

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

Complaint Nos.

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| 1) | 195/18 | Anita Mahawar Gupta Versus M/s. M.G. Housing Pvt. Ltd. |
| 2) | 260/18 | Mohd. Shaquib Versus M/s. M.G. Housing Pvt. Ltd. |
| 3) | 194/18 | Nitin Kumar Chauhan Versus M/s. M.G. Housing Pvt. Ltd. |
| 4) | 196/18 | Samar Mahawar Versus M/s. M.G. Housing Pvt. Ltd. |
| 5) | 197/18 | Neeraj Jain Versus M/s. M.G. Housing Pvt. Ltd. |
| 6) | 198/18 | Rudra Pratap Ojha Versus M/s. M.G. Housing Pvt. Ltd. |
| 7) | 199/18 | Sudeep Chopra Versus M/s. M.G. Housing Pvt. Ltd. |
| 8) | 209/18 | Manish Kumar Versus M/s. M.G. Housing Pvt. Ltd. |
| 9) | 208/18 | Sharat Yadav Versus M/s. M.G. Housing Pvt. Ltd. |

Date of hearing: On 23.08.2018.

Quorum: Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member-I
Shri Dilbag Singh Sihag, Member-II

Present:- i) Shri Sumer Singh Brar, Advocate on behalf of complainant.
ii) Shri Gunjan Rishi, Advocate on behalf of respondent.

ORDER:-

1. The above listed bunch of 9 complaints is being disposed off through this common order because the core dispute in all the complaints is similar. This matter is being disposed of with reference to the facts of the lead case in Complaint No. 195 of 2018 – titled as Anita Mahawar Gupta Versus M/s M.G. Housing Pvt. Ltd.”.



2. The complainant's case is that she had booked an apartment No. B-1108 with super area measuring 1525 Sq. fts., located on 11th Floor of Tower B of the project "Mulberry County", District Faridabad developed by the respondent. A Builders Buyers Agreement (BBA) was made on 24.04.2014. The complainant made all the payments which were due up to the year 2017. She has made total payment of Rs.59,10,417/- inclusive of EDC etc. charges against the basic selling price of Rs. 64,08,850/-. The construction work has been delayed because it should have been completed by June, 2016 and with grace period of 6 months the possession should have handed over by 31.12.2016. The complainant alleged that delay in offering the possession has frustrated the agreement between them.

2. Another grouse of the complainant is that in the brochure on the basis of which she had booked the apartment, the project was shown to be located on 45 mtrs. wide sector road and with further 12 mtrs. wide service road. Actually, however, the project is not located on 45 mtrs. wide sector road. Good connectivity of the project was one of the main incentives of the complainant. Further grouse of the complainants is that as per brochure only four towers were supposed to be constructed, however, the respondent first increased them to five towers and now actually six towers are being constructed. She alleges that respondent has revised the layout plan of his project "Mulberry County" without obtaining prior consent of the complainant and other allottees. The complainant has admitted that the

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respondent had given her a notice for filing objection for change of plans but since she had not replied to the same, her silence cannot be considered consent for the change of plans.

Now the respondent has offered the possession of the apartment after obtaining occupation certificate dated 22.09.2017 from the State authorities. It has been alleged by the complainants that the said occupation certificate is not correct because the development of the site is not completed even till date. Further, since the project was on-going project under the Real Estate (Regulation and Development) Act, 2016, the respondent should have got it registered. For not getting it registered, respondents have violated Section 3 of the Act, thus, have become liable for action under Section 59 of the Act.

The complainants have asked the respondent to refund their entire money because the project has not been developed as promised in the brochure. The complainant states that the respondent instead of refunding their money has raised a demand of Rs. 7,61,498/- vide letter dated 30.01.2018 (Annexure P-11 annexed with the complaint). The prayer of the complainants is that their entire amount be got refunded along with interest @ 12% per annum. They have further prayed for grant of damages to the tune of Rs. 5.00 lakhs for causing mental harassment and agony.

3. The respondent has submitted his reply, by which all the allegations made by the complainants have been strongly rebutted as being baseless and vexatious. He alleges that the complainant has filed this complaint with



mala fide intentions to make illegal enrichment and harassment of respondents. According to the respondent, the project was not an on-going project because it is squarely covered by the Rule 2(O) of the Haryana Real Estate (Regulation and Development) Rules, 2017. More importantly he has already obtained occupation certificate dated 22.09.2017 in respect of towers A & B. Apartment of the complainant is located in Tower-B. The respondent has constructed the project strictly in accordance with the layout plan approved by the competent authorities of the State Government. Under Section 4.2 of the Builders Buyers Agreement, it has been specifically agreed that the layout plan is tentative and provisional and are subject to change/modification/variation/alteration in accordance with the directions of the competent authority of the State Government.

