



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1083 of 2019

HRERA, Panchkula

....COMPLAINANT(S)

VERSUS

Raheja Developers

.....RESPONDENTS(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 07.07.2021

Hearing: 22nd

Present: Sh. Kamaljeet Dahiya, Counsel for respondent/ developer
Sh. Abdes Chaudhary, Counsel for landowners through
Video conferencing

ORDER (Rajan Gupta- Chairman)

1. This Authority had registered two real estate projects namely '**Sansara Residencies**' and '**Akasha Tower**' residential towers to be developed in a group housing colony on land measuring 8.531 acres in sector-2A, Dharuhera, Rewari registered vide registration nos. 29 of 2017 dated 02.08.017 and 30 of 2017 dated 02.08.017 respectively.

2. While adjudicating upon the bunch of complaints with lead complaint case no. 332 of 2018 titled as *Shashank Uppal Vs Raheja Developers Ltd.*, the Authority has observed as follows:

“5. The arguments put forth by the learned counsels for the complainants are as follows: -

(i) That the respondent No.1 has deliberately stopped the construction work for the reasons best known to him. There is no bar on them from any court of law or any other authority against starting the construction activities. The arguments of the respondent No.1 is that respondent No.2 is using strong arm tactics and is denying them access to the project land are nothing but lame excuses only to justify the inaction on their part.

(ii) Regarding the civil suit pending between both the respondents in the civil court relating to the alleged sale deed, there is no stay order granted by the court against any of the parties. The pendency of civil suit is no bar against the Respondent No.1 in commencing the construction of the project.

(iii) The orders passed by Hon'ble NCDRC is also not a hindrance in any manner against the Respondent No.1. It merely re-defines the relationship between both the respondents. Both the respondents had entered into a collaboration agreement which is the basic document defining the relationships between the two. The allottees have nothing to do with their internal dispute if any. Complainants have entered into builder-buyer agreement with the Respondent No.1 who is now failing to discharge his responsibilities by putting forth such lame excuse and is unnecessarily trying to shift the blame of Respondent No.2. Even if there is a legitimate dispute, the Respondent No.1 and 2 should settle it at the earliest. Their internal dispute cannot adversely affect legitimate rights of the allottees.

(iv) Learned counsels for the complainants alleges serious diversion of the funds of the project collected from the allottees as well as from the various financial institutions. They allege that the Respondent No.1 had mortgaged the project with IFCI Ltd. and have raised Rs.75 crores loan against it. Another loan has of Rs.55 crore been raised from the Punjab National Bank. Shri Himanshu Raj, Ld. counsel for the complainant stated that the entire money amounting to Rs.130 crores has been disbursed in favour of the Respondent No.1 but the same has not been



invested on the project. Instead, the respondent No.1 has diverted the same against the interests of the allottees.

(v) Learned counsels for complainants allege that mala fide intention of Respondent No.1 are further proved from the fact that Respondent No.1 had made a collaboration agreement with a Japanese Firm, one of the terms of which was that the licence of the land shall be transferred in favour of Respondent No.1. An application in this regard was filed in the Town & Country Planning Department but the same was not approved on account of some dispute having arisen between both the respondents. The mala fide intention of Respondent No.2 are also exhibited from the fact that he had issued a no objection certificate in favour of the Respondent No.1 for transfer of the licence for collaboration with a Japanese Firm.

(vi) Nearly 50% of apartments in the project, both in high rise as well as in low rise buildings have been allotted and huge sum of money has been collected from the allottees. Neither the money collected from the allottees nor raised by way of loan/mortgage has been invested in the project. This is a clear indication that Respondent No.1 has diverted the funds for their own personal gains to the detriment of the allottees.

(vii) Arguing for the complainant in Complaint No.529 of 2018 Shri Himanshu Raj stated that admittedly the construction of high rise building has not even commenced beyond some basic excavation work at the basement. Accordingly, there is no likelihood of its completion in foreseeable future, especially in view of the facts and circumstances narrated above. He requested that in respect of his client, the orders for refund of the money paid along with interest and compensation should be passed.

6. In view of the aforesaid submissions of the both the parties the Authority observes as follows: -

(i) Admittedly, Respondent No.2 is the landowner licensee of the project. Licence No.27 of 2011 was granted in his favour. Prior to the grant of license a collaboration agreement had been made between them by virtue of which almost entire capital investment was to be made by respondent No.1 and in lieu of the construction of land, the respondent No.2 was to get 23% of the total saleable area.

