



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No.:- 1136 of 2020

Date of Institution:- 15.10.2020

Date of Decision:- 15.03.2022

Saurabh Bajpai, son of Shri Krishna Kumar Bajpai, resident of House No.771-B, Mahalaxmi Garden, Rajendra Park, Gurgaon, Haryana-122001

.....COMPLAINANT

VERSUS

1. M/s RPS Infrastructure Limited, Registered office at 1117-1120, 11th Floor, Tower-B, Jasola District Center, New Delhi-110025
2. M/s Wonder Infracon Pvt.Ltd., Registered office at FF-43A, Omaxe Square, Plot No.14, Jasola District Centre, New Delhi-110025

.....RESPONDENTS

Hearing: 21st

Present: Mr. Neeraj Bhagat, Advocate, Counsel for the complainant through VC
Ms Manpreet Kaur, Advocate and Mr. Tarun Singla, Advocate, Counsel for the respondent no.1 through VC
Ms Tanvi Gupta, Advocate through VC

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. The respondent no.1 had approached the complainant for entering into an assured return arrangement with the builder associate with respect to proposed investing in residential unit. The complainant had booked a unit no.B-04/PH-04/1202 for total sale consideration of ₹71,64,000/- consisting of super area 1791 sq.ft. situated at Tower Purple Hazal-8, unit no.B-04/PH-04-1202 in RPS City i.e RPS Infrastructure Limited, Sector 88, Faridabad, Haryana. After sometime, respondent no.1 had sold the said unit consisting of 3 Bedrooms to Prakash Chawla and Asheem Chawla, now residing in B-04/PH-04-1202 in RPS Savana project, sector 88, Faridabad, who are the registered owners of the said property. It is illegal act on the part of respondent no.1. The complainant had visited the site and was shocked to see that his property has been sold to other persons without any intimation to the complainant. Respondent no.1 has got executed registered sale deed in favour of Prakash Chawla and Asheem Chawla illegally. On 19.02.2020, the respondent no.1 to foreclose the housing loan, issued PDC bearing no.910140 dated 28.02.2020 for a sum of ₹55,00,000/- in favour of ICICI Bank, loan account belonging to the complainant. Because of financial crisis being faced by the respondent company, respondent no.1 requested the complainant not to present the cheque to the Bank. Because of previous relations, the complainant had accepted

the request of the respondent no.1 and extended time for two more months. In this series of events, the promoter had issued one more letter dated 24.02.2020 for extension of two more months till 15.04.2020 and issued another cheque bearing no.915096 of Oriental Bank of Commerce. Respondent no.1 is making excuses of financial crisis and requesting him not to present the cheque to the Bank. Respondent no.1 did not foreclose the above said housing loan. By way of the present complaint, the complainant has sought to summon, prosecute and punish the respondent and also direct the respondent to pay the double the amount paid as total consideration along with interest from the date of booking along with litigation charges and harassment amount.

2. Upon notice, respondent no.1 appeared and filed written statement taking preliminary objections that the contents of the complaint are inconsistent and incorrect. The complaint is not maintainable as the complaint does not disclose contravention of any provision of Real Estate (Regulation & Development) Act 2016. The completion/occupancy certificate of the unit was issued by the concerned authority on 07.10.2016 and the possession of all the units in the said tower, in which the unit in dispute is situated, had been offered in the month of October 2016 which is much prior to coming into force of RERA Act 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017, thereby negating the applicability of the Rules on the subject matter. Respondent no.1 had cancelled the allotment of unit in question vide cancellation letter dated 05.01.2017 and the

complainant is left with no right or interest in the unit in question. The complainant has ceased to be an allottee on the date of institution of the complaint. The complainant had concealed the fact that he had entered into a MOU with M/s Wonder Infracon Private Limited with an understanding as to sale of the unit in favour of M/s Infracon Private Limited for a premium of ₹1 lakh. On this ground also, the complaint deserves dismissal. Since the complainant has ceased to be an allottee on the date of institution of instant complaint, he has no authority and competence to invoke jurisdiction of RERA Authority, Panckhkula. Since the complainant has suppressed the fact of assigning his rights to a third party, the complaint suffers from a material suppression of fact. The dispute, if any, between the parties is of settlement of accounts inter-se the parties, it cannot be a lis before this Court for adjudication. It is to be decided by invoking the arbitration clause in buyer's agreement. Section-8 of Arbitration & Conciliation Act provides key to the dispute resolution between the parties. Another remedy available to the complainant is in terms of section 89 of CPC. It is a settlement of dispute outside the Court and if at all, it is not feasible, then in tune with provisions of section-9 of CPC. He may file a civil suit since there is arbitration clause-53 in the buyer's agreement, filing of civil suit by the complainant would be countered by the respondent with an application under section-8 of Arbitration & Conciliation Act 1996. Remedy left with the complainant is to go in for arbitration invoking arbitration clause-53 of the buyer's agreement. Being purely a dispute of settlement

