	un registered
4.	Total area of the allotted unit no.	349 sq. yards
5.	Date of sale deed	06.10.2005
6.	Total consideration amount as per the sale deed	Rs. 19,19,500/-



7.	Total amount paid by the complainant	<b>19,19,500/-</b>
8.	Date of delivery of possession	<b>Cannot be ascertained since no document attached</b>
9.	Delay for number of months/ years	<b>Cannot be ascertained since no document attached</b>
10.	Penalty clause	<b>Cannot be ascertained since no document attached</b>

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondents. A sale deed dated 06.10.2005 is available on record for the aforementioned apartment.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 08.02.2019. The case came up for hearing on 08.02.2019 and 13.03.2019.



### Facts of the complaint

6. Briefly stating the facts of the complaint, the complainants purchased a plot in the residential project "Urban Estate, Sector 21, Gurugram bears plot no.320-M, measuring 349 sq. yards in sector 21, Urban Estate, Gurugram, for which transfer permission was given by the respondent no.3. The complainants become the owners through sale deed.
7. The respondent no.3 issued re-allotment letter to the complainants for the above mentioned plot vide letter dated 28.11.2005. The complainants applied for a fresh building plan to the respondent no.3 vide application dated 24.12.2014 which was approved on 10.02.2015.
8. On 28.02.2015, the junior engineer of the HUDA department visited the site of the plot on the request of complainants to mark the dimensions of the plot so that construction of house can be started. After demarcation of the plot by the J.E of the respondents, when the contractor of the complainants started digging work in the plot, some persons from the adjacent colony entered the site and threatened the complainants to leave the area or face dire consequences as this is their plot and stop the construction work. The complainants showed them their property papers and permissions from respondents



but ignoring all the pleas of the complainants, more persons from the colony started to gather on the site. Fearing for the worst, the complainants stopped the construction work and left the place. Later on other house owners in the neighbourhood and members of RAW Sector 21, Urban Estate told the complainants that for the last 2-3 years they are requesting respondents for construction of wall between sector 21 and colony, because of the nuisance of these people. The complainants immediately contacted the officials of the respondents and informed them about the unfortunate incident.

9. The complainants submitted that they wrote a letter to the respondents about the incident in vivid detail and requested the respondents to ensure the physical demarcation and peaceful possession of their plot as it is responsibility of the respondents to provide peaceful physical possession of the above mentioned plot so that they would be able to start the construction for their home.

10. The complainants again wrote a letter to the respondents with information that the residents of the colony have started construction of an illegal passage/road on their plot and few more adjacent plots and requested the respondents to take



necessary action against the residents of the colony and to ensure the peaceful physical possession of his plot.

11. The complainants visited the office of respondents 14-15 times and waited for 7 months but the respondents took no action regarding possession of the plot as all requests and pleas fell on deaf ears and complainants were told orally by the officials of the respondents that they can't get them possession of the plot as there is lot of disturbance in the area by the colony residence. So seeing no solution of this problem, the complainant wrote a letter to the Chief Minister, Haryana narrating their ordeal how they have spent their hard earned money to get a home and the indifferent/careless attitude of respondents towards this problem. The complainants also requested for another plot of same size in same or different sector.

12. The complainants again wrote a letter to the Chief Minister Haryana as the respondents took no action on the grievances of the complainants and no effort was done by the respondents to provide peaceful physical possession of the above mentioned plot to the complainants despite the registration of representation of complainant in the CM Grievance Redress System Haryana Chief Minister Office.





13. The complainants received a letter dated 16.10.2017 from respondent no.3 informing that the matter regarding construction of wall in between their plot and other neighbouring plots and Chippi colony (Harijan Basti) is lingering on due to law and order situation in past due to which the possession of the complainant's plot cannot be delivered and also informed that the proposal for allotment of alternative plot has already been forwarded to the respondent no.2.

