



Complaint no. 387 of 2019

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

COMPLAINT NO. 387 OF 2019

Seema Jain

....COMPLAINANT(S)

VERSUS

1. M/s Omaxe Pvt. Ltd
2. Robust Buildwell Pvt. Ltd.
3. Paras Land Developers Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 12.01.2022

Hearing: 15th

Present: Mr. Brahma Prakash, Learned Counsel for the complainant.
Mr. V S Jain, Representative of the complainant through video conferencing.
Mr. Sanjeev Sharma, Learned Counsel for the respondent through video conferencing.

ORDER (DILBAG SINGH SIHAG-MEMBER)

The matter was heard at length on 10.03.2021 whereby Authority after hearing rival contentions and perusing available record had passed following order:

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“ The complainant herein is subsequent transferee of a commercial property booked in the year 2011 by Mrs. Raj Rani Mittal in respondent's project. She had paid Rs.10,00,000/- on 03.02.2011 to the respondent company and had transferred her rights to M/s Shikhar Reality Services Limited (S.R.S.L) on 14.06.2011. Booking rights were later transferred by S.R.S.L to Paras Land Developers Pvt Ltd. from whom the complainant had purchased such rights for Rs. 13,00,000/- in the year 2013. The respondent company had acknowledged and endorsed transfer of bookings rights in favour of complainant in June 2013. The complainants did not get the possession of booked property and the reliefs which they are now praying through the present complaint against promoter company (respondent no 1) and its subsidiary Robust Buildwell Pvt. Ltd. (Respondent No. 2) for restraining the respondents from allotting the property to any other person and for further directing the respondents to execute a sale purchase agreement in their favour.

2. In a joint written statement filed by respondents, preliminary objections were raised against maintainability of complaint and about promoter-allottee relationship between the parties. These objections were addressed by this Authority in its order dated 31.10.2019 by making following observations.

“ 2. Respondent Nos. 1 and 2 have filed a joint written statement and they have not disputed that the complainants are last assignees of the property which was initially booked by Raj Rani on 03.02.2011 on payment of Rs.10.00 lacs. However, the respondents have raised an objection against maintainability of the complaint. The precise objection was that the complainants have filed the present complaint in respect of same cause of action for which they earlier have filed a

suit before the Civil Court. Said objection was decided by this Authority vide order dated 11.09.2019, holding that the complainants are not precluded from seeking reliefs in the present complaint against the respondents 1 and 2 because suit had been already withdrawn against them.

3. Another objection raised was that promoter-allottee relationship between the parties does not exist because the complainants and their predecessor-in-interest were merely investors inasmuch as they had not paid money for allotment in any particular project and have rather invested money in future projects of the respondent. This plea was also turned down by this Authority vide its order dated 11.09.2019 because it was evident from the documents produced on record that the respondents had accepted money from the complainants and their predecessor-in-interest, for allotment of property. It was ruled that money collected and received for allotment of property cannot be treated as investment for indefinite period and the respondents, therefore, owe an obligation to make allotment in favour of the complainants within a reasonable time."

3. The complainant in the course of proceeding held on 11.09.2019 had made it clear that he is ready to take possession of suitable property in respondent's project on payment of balance dues. So, the Authority directed him to move an application to the respondent expressing his such intention and the respondent was directed to allot and give possession of a specific property to him after receiving the balance sale price within 15 days from the receipt of application.

4. The complainant on the adjourned date of hearing i.e on 31.10.2019 had apprised the Authority that he had moved the

application for allotment of suitable property but the respondent had failed to allot him some property in its project. The plea then raised by the respondent was that the complainant is not entitled to allotment of any property because he had failed to exercise an option given to him for prioritization of allotment on payment of Rs. 8,00,000/- Documents Annexures P-5 and P-6 were cited to buttress such contention. The Authority had however turned down the plea so raised by the respondent with the following observations made in order dated 31.10.2019:-

" 6. The Authority has given thoughtful consideration to the submissions of learned counsels and perused the above referred documents. Pertinent to notice is that the respondents in none of the letters Annexures R-5 and R-6 have mentioned the details of the property which was proposed to be allotted to the complainants. So, demand raised by the respondents without disclosing the particulars of the property to be allotted carried no significance and it cannot be said that there was default on the part of complainants to have the property allotted to them. That apart, the respondents themselves have attached a document, Annexure R-7, with their reply indicating that the complainants in January, 2015 had informed them that they have not received the communication sent vide Annexure R-5 and that they wish to have an allotment in Phase-II of the project. So, the respondents were supposed to send some further communication to the complainants in response to their request made for allotment in Phase-II of the project. It is nowhere the respondents' plea that they had sent further communication to the complainants for allotment of the property by disclosing full details of property proposed to be allotted or had sent them some such communication which had the effect of extinguishing the rights of complainants to have the

allotment in the respondents' project or in the alternative to claim refund of the amount already paid by them.