of accounts, both the parties raising claim against each other and many things having been put forth by the respondent. It is entirely a civil suit having no connection with RERA Act & Rules. Complainant has not come to the Court with clean hands and has concealed the material facts. No cause of action has arisen in favour of the complainant. The present complaint is misconceived and baseless and is liable to be dismissed with exemplary costs. Complainant is estopped by his own act, conduct and acquiescence to file the present complaint. The complainant does not come within the purview of definition of the term "allottee". The letter of cancellation has been acted upon, hence the complainant is not entitled to raise the issue. This Court can adjudicate upon only such complaint which can be decided in summary manner, whereas present complaint involves the mixed and complicated questions of laws and facts as such the claim raised and allegations made in the complaint cannot be proved by mere affidavits and interrogatories and cannot be adjudicated upon by this Court. The relations of the complainant with the respondent no.1 are only contractual and both the parties are having reciprocal obligations against each other. The tactics adopted by the complainant are malafide and for unjustly enriching himself by making frivolous and bogus allegations. The present complaint is based on completely false, frivolous and baseless allegations. The complainant intends to extract money from the respondent unlawfully in the garb of present complaint. The respondent reserves its right to claim damages from the complainant for dragging it into false and frivolous proceedings and also for

damaging its goodwill and reputation. The complainant had booked the said unit under investment subvention scheme to make payments with respect to the said unit and to that effect, an agreement between complainant and respondent no.1 was executed. Complainant got loan sanctioned from ICICI Bank vide sanction letter dated 04.03.2015. As per terms of interest subvention scheme, respondent no.1 kept remitting the interest on housing loan taken by the complainant. As per terms of clause-13 and 50 of the buyer's agreement, respondent no.1 had to make an endeavour to give possession of the unit within 36 months from the date of execution of buyer's agreement excluding time taken in obtaining the approvals and sanctions from various authorities subject to force majeure circumstances and also subject to receipt of all the payments as per payment plan and other charges due and payable upto the date of offer of possession. Despite facing several odds in construction of the colony, respondent no.1 had completed the construction of said unit much prior to the date of delivery of possession stipulated under the buyer's agreement dated 28.04.2015. Occupancy certificate of the unit in question was issued on 07.10.2016. Instead of showing interest in taking possession of the unit, the complainant making false and frivolous allegations about the quality of construction and giving lame excuses of slowdown in market, applied for cancellation of allotment vide cancellation letter dated 05.01.2017. The respondent no.1 accepted the cancellation request of the complainant at such an advanced stage and asked the complainant to settle his cancellation terms by settling the

account between the complainant and the respondent no.1 so that refund of deposit could be processed as per agreed terms. As per clause 4 & 5 of buyer's agreement and terms of allotment, a sum equal to 15% of basic sale price and all the pre-EMI paid by the company is liable to be deducted from the amount deposited upon cancellation of booking. It was specifically understood and agreed by the complainant that refund would be processed after completion of all the formalities and also after further sale of the unit. Without intimating respondent no.1, the complainant had entered into a separate MOU with one finance company namely, M/s Wonder Infracon Private Limited on 25.05.2015 for resale of the said unit to the said finance company earning premium of ₹1 lakh by way of cheque no.051893 dated 25.05.2015. The said deliberate and intentional conduct of the complainant amounts to commission of illegal act against respondent no.1, whereby he created a third party interest in favour of M/s Wonder Infracon Pvt. Ltd. without giving any information and providing details about the same to respondent no.1. The complainant has no locus standi to maintain the present complaint. As per clause-5 of Agreement pertaining to interest subvention scheme, any modification, change, alteration in the property rights is permissible only with the written consent of both the parties, which, by reason of complainant entering into aforesaid unilateral agreement with a finance company has been negated and violated by the complainant. The said violation by the complainant renders him liable to refund all the pre-EMIs paid to the complainant/finance provider i.e. ICICI Bank on behalf

of the complainant to the respondent. The complainant did not pay any heed to several attempts made by the respondent no.1 to finalise the accounts to process the matter of refund. Despite the unit being complete, complainant did not come forward to finalise his accounts with respondent no.1. Under compelling circumstances, respondent no.1 had to sell the unit to Prakash Chawla and Asheem Chawla, who were initially arrayed as respondent no.2, at a loss of ₹24 lakh approximately. On one hand, the complainant is not coming forward to finalise his financial liability towards respondent no.1, on the other hand, he is settling his terms with finance company M/s Wonder Infracon Pvt. Ltd. with which the complainant has entered into an MOU for resale of the unit. Since the complainant has violated the terms of buyer's agreement, terms of interest subvention scheme and also of allotment, respondent no.1 is entitled to recover the losses, charges, damages and cost from the complainant, primarily which amounts to ₹24 lakh as also such amount towards earnest money i.e. equal to 15% of basic sale price and pre-EMI paid by the respondent directly to ICICI Bank as also through complainant, which are to be quantified and be claimed at an appropriate time. The dispute between the complainant and respondent no.1 is neither a demand against payment nor an unpaid debt due from respondent no.1 as has been wrongly averred by the complainant, rather it is a contractual liability between both the parties. It is denied that the complainant had booked the unit in any assured return arrangement. Neither there was any such arrangement as it is not reflected in any