As per provisions of Clause 4.2 of the agreement, layout plan has been changed by the respondent after issuing due notices to the complainants and other allottees, as well as after publishing the notice in the newspapers and also after obtaining due approval of the competent authorities of the Town and Country Planning Department. The complainant did not choose to file her objection to the change of the layout plan in response to the notices issued and published by the respondent, and now at this late stage, the complainant is asking to withdraw from the project for the same reason. This fact of having not filed any objection has been specifically admitted by the complainant. Regarding the allegation of the complainant that the project has

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been developed in phases, the respondent has pleaded that as per Clause 6.7 of the agreement, it was specifically agreed that various towers of the whole project will be constructed in phased manner and the respondent has completed the project in accordance with the provisions of the agreement and law.

Respondent has deposited EDC charges to the tune of Rs. 35 crores with the State Government, against which they have collected only Rs. 12 crores from the allottees. With regard to the allegation that now the project is not located on the 45 mtrs. wide sector road it was argued that State Government authorities have to construct these roads in accordance with the approved master plan. The master plan undergoes change from time to time. Therefore, there has been no misrepresentation on the part of the respondent. Respondents have fully discharged their responsibilities towards the State Government by paying EDC etc. Now the sector roads have to be constructed by the Government. The respondents have fully discharge all of their obligations. The offer of possession has been made only after obtaining occupation certificate and the additional amount has been demanded from the complainants strictly in accordance with the Builders-Buyers Agreement. Now the complainants are faulting by not accepting possession of the apartment and not paying the balance dues which are overdue.

The respondent further states that as per Clause 6.9 of the agreement, if the buyer fails to take the possession of the apartment after offering of



possession, respondent is entitled to get holding charges on super area @ Rs. 5/- per sq. ft. per month and further as per Clause 6.10 of the agreement, if the possession is not taken within 90 days then the developer shall have the right to forfeit the earnest money of the allottee. He further alleges that the complaint is false and frivolous and the complainant has hidden several material facts and thus the complainant has not come with clean hands before this Authority.

4. The pleadings of both the parties have been examined; oral submissions have been gone through in detail. The Authority observes as under:-

- (i) Both parties have admitted to the fact that the amount of Rs.59.10 lakhs has been paid by the complainant and the respondent has completed two towers A and B in respect of which occupation certificate has already been obtained. Respondent has offered the possession of the designated apartment to the complainant even though with a delay of about 9 months from the agreed date of offer of possession. Complainant has not alleged that the construction of the apartment is not in accordance with the provisions of the agreement. It is, therefore, to be assumed that the same is acceptable.
- ii) As per the terms of the agreement, respondent was entitled to change the layout plan after issuing notices to the allottees and after seeking prior approval of the Town and Country Planning Department. In this

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regard, respondent had issued notices to the complainants and other allottees and also published the notice in the newspapers. Furthermore, he has changed the layout plans as was permissible in the agreement, after getting the due approval of the State Government Authorities.

- (iii) Regarding 45 mtrs. wide sector road, the external services has to be provided by the State Government authority, HUDA in this case. Respondent has deposited entire EDC of Rs.35 crores with the State Government even though they have collected only Rs.12 crores from the allottees. The road infrastructure has to be provided by the State Government as per master plan. The master plan is also prepared/amended by the State Government. The external services shall be provided by the State Government Authorities as per master plan in due course of time. If this facility is not provided by the State Government in time, the respondent cannot be held answerable for the same
- iv) From the photographs presented by the complainant it is visible that the external roads which are to be developed by the State Government are still not complete. The photographs presented by the respondent shows that the project has been completed and as per law occupation certificate has been obtained. Offer of possession has been made to the complainants in accordance with law. Delay of about nine months

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in completing the project is entirely acceptable in such like ventures for which the complainants are entitled to get compensated in accordance with the provisions of the agreement, but they cannot argue that this delay frustrates the whole agreement. Further, representation of 45mts. Road in the broucher cannot be said to be creating a binding agreement between the parties. Brouchers are in the nature of an invitation to offer. It is only the provisions of the agreement and prevalent law of the land which binds the parties. It is not a part o the agreement that the project will be located on 45 mts. road. The geographical location of the project is where it was supposed to be and there is no misrepresentation involved. Therefore, the argument of the complainant that have not been located on 45 mts. road, the entire agreement get frustrated is not acceptable.

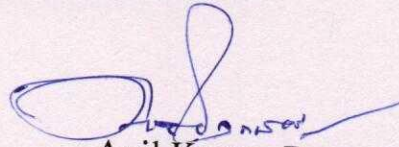
- v) In view of the foregoing findings, the complaint is liable to be dismissed with the directions to the complainants to receive possession of the apartment; otherwise respondent will be entitled to take further action in accordance with the provisions of the agreement. The Authority also directs the respondent to issue fresh Statement of Accounts to the complainants, clearly stating therein the amount to be paid by the complainant after making suitable adjustment on account of delay compensation to be paid to the complainants by the respondent in accordance with the provisions of the agreement for

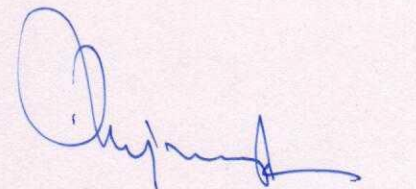
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causing delay of about 9 months in offering possession of the apartment.

Disposed of in above terms.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman 27/8