8. The aforesaid being the situation, the respondents cannot escape their liabilities to allot property to the complainants in their project or in the alternative to refund them the already paid amount.

9. For the reasons recorded above, the Authority grants last opportunity to the respondents to either settle the disputes amicably or else it will be constrained to allow refund in favour of the complainants alongwith interest @ prescribed in Rule-15 of the HRERA Rules, 2017."

5. The Authority in the course of subsequent hearing held on 10.12.2019 had deliberated on the issue as to which property was agreed to be sold to the complainant and with regard to such issue has made following observations in the order dated 10.12.2019:-

" 3. The complainant further drew the attention of the Authority towards a statement of account dated 01.05.2019 which shows that the net amount payable by the complainant is Rs.64.22 lakhs inclusive of the EDC and the basic sale price, against which Rs.20 lakhs has been received. In the statement it has also been written "property area = 200 Sq.yards plot" the project shown is "Omaxe City Centre, Faridabad".

After submitting above arguments, the complainant stated that 200 sq.yards plot should be allotted to him.

4. In response to the above, the respondent stated that no specific property was agreed to be allotted to the complainant. The allotment was intended to be in 'present and future projects' of the respondents. He drew the attention of the Authority towards Para 9 of the orders dated 31.10.2019 when the Authority had asked both the parties to

settle the dispute amicably or else it will be constrained to order refund in favour of the complainants along with interest. He stated that since no specific property can be identified having been allotted to the complainant, refund may be allowed.

5. The Authority has gone through the rival contentions. It observes that, admittedly, Rs.10 lakhs had been received by the respondent from the original allottees in the year 2011. They received another Rs.10 lakhs in five instalments from the complainant in the year 2013. Wording of the receipts issued by the respondents, demonstrates that the money had been received against an identifiable property. The respondent has been receiving money from the complainants and they have specifically indicated the total amount payable by the complainants as late as 01.05.2019 when net payable amount was calculated as Rs.64.22 lacs, against which Rs.20 lakhs had been shown having been paid and remaining amount remained payable.

6. In view of the above observation, the argument of the respondent that no property was identified for allotment cannot be accepted. The Authority decide that the onus is now upon the respondent to show which property they had in mind to sell to the complainants while issuing all the receipts. Different discrepancies of the properties have been given by the respondents. In the receipt of the years 2011 and 2013 the project was supposed to be 'Omaxe Commercial Hub' with 'Customer Code Hub-94'. In the statement of 01.05.2019 the property has been shown to be a 200 Sq.yards plot in Omaxe City Centre, Faridabad. The Authority observes that there expressions though are vague but they do indicate that some identifiably property was in the mind of both the parties.

7. The Authority directs the respondent to offer a specific property to the complainants which could fit into the description of the properties

given in the above mentioned receipts and statements of accounts. If the respondent do not give any satisfactory response in this regard, the Authority will be constrained to appoint firm of Chartered Accountants to examine the record of the respondents and submit a report regarding the likely property which both the parties had in mind. The Authority advises the respondents to either offer a property to the complainant which is acceptable to him and settle the matter out of the court, failing which further appropriate action as indicated will be taken. Since the complainant also has been shifting his stand, the Authority directs him to submit his detailed written arguments and send a copy to the respondents one week before the next date of hearing."

6. When the matter was taken up for hearing on the adjourned date i.e. 29.01.2020, the respondent's learned counsel sought adjournment stating that settlement talks are going on between the parties to amicably settle the matter and the case was, therefore, adjourned to 04.03.2020.

7. The Authority was apprised on 04.03.2020 that respondent has failed to settle the dispute amicably. Further, the respondent on that date had not disclosed the details of the property which was agreed to be sold to the complainant. So, the Authority in view of the opinion expressed in earlier proceedings had decided on 04.03.2020 to appoint M/s. Baldev Garg and Company, a firm of Chartered Accountant to examine the records of the respondents and submit a report regarding the properties allotted to each person who had booked the property in the project named as M/s Omaxe Commercial Hub, Sector-89, Faridabad. Such report was ordered to be submitted on the points, namely, (i) what was the date of booking in each case

(ii) what was the description given about the booked property in the receipts issued to the concerned person (iii) whether possession has been given to any of the person who had booked property after 21.05.2013 (iv) whether any property similar to the one allotted to a person who made booking after 21.05.2013, is available with the respondent (v) whether or not the promoter had sold property to fresh applicants in the above named project after 21.05.2013 and if so, what was the rate at which such sale was made.