of the documents executed between both the parties where the complainant had approached respondent no.1 to purchase the said unit and after acquiring complete details about the said colony i.e. RPS Savana and after having been fully satisfied by obtaining full knowledge by inspecting the relevant documents, the complainant had applied for allotment of residential unit. After considering the application form dated 28.04.2015 duly signed and submitted by the complainant, the unit bearing no.1202, Tower no.B-04 having approximate super area of 1791 sq.ft. subject to final measurement at the time of completion and offer of possession was provisionally allotted to the complainant vide allotment letter dated 28.04.2015 for basic sale price of ₹71,64,000/- calculated @ ₹4000/- per sq.ft. besides other charges, the requisite buyer's agreement dated 28.04.2015 containing terms and conditions was executed. Respondent no.1 has prayed for dismissal of the complaint.

3. Vide order dated 13.04.2021 passed by this Court, respondent no.2 M/s Wonder Infracon Pvt. Ltd. was impleaded as respondent no.2. Separate written statement has been filed by respondent no.2 taking preliminary objections with regard to maintainability of the complaint, this Court has no jurisdiction to try and adjudicate upon the present complaint. Respondent no.1 had cancelled the allotment of the unit of the complainant vide cancellation letter dated 05.01.2017, thereby the complainant is left with no right, title or interest in the unit. The complainant has ceased to be an allottee on the date of institution of the complaint.

The complainant has suppressed the true facts i.e. the fact of assigning his rights in favour of respondent no.2. Dispute between the parties is of settlement of accounts inter-se the parties, hence the same cannot be a lis before this Court. The complainant can go to some other forum having competent jurisdiction. The other remedy available to the complainant is in terms of section 89 of CPC. He can have the dispute settled by way of mediation, conciliation, Arbitration, Lok Adalat, etc. As per provisions of section-9 of CPC, the complainant is at liberty to file civil suit. The dispute between the complainant and the respondent no.2 is purely of settlement of accounts, i.e. of civil nature having no connection with Real Estate Regulatory Authority Act and Rules. The present complaint is misconceived, baseless and liable to be dismissed with exemplary costs. The complainant is estopped by his own act, conduct and acquiescence to file the present complaint. The letter of cancellation has been acted upon, hence the complainant is not entitled to raise the issue. The complainant has presented distorted and incomplete facts. The complainant had initially not impleaded the present respondent no.2 as respondent, though it was necessary party in the present complaint. The complaint suffers from mis-joinder and non-joinder of parties. Before respondent no.2, the complainant has represented that he had signed and executed the buyer's agreement with respondent no.1 i.e. RPS Infrastructure Ltd. for purchase of residential unit bearing no.PH-04-1202, RPS Savana, Sector 88, Faridabad for a sale consideration of ₹86,01,285/-. The complainant had further represented to

respondent no.2 that he has obtained a housing loan from ICICI Bank Ltd. against the said unit and got disbursement of ₹55,00,000/-. The complainant further represented respondent no.2 that he has made a payment of ₹13 lakh as sale consideration for the said unit in favour of respondent no.1. Believing the representation and assurance made by the complainant as true, the respondent no.2 agreed to purchase the said unit at a premium of ₹1 lakh and signed an agreement to this effect with the complainant. Respondent no.2 had remitted a sum of ₹1 lakh vide cheque dated 25.05.2015 as premium amount in favour of the complainant against the said unit. Respondent no.2 has disbursed the amount of ₹1 lakh vide cheque no.051893 dated 25.05.2015 in favour of complainant. As per agreement entered into between the complainant and respondent no.2, the complainant had agreed to assign his rights and interest in the said unit in favour of respondent no.2. In lieu of that, the complainant has already collected an advance of ₹1 lakh. Respondent no.2 holds a valid and legal right, title and interest in the said unit pursuant to the complainant transferring his rights in the said unit. Complainant is duty bound to fulfil his contractual obligations. Instead of complying with stipulations of agreement entered into between the complainant and respondent no.2, the complainant wilfully, maliciously and with ulterior motive defaulted his terms of allotment which resulted in cancellation of allotment of unit by respondent no.1. Without informing respondent no.2, complainant applied for surrender of allotment of said unit to respondent no.1 and sought refund of his amount deposited

