

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

Complaint No. 608 /2018- Pramod Gupta

.....Complainant

Versus

Ansal Properties and Infrastructure Ltd.

.....Respondent

Date of Hearing: 16.01.2019 (3rd hearing)

Coram: - Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance: - Shri Ajay Chikara, Counsel for complainant
Shri Kamal Dahiya, Counsel for Respondent

ORDER:

1. The complainant herein has purchased a Villa bearing No. F-2764 measuring 239 Sq. yds. from the respondent in the Project named "Ansal Sushant City" situated at Panipat in Haryana. A sale deed was executed in his favour on 18.03.2014. The grievance which he is now expressing is that the villa was in a dilapidated and non-habitable condition at the time when the possession was offered to him in as much as the toilet seats were broken, paint was falling from the walls,



heavy seepage was occurring at different places, doors and windows and tiles were broken and there was faulty wooden work in the kitchen. When these defects were pointed out to the respondent, he assured that the necessary shortcomings will be removed within a week. Upon such assurance, a sale deed was executed but the respondent thereafter did not remove the above-mentioned shortcomings and has not even handed over the physical possession of the villa allotted to the complainant. So, his prayer is for delivery of physical possession of the villa and for issuing the directions to the respondent to remove all the deficiencies and also to pay him compensation and litigation expenses.

2. The respondent did not file his reply and his learned counsel has rather preferred to rely on the complainant's own averments and documents attached with the complaint to resist the complaint.
3. Learned counsel for the parties have been heard and record has been perused. It is clear from the sale deed, a copy of which is attached with the complaint, that the respondent has already transferred his property rights to the complainant in the year 2014. There is clear recital in the sale deed that physical possession of the villa was delivered to the complainant at the time of execution of the sale deed. Learned counsel for the complainant in the face of such recital has not been able to deny that the complainant had occupied the villa in the year 2014. So,



no further direction for delivery of possession is warranted in the present case.

4. Now coming to the complainant's plea about the respondent's failure to remove the deficiencies in the villa, the complainant has narrated the following deficiencies in his complaint: -

- i) Toilet seats were broken.
- ii) Paint was falling from the walls.
- iii) Heavy seepage was occurring at different places.
- iv) Doors and windows were broken.
- v) Tiles of washroom and kitchen were broken.
- vi) Faulty wooden work in the kitchen.

5. The Authority observes that this is a case of concluded contract between the complainant and the respondent. After execution of the conveyance deed the bilateral relationship in respect of the property in question comes to an end. As per law of the land, the buyer of a property has to be vigilant about its quality and specifications at the time of taking possession. In this case the possession was taken over on 18.03.2014 and the conveyance deed was also executed on the same date. The complainant, however, states that there are several defects in the



apartment and he had taken the possession in good faith and on the assurances that the defects will be rectified.

6. In support of his contentions the complainant has relied upon a legal notice dated 08.09.2014 issued by him. In the legal notice it has been mentioned that the complainant had received the offer of possession on 13.7.2013. With regard to the damaged condition of the villa, the legal notice only describes villa having been found in "damaged conditions". No description of the damages has been given in the legal notice. The complainant has also annexed an Annexure C-3 with the complaint in which a list of certain defects has been given but it is difficult to prove that the list pertains to same apartment.
7. On the basis of the averments of the complainant, it appears correct that the apartment had certain defects on the date of execution of sale deed but now a period of more than 4-1/2 years has lapsed since taking over of the possession. No substantive evidence has been produced before the Authority to prove that those defects actually exist. The defects of the nature described were not even mentioned in the legal notice.
8. More importantly a legal question arises whether these questions can be raised after execution of the conveyance deed and after conclusion of the contracts between the parties. This Authority would have jurisdiction to deal with the subject had a conveyance deed being not executed and the

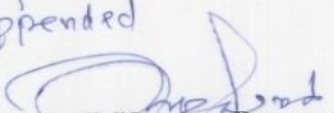



complainant had protested against taking over of possession without rectification of the defects. This Authority carries out its proceedings in a summary manner and has to rely on the facts apparent on the face of the record. In the absence of a concrete evidence and in view of the conclusion of the agreement between the parties the disputes of the nature as in this instant case cannot be raised before this Authority. Buildings tend to depreciate rapidly and after a lapse of nearly five years, building become due for fresh round of maintenance. Even a site inspection of the building at this stage will be of no help.

Keeping in view the above facts and circumstances, this complaint is disposed of as **dismissed**.

Dilbag Singh Sihag
Member

*Separate order
appended*


Anil Kumar Panwar
Member


Rajan Gupta
Chairman

ORDER BY SHRI ANIL KUMAR PANWAR (MEMBER)

Having gone through the judgment authored by the Hon'ble Chairman, the undersigned member is of the considered opinion that certain important facts have gone unnoticed and the same needs to be considered for proper adjudication of complainant's grievance.