8. The respondent filed an appeal against order for appointment of Chartered Accountant for examination of its record and the Hon'ble Appellate Tribunal vide order dated 03.11.2020 disposed of the appeal with the following observations

“ In the present case, the allotment of only one unit is involved and for the adjudication of such dispute, in our view, this type of fishing enquiry by the Chartered Accountant should not be indulged into. The information sought by the Ld. Authority in para 7 of the impugned order can be extracted by way of affidavit of the Director of the appellant promoter. Thus, the impugned order dated 04.03.2020 passed by the Ld. Authority is hereby modified. Instead of any examination of the records, by the Chartered Accountant, the Director of the company, well-conversant with the facts of the case, will file his affidavit with respect to all the 5 points formed by the Ld. Authority in the impugned order with the Ld. Authority within a period of 4 weeks with advance copy to Ld. counsel for the respondent-allottee. The respondent-allottee will also be entitled to file the counter-affidavit, if they so desire. “

9. The Authority on 10.12.2020 has accordingly directed the respondents to furnish the information in the form of affidavit on all

the earlier referred points (i) to (v) in respect of which a report was sought from the Chartered Accountant. The respondents then furnished the ordered information on 21.12.2020. Taking notice of the information so furnished in the affidavit, the Authority vide its order dated 19.01.2021 has observed that the respondent No. 2 has kept the amount collected from the complainant without allocating any specific property and has also changed the nature of the project inasmuch as the same was earlier licensed for developing SCOs and has been subsequently converted into built up floors. So, the respondents were directed to firstly, prove that the said change was as per the requisite approval of the concerned authority and secondly, he should file the details of the total number of built up floors, (sold and unsold both). He was further directed to offer three vacant floors, if available, to the complainant with details of property and price thereof. It was stipulated in the order that the complainant would exercise option to either accept any of the offered floors or to seek the refund of the amount already paid to the respondents alongwith interest. It may be mentioned that an application filed by the respondents for dismissal of the present complaint on the ground that the complainant is pursuing parallel remedy in Civil Court, was dismissed by this Authority on 19.01.2021 because the complainant was withdrawing her suit from the Civil Court.

10. The case on 19.01.2021 was adjourned for today i.e. 10.03.2021. Learned Counsel for the respondents has today submitted that the information sought with regard to total number of built up floors (sold or unsold) as also about the proof for obtaining the requisite approval of the concerned authority for changing the option from SCOs to built up floors is today not readily available with

him because he did not have knowledge of the order so passed for the reason the same was uploaded only a few days ago. He seeks more time to furnish the requisite information and therefore, the case is adjourned to 14.07.2021.”

2. On hearing dated 14.07.2021 respondent had sought time to furnish the information sought vide order dated 19.01.2021 and the case was adjourned to 14.09.2021. Relevant orders passed on hearing dated 14.09.2021 is reproduced below:

“ Vide previous order dated 10.03.2021, Authority had issued certain directions to respondent with regards to total number of built up floors (sold and unsold) in the project and proof for obtaining requisite approval of concerned authority for changing the nature of project from SCOs to built up floors.

2. Initiating his arguments, Shri Sanjeev Sharma, learned counsel for respondent submitted as follows:

(i) In regard to the project, there has been no change in the nature of the project, rather the respondent company had given an option to the original allottees of the project to get their unit constructed from the company itself. Those allottees who exercised this option had to make payment of cost of construction alongwith cost of flat. Accordingly, those who made the payments had their unit constructed by the company.

(ii) Requisite information with regards to built up floors has already been filed by the respondent vide application dated 05.09.2019. At page 21 of said application it is submitted that total number of units in

the project is 855 and by the year 2019 respondent company had sold 824 units. However, at present all the units have been sold and now there is no unsold unit available in the project.