with respondent no.1 against the said unit. The wilful, malicious, deceitful, illegal and unlawful act of the complainant has adversely affected the interest of respondent no.2. On one hand, the rights and interest in respect of said unit have not been transferred in favour of respondent no.2 by the complainant and on the other hand, money received by the complainant against the said unit has not been refunded to respondent no.2 after cancellation. Respondent no.2 has been cheated by the complainant. Act of the complainant has caused intentionally huge monetary loss to the respondent no.2 but this conduct of the complainant has dragged respondent no.2 into unwanted litigation. Respondent no.2 is entitled to recover the money paid to the complainant which primarily comes to ₹1,00,000/- along with interest @ 18% per annum till realisation. Dismissal of the complaint has been prayed along with exemplary costs.

4. Rejoinder to the written statement by respondent no.1 was filed by the complainant denying all the averments made by the respondent and reiterating the averments made in the complaint that the respondent no.1 was required to give possession of the allotted unit bearing no.PH-04-1202 to the complainant within 36 months from the date of execution of buyer's agreement. Respondent no.1 is admitting its default and it had issued letter for cancellation of allotment rights of the said unit and issued PDC in favour of ICICI Bank Ltd. loan account of the buyer. Respondent no.1 is liable to give its own contribution along with interest, harassment and litigation charges. Default has been committed by the respondent

no.1 by selling the property in favour of Prakash Chawla and Asheem Chawla and information not being communicated to the lending Bank. Respondent no.1 has committed serious offences of breach of trust, cheating, forgery and fraud. In this manner, the complaint is maintainable. If the promoter fails to discharge his obligation imposed on him under the Act or Rules or Regulations made thereunder in accordance with terms and conditions of agreement for sale, he shall be liable to pay compensation to the allottee. It is denied that in the year 2017, the respondent no.1 has sold the unit to Prakash Chawla and Asheem Chawla. Respondent no.1 has invoked the builder buyer agreement and also tripartite agreement. In February 2020, respondent no.1 had issued cancellation letter along with cheque in favour of loan account. Respondent no.1 has used the amount of complainant with malafide intention till date. The respondent no.1 has forged letter for cancellation dated 05.01.2017 placed on record as Annexure-4. The complainant had never seen and signed the said letter. The signatures affixed on the said letter are forged and do not match with the original signatures of the complainant. The Court can check the signatures affixed on said letter Annexure-4, on Builder Buyer Agreement and on Tripartite Agreement. With bare eyes, it can be revealed that signatures on these documents i.e. Builder Buyer Agreement and Tripartite Agreement are different from signatures on Annexure-4. The Court can cross verify the signatures of the complainant. The criminal act of respondent no.1 attracts invoking of section 465 and 467 of Indian Penal Code. In these

circumstances, there is no possibility of arbitration proceedings. The Act of the respondent no.1 has spoiled the image and values of the complainant in the society. The respondent no.1 has committed breach of trust of the complainant. The money deposited by the complainant with respondent no.1 has been misused by respondent no.1 and it has also earned money by selling the unit in favour of Prakash Chawla and Asheem Chawla. The respondent no.1 could not sell the mortgaged property to anyone without permission of the complainant and lender Bank. The complainant is lawful owners of the property in dispute. Respondent no.1 is associate of M/s Wonder Infracon Pvt. Ltd. respondent no.2 with which the complainant has entered into Memorandum of Understanding. Memorandum of Understanding is made to sign for peaceful resolution till the foreclosure of home loan and other charges. Respondent no.1 had never informed the Bank from where the housing loan was availed by the complainant against property in dispute. It was the liability of the respondent no.1 to pay EMI till possession of the property was handed over to the complainant. Respondent no.1 has committed an offence under section 415 and 420 of Indian Penal Code by selling the property to Prakash Chawla and Asheem Chawla without consent of the complainant. Respondent No.1 had never approached the complainant to settle the account. Rather when the complainant had visited the property in dispute in the year 2018, the complainant came to know about the fraud committed by respondent no.1. The factum of MOU having been signed by the complainant with associate of respondent no.1 has been

deliberately concealed by respondent no.1 in its written statement. It is denied that respondent no.1 has initially paid the instalment to Axis Bank (wrongly written as Axis Bank, it should be ICICI) from its account and it was the private treaty signed between the complainant and respondent no.1. It is for this reason that the respondent no.1 kept paying EMI to Axis Bank (ICICI is correct) from its own account. The complainant has prayed for allowing the complaint and awarding compensation.

