

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

Complaint No-RERA-PKL-276/2018

Date of Hearing: 06.03.2019

8<sup>th</sup> Hearing

Abhijit Jasrasaria

...Complainant

Versus

- |  |                  |
|--|------------------|
| 1. M/s JOP International Ltd.                                      | Respondent No. 1 |
| 2. Bharat Aggarwal, Director<br>JOP International Ltd.             | Respondent No. 2 |
| 3. Shyama Aggarwal, Director<br>JOP International Ltd.             | Respondent No.3  |
| 4. Urvi Aggarwal, Director<br>JOP International Ltd.               | Respondent No. 4 |
| 5. Dimple Cinema (Licensee)<br>through its Proprietor Dinesh Gupta | Respondent No. 5 |

**QUORUM: -**

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

**APPEARANCE: -**

1. Sh. P.K. Sachdeva, Counsel for Complainant.
2. Sh. Ajiteshwar Singh, Counsel for Respondent No. 1  
to 4.
3. Sh. Ajay Chhikara, Counsel for Respondent No. 5

**ORDER: -**

1. This case was adjourned for today for enabling the respondent to get the dispute settled amicably. Parties, however could not arrived at amicable settlement. So, the matter is being disposed of through this order.
2. The complainant's case is that he in the year 2008 had booked three shops bearing no.s F-2, F-3 and G-4 in the real estate project 'JOP Square, Yamunanagar' which was to be developed by the Respondent No. 1, JOP International Ltd. The complainant has already paid Rs. 87,38,000/- against the total sale consideration of Rs. 1,00,38,000/-. The respondent no. 1 to 4, through whom the licensee owner got the project developed, had executed buyer agreement in his favor on 24.02.2009 and allotted him the above-mentioned booked shops measuring 562 sq. ft each. The period fixed in the agreement for delivery of possession has already lapsed on 24.02.2010 but respondents have not delivered him possession till date. So, he prayed for refund of the amount alongwith interest.
3. Respondent No.1 to 4, the developers of the project, have pleaded that the construction work of the project is almost complete and they have even obtained part occupation/ completion certificate from DTCP in October, 2011. However, they could not deliver shops to the complainant due to non-cooperation of respondent no. 5, the owner licensee. Non-cooperation alleged against respondent no. 5, in essence, was that he had failed to get the licenses renewed



on time and has also not come forward to execute the documents necessary to have the conveyance deed registered in favour of complainant.

4. Respondent no. 5 has admitted in his reply that he is the owner-licensee of the project and had entered into collaboration with respondent no. 1 to 4 for the development of said project. However, he has attempted to disown his liability towards complainant on the ground that he was not party to the agreement executed with him. He has also averred that developer-respondent no. 1 to 4 have committed default in their obligations towards him in terms of collaboration agreement. It was further pleaded that due to non-compliance of such obligations by developer, arbitration proceedings had cropped up which are pending and are causing delay in discharging of obligations towards complainant.
5. Learned counsel for parties have been heard and record has been perused.
6. The respondents are not at dispute on the point that the possession of purchased shops has not been delivered till date even though the period agreed for its delivery has lapsed almost 9 years ago on 24.02.2010. The dispute they are raising is only on the point as to who is responsible for such delay. The owner-respondent has tried to shift the blame to developers and the developer has attempted to argue that the blame rests on the part of owner because he is not cooperating towards execution of documents necessary for obtaining completion/occupation certificate in respect of the shops in question and for conveying title in favour of complainant through registered deeds. Whosoever



may be at fault, the fact remains that it is the complainant who is suffering on account of inter se disputes between owner and developer and there is no likelihood of handing over of possession to him in the near future. The complainant, in these circumstances cannot be forced to wait for an indefinite period and is, therefore, entitled to refund of amount.

7. The Authority does not find any merit in the contention of owner- licensee that he is not liable towards the complainant for non-discharge of obligations under the buyers agreement for the reason that he had not signed the said agreement. Undeniably, Real Estate (Regulation and Development) Act, 2016 (for short 'Act') cast a duty on this Authority to resolve the disputes between allottee and promoters of real estate project. The expressions 'allottee', 'promoter', 'real estate project' have been defined in section 2 of the Act. It is necessary to quote the definition of promoter as incorporated in section 2(zk) which reads as under:-

*(zk) promoter means-*

- i. A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- ii. A person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon ;or*
- iii. Any development authority or any other public body in respect of allottees of -*



(a) Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the government.

(b) Plots owned by such authority or body or placed at their disposal by the government.

For the purpose of selling all or some of the apartments or plots; or

- iv. An apex state level co-operative housing finances society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- v. Any other person who acts himself as a builder, colonizer, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- vi. Such other person who constructs any building or apartment for sale to the general public .

*Explanation-for the purposes of this clause where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this act or the rules and regulations made thereunder;*

It is explicit from above quoted clause(i) that both the person constructing the project and also the person who causes the project to be constructed, fall in the definition of promoter. So, respondent no. 5 being the owner and the person who had caused the project to be constructed by respondent no 1 to 4 becomes answerable to the complainant being the promoter of project. Clause (v) and clause (vi), further accords clarity in this regard because the builder who is granted license for development of the project and contractor who undertakes the work for construction of project are to be considered promoter under these

clauses. So, the respondent no. 5 being the owner-licensee and a promoter, cannot escape his liability towards the present complainant.


7. The complainant herein being one of the allottee of project has a right to enforce the duties cast upon promoter under section 11 of Act. These duties are required to be performed jointly and severally by all such persons who falls in definition of expression 'promoter'. As already observed respondent no. 5 is a promoter and therefore, he is vicariously liable for all such responsibilities as are required to be discharged under the terms of buyer's agreement executed in favour of complainant irrespective of the fact that primary duty to discharge the obligations under buyer agreement is of respondent-developer. The complainant has a right to have these responsibilities and obligations discharged jointly and severally by both, the developer and the owner-licensee. So, the owner-licensee of project cannot escape from the responsibility of discharging obligations in terms of buyer agreement towards complainant merely because the agreement is not signed by him and signed by person whom he had authorized to perform the construction work.

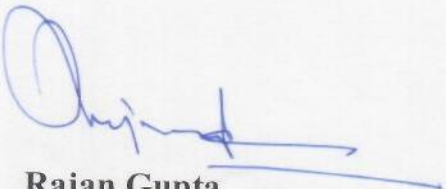
8. For the reason recorded above, the Authority directs the respondents to refund the amount paid i.e. Rs. 87,38,000/- along with interest from the date of deposit of the amount to the actual date of refund as per Rule 15 of HRERA Rules 2017 i.e. SBI MCLR + 2% within a period of 90 days from the date of uploading of the order. The amount shall be paid in two installments of which first

installment of 50% amount shall be paid within 45 days and the remaining 50% amount in second installment within next 45 days. The primary duty to refund the amount will be of respondent no. 1 to 4 as they had received the amount from complainant. In case the same is not recovered from respondent no. 1 to 4, the complainant in that eventuality will have a right to recover the same from respondent no. 5 who is held to be jointly and severally liable.

**Disposed of .** File be consigned to record room.

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

  
**Rajan Gupta**  
Chairman