(iii) For allotment of units, respondent company had conducted a draw of lots of available plots. Applications were to be considered for said draw upon payment of Rs 8 lakh demanded towards prioritising allotment in favour of an applicant. Respondent had duly sent letter dated 08.08.2014 to inform the complainant about the same and further a reminder letter was sent on 12.01.2015. Since the complainant failed to pay Rs 8 lakh towards prioritization of allotment therefore, no specific allotment was made in her favour. Complainant in the present case thus is only an applicant in the project and accordingly has only been provided with a client code i.e HUB/94/T3. She cannot be considered an allottee.

(iv) It is submitted that it was the complainant herself who was not interested in the property at the time of allotment and thus chose not to participate in the allotment process. For this reason there is no specific property allotted to the complainant to lay claim on and now all the units in the project have been sold. Further, in absence of any allotment or builder-buyer agreement, there is no contract for sale and as such no buyer-allottee relationship exists. Accordingly the terms of the original application will prevail. Respondent is not bound to allot a unit in favour of the complainant.

With regards to the amount complainant had deposited with the respondent towards booking of a unit in the project, learned counsel for respondent submitted that complainant is well aware that they are earning a 9% simple interest on the deposited amount. Complainant

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may at any time ask the respondent company for refund of her paid amount alongwith interest

3. Shri Brahma Prakash, learned counsel for the complainant stated that his client is only interested in a property in the project and not in refund of the paid amount. Even though respondent has issued to complainant only a provisional booking number, the same was issued in lieu of some specific property/plot in the project. The basic sale price of the booked unit is approximately Rs 52 lakh and the complainant had paid an amount of Rs 20 lakh to the respondent company till the year 2013. Respondent has neither allotted any specific property to the complainant nor has returned back the amount to the complainant till date. The respondent had further asked for a payment of Rs 8 lakh without showing any specific property. Even if there is no agreement entered between the parties, the respondent has also not cancelled the booking of the complainant . Respondent company has charged hefty amount of Rs 20 lakh from the complainant and the same must have been in lieu of a specific unit in the project. Therefore, complainant is entitled to a property in the project.

4. Learned counsel for the complainant further submitted that the project being developed by the respondent namely 'Omaxe World Street' is being developed in four phases, phase 1,2,3& 4. As per respondent phase 1& 2 have been fully constructed and all units have been duly allotted. However phase 3&4 of the project are still being developed. If there is no plot available in phase 1 & 2 of the project then respondent should allot a plot to the complainant in phase 3 or 4 of the project.

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4. After consideration of rival contentions, Authority observes that the complainant booked an SCO in the project of the respondent for which she deposited an amount of Rs 20 lakh by the year 2013, which is still with the respondent. The respondent then in the year 2014 issued a demand letter of Rs 8 lakh for prioritizing of allotment in favour of the complainant without clearly specifying a property in lieu of which the said amount was being charged. The said amount of Rs 20 lakh was charged from the complainant for allotment of a plot. Respondent company had issued a client code in the name of the complainant. After taking nearly 30 % of the price of plot, respondent should have clearly allotted a property in favour of the complainant and not just issued a code. It has been more than 7 years, respondent has neither cancelled the booking nor returned the amount to the complainant. Therefore, complainant is entitled to encash the code which had been issued to him by the respondent company for a property in the project. Authority tentatively holds that respondent should allot a property to the complainant in phase 3 or 4 of the project. Said property should be allotted at the same allotment price as originally agreed upon between the parties. Complainant shall upon receipt of offer make balance payment to the respondent in respect of the booked property. Further, due to delay in handing over of possession complainant is entitled to delay interest from deemed date of possession till an offer of possession is made to the complainant in terms of Rule 15 of HRERA Rules 2017.

Now with regards to deemed date of possession, Authority observes that in absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainant. In Appeal no 273 of 2019 titled as TDI

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Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time.

In present complaint, the plot was booked by the original allottee in the year 2011 and taking a period of 3 years and an additional period of 6 months as grace period from the date of booking i.e 03.02.2011 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 03.08.2014 . Although the endorsement rights were transferred by the respondent in the favour of the complainant in June 2013 but since the complainant has stepped into the shoes of original buyer, therefore the deemed date of possession shall be considered from the date of booking made by the original buyer itself. In this way, the possession of the unit should have been handed over to the complainant by August 2014.

5. To determine availability of a property for allotment in phase 3 or 4 of the project in question, respondent is directed to submit details of phase 3 & 4 of the project including total number of built up floors, sold as well as unsold. Said information should be filed in the registry of the office atleast 15 days before the next date of hearing with an advance copy supplied to the complainant.

Further vide order dated 19.01.2021, learned counsel for the complainant had stated that the complainant has decided to withdraw the suit filed by her in civil court for the same cause of action as before this Authority. Complainant is directed to place a copy of withdrawal before the Authority on next date of hearing.