14. The complainant again wrote a letter dated 23.01.2018 to respondent no.1 requesting for allotment of an alternative plot. The complainant also specifically mentioned that they have paid all the requisite fees including extension fee, transfer fee, fresh building plan fee etc. and have got all the permissions from respondents and still they are unable to get the peaceful physical possession of the plot.

15. The complainants belongs to a middle class family and they have moderate sources of income and it was their dream to have own house for which the complainants paid their hard



earned money. The complainants are running from pillar to post for more than 3 years to get possession of their plot and they have even requested to the respondents that they are ready to take any other plot of same dimension in the same sector or any other sector of Gurugram in lieu of disputed plot but respondents have ignored every plea of the complainants, however the respondent no.3 himself admitted that the plot in question cannot be delivered due to law and order situation in the area.

#### 16. Issues raised by the complainants

- I. Whether the respondents are legally bound to handover the peaceful physical possession of plot as per the re-allotment letter?
- II. Whether there was any deliberate misrepresentation by the respondents, in regard to the plot at the time of allotment.



#### 17. Relief sought

- I. Direct the respondents to allot alternative plot of same size in same sector or in any other sector to the complainants, as promised by them.



- II. Direct the respondents to pay Rs.10,000/- per month from the committed date of possession i.e. date of approval of fresh building plan dated 10.02.2015 till the allotment of alternative plot.

### Respondent's reply

18. The respondent raised preliminary objections upon the maintainability of the complaint is baseless, on facts or in law, and is such liable to be dismissed at the threshold.
19. The respondent submitted that the present complaint is not maintainable before the authority and also devoid of any merits, which has been preferred with the sole motive to harass the respondents. In fact, the complainants are guilty "suppressio veri and suggestio falsi" and have in fact concealed the true facts about the subject matter.
20. The respondent submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract money from the respondents, hence the same is liable to be dismissed.
21. The respondent submitted that the complainants have preferred to file their complaint before the hon'ble authority



for adjudication of their complaint, however, the same is ought to be filed before the adjudicating officer as per section 71 of the RERA, 2016. It is submitted that is it not the duty of respondent to, deploy police force in protection of complainants as they had taken physical possession under care, supervision and demarcation of concerned staff of engineering wing of the respondent.

22. The respondent submitted that the relationship between the complainants and the respondents is governed by the document executed between them i.e allotment or possession letter etc. The plot in question was allotted to the complainants dated 12.04.2001 and the possession of the same was delivered on 05.06.2003. Thereafter, the building plan was duly sanctioned and approved on 10.02.2015 and accordingly the complainants had started raising the construction over the said allotted plot in question. At the time of raising of construction over the said plot, some of the unsocial elements of adjoining local private colony started to create nuisance with the complainants and the complainants had approached to the answering respondents for seeking the police aid. On the said request of the complainants, the respondents had got provided the police help under the supervision of Duty Magistrate on 05.06.2015 by way of letter



dated 18.05.2018 and the same kind of police help was again provided to the complainants on 04.02.2016. for further police help or protection the complainants are required to approach the proper authorities i.e the concerned police station.

23. The respondent submitted that the allotment and the possession letter as well as construction plan completed much prior to coming into force of the RERA Act, 2016 and the HARERA Rules, 2017, thus the complaint is liable to be dismissed.

24. The respondent contended that the bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents. The complainant is hopelessly time barred and thus, liable to be dismissed on this ground alone.

### Findings of the authority

25. The authority is of the view that the matter is of civil/criminal in nature as the plot has since been encroached upon by the authority and this authority has no jurisdiction to entertain this complaint. Accordingly, the complainant is advised to approach the appropriate authority/forum to get his grievances redressed.



26. The complaint is disposed of accordingly.

27. The order is pronounced.

28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

(Haryana Real Estate Regulatory Authority, Gurugram)

Date: 13.03.2019

Judgement Uploaded on 10.04.2019



HARERA  
GURUGRAM