5. Separate rejoinder to written statement filed by respondent no.2 was filed by the complainant. Controverting the allegations made by respondent no.2 and reiterating the averments made by the complainant in complaint, it is denied that respondent no.2 is having legal title in the unit, which was already sold by the respondent no.1 to the complainant. If payment made by the complainant is not given back to him by respondent no.1 and 2, the complainant would move an application for cancellation of sale deed executed by respondent no.1 in favour of Prakash Chawla and Asheem Chawla. The complainant has prayed for awarding compensation, litigation charges, capital interest and compensation for continuous mental harassment.

6. Arguments raised by ld. counsel for all the parties have been carefully heard along with meticulous examination of the records of the case.

7. At the outset, it has been argued by Id. counsel for complainant that he had booked unit no.PH-04-1202 measuring 1791 sq.ft. super area situated at Tower-Purple Hazal-8 in RPS Savana, sector 88, Faridabad for a total sale consideration of ₹86,01,285/-. It was an assured return arrangement with respondent no.1. Out of the total sale consideration, the complainant had paid ₹7,00,000/- + ₹6,00,000/- on 28.04.2015. He had got sanctioned loan of ₹55 lakh from ICICI Bank. It was agreed that the respondent no.1. will foreclose the said housing loan. Tripartite Agreement was entered into between the complainant, ICICI Bank and respondent no.1. Basic sale price was ₹71,64,000/-. Builder buyer agreement was executed between the complainant and respondent no.1 on 28.04.2015. Instead of offering possession to the complainant, the respondent no.1 has forged a letter dated 05.01.2017 showing that the complainant Saurabh Bajpai had written to respondent no.1 for cancellation of the unit. In fact, the respondent no.1 wanted to resale the said unit. After fabricating request for cancellation of the unit on behalf of the complainant, the unit was cancelled from the name of the complainant. On 24.04.2017, it was sold to Prakash Chawla and Asheem Chawla, who are in possession of the said unit since then. The respondent no.1 had sold unit without prior consent of the complainant and thereby has committed fraud upon the complainant. The complainant was not even informed about the execution of conveyance deed in favour of Prakash Chawla and Asheem Chawla and also handing over physical possession to him. Later on, on 19.02.2020, a post-dated

cheque dated 28.02.2020 for a sum of ₹55,00,000/- was issued by the respondent no.1 in favour of ICICI Bank loan account. Though the cheque was issued, the respondent no.1 requested the complainant not to present the said cheque for at least two months because of financial crisis. Since the complainant was having cordial relations with respondent no.1, the request of respondent no.1 was acceded to by him. After two months, there was another request for extension of two more months. Another cheque in the sum of ₹55,00,000/- dated 31.08.2020 was issued by respondent no.1 in favour of ICICI Bank loan account. Now the respondent no.1 has foreclosed the loan of ICICI Bank. The counsel for the complainant has argued that even after payment of ₹13,00,000/- to the respondent no.1 till 28.04.2015, possession was not handed over to the complainant. The complainant had never written any letter to respondent no.1 to cancel the unit. The signatures on the cancellation letter dated 05.01.2017, placed on record as Annexure-R4 are not the signatures of the complainant. Rather after forging request for cancellation of the unit, it has been resold to Prakash Chawla and Asheem Chawla. The complainant has suffered mental agony and harassment at the hands of respondent no.1 for all these long eight years. Along with compensation, the complainant has sought cost of litigation and has also requested to prosecute respondent no.1 for cheating and forgery committed by him.

8. To rebut the arguments of ld. counsel for the complainant, it has been argued by ld. counsel for respondent no.1 that the complainant has sold his rights in the unit in the project of respondent no.1 to respondent no.2 after taking ₹1 lakh as premium taken in advance for selling the unit. It was only after receiving request for cancellation of unit from the complainant on 05.01.2017, unit no.PH-04-1202 was cancelled in favour of Saurabh Bajpai and was re-allotted to Prakash Chawla and Asheem Chawla on 20.02.2017. Conveyance deed in favour of Prakash Chawla and Asheem Chawla was executed on 24.04.2017. The complainant has wrongly alleged that his signatures are not there on letter dated 05.01.2017 requesting the respondent for cancellation of the unit. False report has been procured by the complainant. Now cheque dated 31.08.2020 in the sum of ₹55,00,000/- has been issued in favour of ICICI Bank loan account by respondent no.1 and the loan in favour of complainant has been foreclosed. There is no right of the complainant in the said unit. After relinquishing his right in the project of respondent no.1, the complainant is no more an allottee and has no right to file the present complaint and it is not maintainable. It has further been argued by ld. counsel for respondent no.1 that when the unit no.1202, in the project of respondent no.1 has already been sold by the complainant after taking ₹1 lakh from respondent no.2, the complainant has not suffered any mental agony or harassment. Ld. counsel for respondent no.1 has prayed for dismissal of the complaint.

