



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA
Website: www.haryanarera.gov.in

COMPLAINT NO. 1416 OF 2020

Naman Kumar and Mayank Kumar

...COMPLAINANT

VERSUS

Zion Promoters and Developer Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 02.03.2022

Hearing: 11th

Present: Mr. Mahesh Kumar Ld. counsel for the complainant in through VC.

Mr. Neeraj Goel, Learned counsel for the respondent through VC.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Perusal of record files reveals that Complainants booked a flat Unit No. S4-801 in Tower S-4 in "Stonecrop II" project sector 89 faridabad on 24.03.2007 by paying a booking amount of Rs. 5,00,000/- (five lacs only) under construction linked payment plan. Allotment letter for the same was issued by

the respondent on 28.11.2008 and Flat Buyer Agreement was executed on 28.11.2008. As per clause 2.4, the Flat Buyer Agreement delivery of flat was to be made within a period of 36 months from the date of commencement of the construction of said complex. It is further submitted by complainant that construction commenced before the booking of the unit. Therefore the deemed date comes out to be 23.03.2010. Complainants have made payment of Rs.Rs. 28,09,037/- against total sale consideration of Rs.28,20,250/- till 08.02.2011 and also submitted that they have paid all installments as per demand raised by respondent and are further ready and willing to pay the balance amount if any, computed and found payable after taking into consideration. After a delay of 10 years, the respondents had sent offer for fitouts of flat on 05.08.2020 but the letter was delivered with a delay of more than 2 months on 21.11.2020 due to incorrect address. It is further averred by the complainant that offer for fit out possession is not a valid offer in absence of occupation/completion certificate. However, considering the offer for fit out possession, complainant had visited the project site and were shocked to see that neither the unit is complete nor the project. Complainants have attached photographic evidence in the complaint file to further substantiate his averrement, that the project is not yet complete.



Following deficiencies have been observed by the complainant during site visit on 25.11.2020;

(i) No regular electric connection has been taken from DHBVNL or any authorized agency of Haryana Government till date.

(ii) No water supply connection has been taken from the authorized agency till date.

(iii) Water storage tank does not exist at site.

(iv) Sewer connection has not been taken from the authorized agency and No sewerage Treatment Plant has been installed at site.

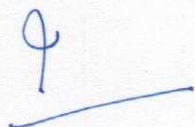
(v) Fire safety approval has not been taken from the competent authority, etc.

2. Complainants have further averred that cost of the unit has been increased by 34% approximately, at the time of receipt of final statement of accounts attached with the offer for fit out possession. Also, averred that respondent has

made illegal demands on account of electricity, VAT & GST etc. which he is not liable to pay because delay was caused by respondent. Further deemed date of possession was 23.03.2010 whereas GST was introduced in 2016.

The complainant has approached the Authority seeking relief of refund.

3. The basic case of the respondent company is that they had purchased rights for developing project on a land measuring about 2.28 lac Sq.ft. from M/S Ferrous Infrastructure Pvt. Ltd. in term were a part of the another licensee company named M/s Triveni Ferrous Infrastructure Pvt. Ltd. Further, relationship of M/s Ferrous Infrastructure Pvt.Ltd.and other partner companies of the licensee company M/s Triveni Ferrous Infrastructure Pvt.Ltd. have gone sour and are in serious litigation. Complex litigation is going on between the licensee company and subsequent successor companies. The respondent herein is a purchaser of development rights from one of the successor companies of the licensee company. Therefore, respondent has also got caught in the disputes between licensee company and the successor companies, as a result of which is not in a position to obtain occupation certificate of the project. The respondent has referred to several orders passed by Hon'ble Supreme Court, High Court as well as by this Authority in which disputes between successor companies of the



licensee company are being tried to be resolved. The respondent, however has not said anything about their own legal competency to develop the project and whether they could be recognised as lawful promoters of the project and whether they have been so recognised by licensing department i.e. Town and country planning department of the state government.

4. The Authority after consideration of the matter has arrived at the following conclusions:

(i) The facts of Builder-Buyer Agreement having been executed and consideration amount paid by complainant to respondent company are admitted.

(ii) As per law, an individual or a firm or a company could commence development of a real estate project only after getting authorization in form of proper licence from Town & Country Planning Department or Urban Local Bodies, as the case may be. A promoter of a project has to have a proper lawful authorisation from the department concerned of the State Government to be able to develop a colony.



In this case the respondent-promoter had purchased development rights from M/s Ferrous Infrastructure Pvt. Ltd. without obtaining any approval or endorsement from competent authority i.e. Town & Country Planning Department.

(iii) It is noteworthy that when M/s Ferrous Infrastructure Pvt. Ltd. had sold development rights for about 2.28 lac Sq.ft. to the respondent company, the rights of seller M/s Ferrous Infrastructure Pvt.Ltd. themselves were not licensees of the project or their rights were recognised by the competent authority i.e. Town and Country planning department.

(iv) Authority is seized of this matter in its project jurisdiction. The original licensee company license M/s Triveni Ferrous Infrastructure Pvt. Ltd. had irregularly and unauthorisedly had sub divided their licence amongst five companies without any express approval of competent Authority of the State Government. Disputes in that regard are still pending and are being sought to be resolved by this Authority. Certain orders in the matter have also been passed by Hon'ble Supreme Court.

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Said dispute however, has not yet been resolved, and may take in determinate a period of time.

(v) It is all the more serious that M/s Ferrous Infrastructure Pvt. Ltd, who themselves were not properly competent to develop their project, further sold a portion of that project to the present respondent. The present respondent is nowhere in picture. They have not been recognised by the department as authorised developer of the project. Not even an application for consideration for their recognition as developer is pending with the State Government.

Therefore, future of the allottees of project of the respondent company is uncertain and nobody knows what direction this complex pending disputes will take in future.

Whether project of respondent company will eventually be approved or made authorised remains uncertain. It is uncertain whether the project of the respondent will be able to get occupation certificate.

(vi) Be that as they may, the fact remains that the project in question is already delayed by more than 10 years. It is unlikely to



receive occupation certificate in the foreseeable future. The ongoing litigation in respect of overall project will take some time to resolve. The Authority, therefore, cannot force complainant to continue with this project. The mandate of Section 18 of the RERA Act, 2016 is abundantly clear. Allottees have been given a choice to continue with a project or to withdraw from the project in case the project is not being developed in accordance with terms of agreement. Authority has been asking the allottee to continue in a project which is nearing completion or is likely to be completed. It has been allowing refund of the money paid where project is not likely to be completed in foreseeable future. Receipt of occupation certificate is one of prerequisite for calling a project as complete, which in this case is totally uncertain

5. In the above circumstances, this project is neither complete nor any timelines can be assigned for its completion. Accordingly relief of refund claimed by the complainants shall be admissible. Accordingly, it is ordered that respondent shall refund the entire amount of Rs 28,09,037/- paid by the complainant along with interest at the rate prescribed in Rule 15 of the RERA Rules, 2017. The amount of interest admissible has been worked out as Rs

33,16,404/- The respondent are directed to refund the amount of Rs28,09,037/- as principle and Rs 33,16,404/-as interest totalling Rs 61,25,441/- to the complaint within time period provided in Rule 16 of the HRERA Rules 2017.

Case is **Disposed of.** Files to be consigned to the record room after uploading of order.



RAJAN GUPTA
(CHAIRMAN)

DILBAG SINGH SIHAG
(MEMBER)