6. Case is adjourned to 23.11.2021.”

3. On hearing dated 23.11.2021 learned counsel for the respondent had reiterated his arguments pertaining to the civil suit filed by complainant in civil court submitting that the suit is still pending against respondent no. 3 for same cause of action hence the present was not maintainable. Authority had observed that since respondent no. 3 is not the person against whom the complainant had purchased allotment rights therefore respondent no. 3 is not necessary party. The said suit qua respondent no. 1 and 2 stood dismissed as withdrawn giving the complainant liberty to pursue her remedy before this Authority. Respondent was again directed to file the requisite information sought vide order dated 14.09.2021.

4. Initiating his arguments, Shri Sanjeev Sharma, learned counsel for respondent submitted that the present matter was reserved twice for orders after arguments i.e on 10.03.2021 and subsequently on 14.09.2021 and then the matter was listed for hearing on 23.11.2021. Relying upon the orders passed by Hon'ble Haryana Real Estate Appellate Tribunal in appeal no. 111 of 2021 titled as Omaxe India Pvt Ltd Vs Sandeep Goyal on 13.04.2021 he submitted that Authority in general is passing various substantive orders separately dealing with one or two issues in phased manner wherein all issues are not dealt with together as required by law. This practice gives rise to multiplicity of litigation as aggrieved parties rush to file appeal against interim orders.



He further referred to order dated 14.12.2021 passed by this Authority in complaint no. 603 of 2021 titled Dheeraj Singh Vs Jindal Reality Pvt Ltd. wherein despite having a valid 'Agreement for Sale' and 'Allotment' the Authority has awarded a refund of amount with interest, whereas in the present complaint there is neither any 'Agreement for Sale' nor there has been any allotment in favour of complainant. Complainant not being an allottee is not entitled to relief of possession and is only entitled to relief of refund of the amount deposited with the respondent. He submitted that he has nothing further to submit in the matter than that which is already placed on record.

5. Mr. Brahma Prakash, learned counsel for the complainant submitted that respondent has again failed to comply with the orders of the Authority dated 14.09.2021 to furnish details of property in phase 3 and 4 of the project. Respondent is only indulging in delaying tactics in order to avoid furnishing the information. He therefore prayed the Authority to issue directions to respondent to handover possession of equivalent property to the complainant at the same price as earlier booked by the complainants.

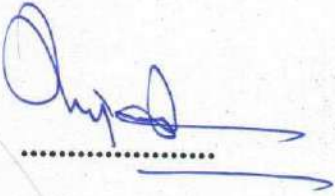
6. After hearing above submissions, Authority observes that it is true that in present case there is neither any agreement to sell nor any allotment in favour of the complainant. However, in June 2013 respondent company had acknowledged and endorsed transfer of rights in favour of complainants and thereon accepted payment in lieu of certain property. Thereafter, respondent had

sent a demand letter dated 08.08.2014 to the complainant for prioritisation of allotment. Taking into consideration all these documents Authority observes that there existed a builder buyers relationship between both the parties and respondent was duty bound to allot a property to the complainants. Respondent company has retained an amount of Rs 20 lakh charged from the complainants since the year 2013. Said amount of Rs 20 lakh was charged from the complainant for allotment of a plot. It has been more than 7 years, respondent has neither cancelled the booking nor returned the amount to the complainant. Therefore, complainants are entitled to have allotment of a property in the project of the respondent. For the reasons discussed in previous hearing and above paragraphs, Authority reiterates its view as already expressed in order dated 14.09.2021 and directs the respondent to allot a property to the complainant in phase 3 or 4 of the project. Said property should be allotted at the same allotment price as originally agreed upon between the parties. Complainant shall upon receipt of offer make balance payment to the respondent in respect of the booked property. For the delay in handing over of possession complainant is entitled to delay interest on the amount paid from deemed date of possession i.e 03.08.2014 (as established in para 4 of order dated 14.09.2021) till an offer of possession is made to the complainant in terms of Rule 15 of HRERA Rules 2017. Respondent is directed to hand over possession of a property equivalent to the one earlier booked by complainants alongwith a comprehensive statement of account incorporating therein the total

amount claimed from the complainant and the amount payable by the respondent to the complainant on account of delay caused in handing over of possession within 90 days of uploading of this order.

7. With these directions the case is disposed of. Order be uploaded and file be consigned to record room.





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]