The Authority observes that when under the collaboration agreement rights and responsibilities of both the parties were clearly defined, it is not clear why was a sale deed executed by the respondent No.2 in favour of respondent No.1, and that also without citing any sale consideration in their favour.

4

(ii) In so far as the orders of Hon'ble NCDRC is concerned, it only redefines/clarifies the relationship between both the respondents which has no impact on the rights of the allottees. The respondent No.1 has been directed to fulfil their obligation by certain prescribed dates. It is not understood how is respondent No.1 taking shelter behind this order of the the Hon'ble NCDRC to justify non-resumption of construction activities.

(iii) It has been argued that an appeal has been filed by respondent No.1 in the Hon'ble Supreme Court Copy of the said appeal was not submitted to enable the Authority to understand its exact nature. On the next date a copy of it shall be submitted by respondent No.1.

(iv) Respondent No.1 alleges that Respondent No.2 is obstructing access to the project land by using strong arm tactics. Allegedly, this is being done for last couple of years. On a question being posed by the Authority whether any FIR in this regard has been lodged or assistance of the police has been sought, Shri Dahiya could not come forward with any satisfactory reply. Accordingly, it appears that this also is a lame excuse.

(v) No reply was given by the learned counsel for respondent No.1 regarding utilisation of funds raised from the allottees and from the financial institutions. They will have to explain how much funds have been raised from various sources where they have been deployed.

(vi) It appears that both the respondent are in collusion with each other. Both the parties appears to be collaborating with each other right from the beginning. They have facilitated collaboration with the Japanese firm. They have also collaborating for transfer of licence in favour of respondent No.1. There is no stay order from the civil court and there is no bar in commencing the construction activities. The argument of the respondents appears to be only a ploy to continue to deny legitimate rights of the allottees.

7. From the foregoing discussions the Authority is of prima-facie view that respondent No.1 is not deliberately completing the project. He has gathered huge amount of money by sale of nearly 50% of the project and have also raised an amount of 130 crores by way of loan/mortgage. Against such a massive collection, much less amount appears to have been invested on the project which points to the fact that respondent no.1 has siphoned away funds of the project. Now the respondent No.1 & 2 are indulging into fruitless litigation and are levelling baseless allegations and counter allegations against each

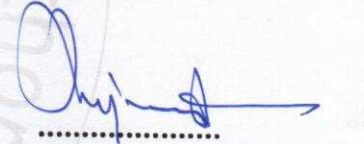
other in order to buy time and to justify their inaction for non-completion of the project. They have sold nearly 50% of the high rise building in respect of which even construction work has not begun.”

3. Taking cognizance of aforesaid facts received against the promoters for violating terms and conditions of the registration and provisions of the RERA Act, 2016; and also upon observing that the promoter appears to have been indulged in siphoning off the funds of the project; and there are ongoing disputes in respect of ownership of the project land between the developer and land owners, the Authority decided to issue a show cause notice to the respondent/promoter as to why their registration bearing nos. 29 of 2017 and 30 of 2017 be not cancelled.
4. Several detailed orders have been passed by the Authority in this matter. Basic reasons of non-completion of the project have been recorded in the orders dated 17.09.2019, 22.10.2019 and 22.12.2020.
5. Today, the Authority observes that since the promoter has failed to complete the project for more than a decade and no construction is taking place for the past 3-4 years due to dispute between the promoter & landowners which has put a question mark on the future of the project. The allottees of the projects are waiting for their homes even after paying their hard-earned money. It is also observed that there are several other ongoing disputes between respondent/promoter & landowners in respect of the ownership of the project land which may take time to resolve. Despite

4

granting repeated opportunities to the promoters to resolve their disputes, no satisfactory outcome has been arrived towards completion of the project. The promoters have again failed to satisfy the Authority of their capabilities to complete the projects within stipulated time and will hand over the possession of the units to the prospective allottees.

6. Taking serious view of the above circumstances, the Authority decides to suspend the aforesaid registration nos. 29 of 2017 and 30 of 2017 till further orders and the promoters of the projects are prohibited from making any further sale of any unit or alienate any asset of the projects in question. The fact of suspension of the registration and prohibition of further sale of the project should be hosted on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]