2. Undeniably, the basic grievance of the complainant is that there were several defects in the villa which he had purchased from the respondent. He claimed to have pointed out all such defects to the respondent before execution of conveyance deed. He had taken the possession and also got the conveyance deed executed because the respondent had given him assurance that the defects will be rectified. The complainant was not given any relief in the present case and his complaint has been dismissed by the Hon'ble Chairman mainly for the below mentioned reasons: -

- (i) that no substantive evidence has been produced before the Authority to prove that the defects actually existed,
- (ii) that no description of the damages was given in the legal notice dated 08.09.14 sent to the respondent and
- (iii) that in the absence of concrete evidence about the existence of defects, the disputes of the present nature cannot be raised before



the Authority after the conclusion of the agreement between the parties with execution of conveyance deed.

3. Significantly, the respondent in the present case, as noticed by the Hon'ble Chairman has opted not to file his reply to the complaint and his learned counsel has even preferred to rely on the complainant's own averments and documents attached with the complaint. It is a well settled law of pleadings that a party who has chosen not to deny the pleadings of his opponent, shall be deemed to have admitted the pleadings raised by the opposite party against him. Applying this rule, the complainant's averments in the complaint shall be deemed as admitted by the respondent on the points namely: -

- (i) that the complainant had pointed out the defects to the respondent before execution of conveyance deed and the respondent had given assurance that he will rectify those defects after conveyance deed is executed,
- (ii) that the complainant has been requesting the respondent time and again but the respondent despite giving assurance to rectify the defects, has failed to do so,
- (iii) that the complainant on 07.08.14 had noted down all the defects and had submitted a list thereof, in writing to the respondent in his office, and



(iv) that when the respondent had even thereafter, not rectified the defects, the complainant sent a legal notice dated 08.09.14 to the respondent.

4 So, non-denial of aforesaid pleadings on the part of respondent by filing a reply, tantamounts to admission of all the above referred facts. The complainant has attached with his complaint as Annexure C-7, the list submitted to the respondent containing the description of defects. Said document bears the stamp of office of respondent and also the signature of person receiving the same. Since the respondent, as rightly observed by the Hon'ble Chairman, has even relied on the documents attached with the complaint, the Annexure no. C-7 constitutes a valid proof about the defects occurring in the complainant's villa. So, there is no scope to hold that the complainant had not produced evidence substantiating the defects.

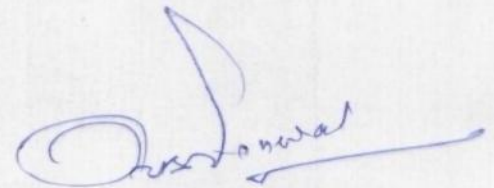
5. Section 14(3) of the Real Estate Regulatory Authority Act, 2016 (hereinafter referred as RERA ACT, 2016) casts a duty on the promoter to rectify all such defects without further charge which have been brought to his notice within a period of five years by the allottee from the date of handing over of possession. The complainant, herein, was delivered possession of the villa in the year 2014 and he had pointed out defects before getting the conveyance deed executed. These defects were again



brought to the notice of respondent through a written document dated 07.08.14, Annexure C-7. So, the respondent, herein, was duty bound to rectify the defects.

6. The complainant has mentioned in his complaint that defects are still subsisting and therefore, it will be most appropriate on part of the Authority to get the complainant's villa inspected in order to find out the nature of defects and also to fasten liability on the respondent with regard to all such defects which needs to be rectified in terms of provisions of Section 14(3) of the RERA Act, 2016.

7. The undersigned member, in the aforesaid circumstances, will, therefore, direct that the villa allotted to the complainant be got inspected by the learned CTP attached to this Authority and in case his report indicates existence of structural defects or any defect in workmanship, quality or provision of services or any other obligation of promoter as per the agreement entered between the parties, then the same shall be got rectified by the respondent without further charge within thirty days.



Anil Kumar Panwar

(Member)

I have gone through the orders dictated by Hon'ble Chairman and Hon'ble Member in this case. The Hon'ble Chairman is of the view that contractual obligations of the promoter towards allottee is over as and when the conveyance deed stands executed and allottee accepts the possession of the booked property. Moreover, it is difficult for the Authority to comprehend the defects requested by the complainant in 2019, whereas, possession was taken in 2014. Whereas, the Hon'ble Member has opined that non denial of any submission of the complainant tantamount to acceptance of all the allegations mentioned in the complaint. Nowhere, the respondent has denied any of the allegation raised by the complainant, meaning thereby there is a substance in the complaint and the same has been established after perusing the Annexure C-7 annexed with the complaint; meaning thereby certain defects were already existed there at the time of handing over the possession and execution of conveyance deed. In view of above, Hon'ble Member has rightly pointed out that under the provisions of

8.

Section 14(3) of the Real Estate (Regulations and Development) Act, 2016, a promoter is duty bound to rectify any defect pointed out by the complainant within a period of five years from the date of handing over the possession. He further concluded that now the question arise what are the major defects in the property and CTP of the Authority be directed to inspect the disputed property and give his report within a period 30 days.

A perusal of the annexures of legal notice and C-7, it has prima-facie established that there were certain defects existed in the disputed villa at the time of handing over the possession and execution of the conveyance deed, hence, I am of the view that the provision of Section 14(3) of the Act is absolutely applicable in this case. So, the undersigned do agree with the findings and conclusions of Hon'ble Member in this case.


(Dilbag Singh Sihag)
Member.
22.04.2019