9. To controvert the arguments of ld. counsel for the complainant, it has been argued by ld. counsel for respondent no.2 that the complainant had taken ₹1 lakh as premium in consideration of having sold his unit no.PH-04-1202 in the project of the respondent no.1 to respondent no.2. In pursuance to the transfer of rights by the complainant in the said unit in favour of respondent no.2, a Memorandum of Undertaking (MOU) was executed between the complainant and respondent no.2. Vide said MOU, all the rights in unit no.PH-04-1202 in the project of respondent no.1 were to be transferred in favour of respondent no.2. Another MOU was entered into between the complainant and respondent no.2 on 30.07.2019 and the terms and conditions of the previous MOU dated 25.05.2015 were extended upto 30.11.2019. Respondent no.2 was not aware that the complainant had written a letter to respondent no.1 for cancellation of the unit in his favour. Respondent no.2 was also not aware of about the re-allotment of the said unit in favour of some other persons i.e. Prakash Chawla and Asheem Chawla by respondent no.1. The complainant had intentionally not impleaded M/s Wonder Infracon Pvt. Ltd. as party at the time of filing of complaint. This fact was intentionally concealed from the Court that the unit which was purchased by the complainant was sold to respondent no.2 after taking premium amount of ₹1 lakh. Complainant has again entered into second MOU with respondent no.2 even when the unit stood transferred to some other persons. There is no connection between respondent no.1 and respondent no.2. The counsel for the complainant has wrongly

argued that one of the Directors of RPS Infrastructure Ltd., respondent no.1 is also Director of M/s Wonder Infracon Pvt. Ltd., respondent no.2. Ld. counsel for respondent no.2 has prayed for dismissal of the complaint filed by complainant.

10. It is not disputed that the complainant had booked a unit bearing no. PH-04-1202 measuring super area of 1791 sq.ft. situated at Tower-Purple, Hazal-8 in RPS Savana, Faridabad in the project of respondent no.1 and he was allotted unit no.PH-04-1202. It is also not disputed that application dated 28.04.2015 for allotment of unit in the project of respondent was presented by the complainant, copy of which has been placed on the record as Annexure-R8 by ld. counsel for respondent no.1. Annexure R9 is the copy of allotment by respondent no.1 in favour of the complainant on 28.04.2015. It is pertinent to mention here that amount paid by the complainant has not been mentioned in the said allotment letter at Annexure-R9. Total cost of the unit was ₹86,01,285/-. Basic sale price was ₹71,64,000/-. On 28.04.2015, builder buyer agreement was entered into between the complainant and respondent no.1, copy of which has been placed on record by ld. counsel for the complainant. As per builder buyer agreement, possession of the unit was to be delivered within 36 months from the date of entering into builder buyer agreement i.e. till 28.04.2018. The complainant wanted to raise loan of ₹55 lakh from ICICI Bank. Before sanctioning of loan in favour of complainant, Tripartite Agreement was entered into between the complainant,

respondent no.1 and ICICI Bank on 03.03.2015. Loan of ₹55 lakh was sanctioned by ICICI Bank. Copies of receipts dated 28.04.2015 show that the complainant had paid a sum of ₹7 lakh and ₹6 lakh, total ₹13 lakh to respondent no.1.

11. After entering into builder buyer agreement with respondent no.1, the complainant was in touch with M/s Wonder Infracon Pvt. Ltd., respondent no.2. Copy of statement of account of Saurabh Bajpai, the present complainant has been placed on record by Id. counsel for respondent no.2 at Page-17 of reply by respondent no.2. The complainant got sanctioned loan of ₹55 lakh from ICICI Bank. The complainant had allegedly entered into MOU with respondent no.2 on 25.05.2015, copy of which has not been placed on record. Signatures on the said MOU dated 25.05.2015 have been denied by the complainant stating that on the said document also, the signatures of complainant are not present and have been forged and said MOU has been fabricated by respondent no.2. Vide order dated 03.08.2021 passed by this Court, when complainant had disputed his signatures on said MOU, he was given liberty to get compared the allegedly disputed signatures on MOU dated 25.05.2015 with his admitted signatures from some Government agency. However, no such attempt has been made to get compared his allegedly disputed signatures on MOU. Since the complainant did not get compared his allegedly disputed signatures, presumption is drawn against the complainant that he had signed MOU and entered into the said agreement with respondent no.2. The complainant had gone further and took ₹1 lakh from M/s Wonder Infracon Pvt.Ltd.

respondent no.2 on 25.05.2015 as premium for selling his rights in the unit no.PH-04-1202 in the project of respondent no.1. The copy of ledger account in books of respondent no.2 and in favour of Saurabh Bajpai, complainant placed on record as Annexure-R2/3 shows that on 25.05.2015, a sum of ₹1 lakh was paid by respondent no.2 to the complainant. Though the complainant has disputed his signatures on MOU dated 25.05.2015, but he has not disputed the amount of ₹1 lakh taken by him from respondent no.2, which has been proved by respondent no.2 by placing on record the ledger account of Saurabh Bajpai in the books of respondent no.2 M/s Wonder Infracon Pvt. Ltd. Copy of cheque dated 25.05.2015 in the sum of ₹1 lakh in favour of Saurabh Bajpai has been placed on record as Annexure-R2/3. It is also worthwhile to point it out here that there is another MOU dated 30.07.2019 between the complainant and respondent no.2 but the complainant has not denied his signatures on the said MOU which had extended terms and conditions of previous MOU till 30.11.2019, meaning thereby that the complainant has disputed his signatures on first MOU with respondent no.2 for the sake of disputing it and denying any connection with respondent no.2. Even after entering into MOU by the complainant with respondent no.2 for sale of his unit in favour of respondent no.2, it was never brought to the notice of respondent no.1 that he has sold his rights in unit no.PH-04-1202 in favour of respondent no.2. As per averments of respondent no.1, on 05.01.2017, the complainant Saurabh Bajpai had written to respondent no.1 for cancellation of his unit. The copy of said letter has

been placed on record as Annexure-R4 by ld. counsel for respondent no.1. The complainant has disputed his signatures on the said document. In the rejoinder filed by the complainant, the complainant has repeatedly mentioned that his signatures are not present on Annexure-R4 letter dated 05.01.2017 and respondent no.1 had forged his signatures. The complainant has also alleged that respondent no.2 has forged his signatures on MOU dated 25.05.2015 and fabricated the said document. The reply of respondent no.1 was filed on 09.11.2020. The said document has been attached with the reply by respondent no.1 since then. The reply of respondent no.2 was filed on 23.06.2021 and the document MOU dated 15.05.2015 has been attached with the reply of respondent no.2 since then. Later on, the complainant got compared his signatures on the letter dated 05.01.2017 from one private document expert and copy of report has been placed on the record. It is the report from a private document expert. It is general practice that a private document expert gives report in favour of the person who hires his services. The complainant was directed to get compared the disputed signatures on MOU dated 25.05.2015 from some Government forensic laboratory, which he did not. Though there is no contra report in favour of respondent no.1, yet much authenticity cannot be attached to the said report for the reasons stated above. So far as signature on MOU dated 25.05.2015 are concerned, though the complainant has disputed his signatures on this document also, despite giving opportunity to compare allegedly

Sareeta Gupta

disputed signature from some Government agency, the complainant did not get compared those signatures.

12. On one hand, the complainant has entered into builder buyer agreement on 28.04.2015 with respondent no.1 and on the other hand, the complainant has entered into MOU with respondent no.2 on 25.05.2015, only after one month of entering into builder buyer agreement with respondent no.1 for sale of his rights in the unit of respondent no.1. It is apparent that the complainant was playing double game both with the respondent no.1 as well as with respondent no.2. He did not inform the respondent no.1 that he had sold his rights in the unit of respondent no.1 to respondent no.2 after taking ₹1 lakh as premium. He did not inform the respondent no.2 that he had sent written request to respondent no.1 for cancellation of the unit and said unit already stood sold to some other person. Though for the sake of arguments, it is presumed that no such cancellation letter was written by the complainant to respondent no.1, yet it is apparent on the record that on 20.02.2017, unit no.PH-04-1202 was re-allotted to Prakash Chawla and Asheem Chawla by M/s RPS Infrastructure, respondent no.1 and conveyance deed in their favour was executed on 18.04.2017. After issuance of allotment letter and execution of conveyance deed in favour of Prakash Chawla and Asheem Chawla, possession was handed over to them and it is also the case of complainant that Prakash Chawla and Asheem Chawla were in actual physical possession of the unit. It has specifically been mentioned in para no.4 of the complaint. It was in

these circumstances that Prakash Chawla and Asheem Chawla were initially arrayed as respondent no.2. Later on application was filed by Prakash Chawla and Asheem Chawla to delete their names, which was allowed vide order dated 04.03.2021 passed by this Court. The complainant kept concealed all the proceedings with M/s Wonder Infracon Pvt. Ltd., respondent no.2 from respondent no.1. Intentionally concealing the said facts from the Court, simply stating in the complaint that after fabricating and forging the letter dated 05.01.2017 for cancellation of the unit, the respondent no.1 has sold the unit in favour of Prakash Chawla and Asheem Chawla. Even after coming to know about the re-allotment of unit in favour of Prakash Chawla and Asheem Chawla and also execution of sale deed in their favour on 18.04.2017, the complainant entered into second MOU with respondent no.2 M/s Wonder Infracon Pvt. Ltd. on 30.07.2019 stating that the terms and conditions of MOU dated 25.05.2015 were extended upto 30.11.2019. The respondent no.1 was kept in dark about the transaction with respondent no.2 and respondent no.2 was kept in dark with regard to execution of conveyance deed of unit no.PH-04-1202 in favour of Prakash Chawla and Asheem Chawla. Since the complainant wanted to conceal writing a letter of request to respondent no.1 for cancellation of unit from respondent no.2, he disputed his signatures on letter dated 05.01.2017 alleging that his signatures have been forged by respondent no.1. The complainant wanted to conceal entering into MOU dated 25.05.2015 with respondent no.2 from respondent no.1, he disputed his signatures on MOU dated

25.05.2015 alleging that his signatures were forged on the said document by respondent no.2. On 15.10.2020, the present complaint was filed stating therein that the possession of the unit was to be delivered within 36 months i.e. upto 28.04.2018 but the conveyance deed has been executed in favour of Prakash Chawla and Asheem Chawla. It is the complainant who is misusing the process of the Court. The complainant has failed to show as to how he was aggrieved and how he had suffered mental agony and harassment particularly when he had himself entered into MOU to sell his own unit in the project of the respondent no.1 in favour of respondent no.2. The complainant has stated in para no.2 of the complaint that the respondent had approached the complainant for entering into an assured return arrangement with respondent no.1. There is no such arrangement proved on the record. On the other hand, the respondent no.1 has stated in his reply that it was Interest Subvention Scheme. Copy of builder buyer agreement dated 28.04.2015 also shows that it was Interest Subvention Scheme and interest of EMI for 18 months was to be paid by respondent no.1. In para no.5 of complaint, it has been written that one day, the complainant had visited the site of property and was surprised and shocked to see that his property has been sold to some other persons without any intimation to the complainant. Though there is no limitation to file the complaint before this Court, yet very vaguely it has been mentioned that one day the complainant visited the site. In the relief clause, it has been prayed to summon, prosecute and punish the respondent and also direct the **accused** to pay the amount

as double the amount paid as total consideration along with interest. It needs to be clarified here that this is Civil Court and the opposite party is not an accused before this Court, it is the respondent, who cannot be summoned, prosecuted or punished as an accused in civil proceedings. The complainant has also disputed his signatures on MOU dated 25.05.2015 with respondent no.2. The complainant was himself concealing the true facts from the Court as well as from both the respondents.

13. Now, the question arises as to whether the complainant is competent to institute the present complaint seeking compensation for mental agony and harassment. It is not disputed that initially unit no.PH-04-1202 was allotted in favour of the complainant and builder buyer agreement was executed on 28.04.2015. Allotment in favour of complainant was made on same day i.e. 28.04.2015. Possession was to be delivered within 36 months i.e. upto 28.04.2018. Whether till 28.04.2018 the complainant was making payments of remaining amount or was in fact waiting for the possession to be delivered. Undisputedly on 28.04.2015 complainant had paid ₹7 lakh and ₹6 lakh to respondent no.1. The complainant entered into an MOU with M/s Wonder Infracon Pvt. Ltd. respondent no.2 on 25.05.2015 and he took ₹1 lakh as premium from respondent no.2, M/s Wonder Infracon Pvt. Ltd. in consideration of having sold his rights in unit no.PH-04-1202 in the project of respondent no.1. Even if it is presumed for the sake of arguments that the complainant had never written to respondent no.1 for

cancellation of his unit in the year 2017, it is proved on record that he sold his rights in the unit no.PH-04-1202 in favour of respondent no.2 in the year 2015. After selling his rights in the said unit, he was left with no right in unit no.PH-04-1202 in the project of respondent no.1. He ceased to be an allottee of the said unit. To knock the door of RERA Court either for seeking possession or refund or compensation, the relationship between the complainant and the respondent must be of allottee and the promoter. With entering into MOU for sale of his unit in favour of respondent no.2 M/s Wonder Infracon Pvt. Ltd., the complainant is no more allottee of respondent no.1. Since he is not an allottee of M/s RPS Infrastructure Ltd. respondent no.1, he has no locus standi to file the present complaint seeking compensation for mental agony, harassment and litigation charges. He has also sought relief to pay double the amount by respondent no.1 to the amount paid by him. It has been admitted by him that loan of ₹55 lakh from ICICI Bank has been foreclosed. A cheque in the sum of ₹55,00,000/- dated 31.08.2020 has been issued by respondent no.1 in favour ICICI Bank loan account. Neither the complainant is an aggrieved person nor he has suffered any mental agony or harassment. He has ceased to be an allottee of respondent no.1 and has no right to institute the present complaint. Rather he has misused the machinery of the Court, concealed true and the material facts from the Court and has also wasted the precious time of the Court.

14. With these observations, the complaint is ordered to be dismissed with a cost of ₹5000/- to be deposited in the account of Hon'ble Authority.

15. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

15.03.2022

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 29 pages (twenty nine pages) and all pages have been checked and signed by me.

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

