

Complaint No. - RERA-PKL-COMP-144-2018.

3rd date of hearing: 12.06.2018.

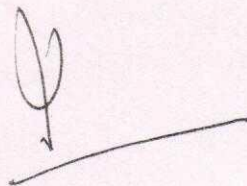
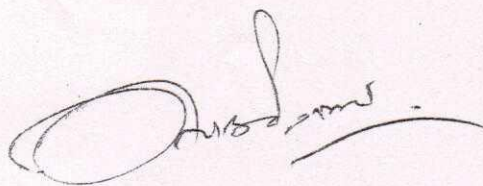
Sanju Jain
Vs
TDI Infrastructure Ltd.

Present: Shri Sandeep Dhaiya, Advocate on behalf of the Complainant.
Shri Shobit Phutela, Advocate, on behalf of the respondent.

The present complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act') raises grievance regarding non performance of obligations cast upon the promoter under the buyer agreement.

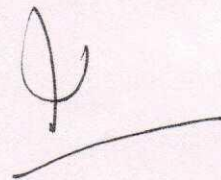
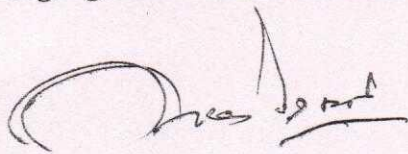
Ld. Counsel for the promoter has argued that the promoter had already obtained a partial completion certificate attached as Annexure R-3 with his reply, and therefore, his project does not require registration under Section 3 of the Act and this Authority will have no jurisdiction to adjudicate the complaint relating to such project of the promoter.

The Authority has given thought to consideration to the submissions of learned counsel and is of the considered opinion that the argument is devoid of force and is a result of misconception of the provisions of the Act.



The underlying object for enacting the Act is two folds. Firstly, it is aimed at ensuring sale of plot/apartment/building in the real estate sector in an efficient and transparent manner. For serving of such purpose, the registration of the real estate project has been made compulsory before a promoter is allowed to put his project on sale. Elaborate provisions concerning the process of registration have been laid in Chapter-II of the Act; thereby, requiring the promoter to disclose and bring to the public domain all such information as is reasonably necessarily for a prospective purchaser of property, to effectively decide on the question as to whether or not he should invest his money with the promoter in his proposed project. The registration process is also aimed at ensuring that 70% of the money collected from the prospective buyers is invested in the project without its diversion for other purpose.

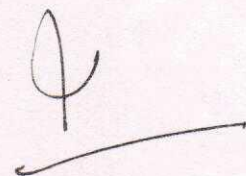
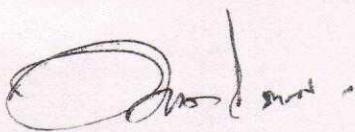
The second purpose for enacting the Act is to establish an adjudicating mechanism for speedy redressal of the grievances of allottees and promoters. The legislature in order to achieve this purpose has laid provisions detailing out the functions and duties of the promoters in Chapter-III, rights and duties of the allottees in Chapter IV and also by creation of Real Estate Regulatory Authority and Appellate Tribunal as per the provisions contained in Chapter-V and in Chapter-VII of the Act. There is Chapter VIII relating to the offences emerging from different kind of violations committed in respect of various



provisions of the Act and vesting of powers in the Authority/Appellate Tribunal for punishing those offences.

Section 11 of the Act defines and elaborates the functions and duties of a promoter. Nowhere in this section is used the expression 'Promoter of a registered project' and since the expression used everywhere in the Section is 'Promoter', it cannot be legitimately argued that the duties cast upon the promoter will be applicable only to the promoter of a registered project and not to the promoter of an unregistered project.

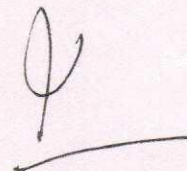
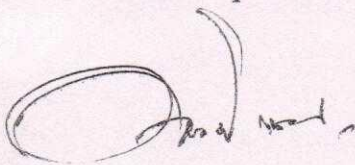
Sub section (4) of Section 11 of the Act manifests that a host of responsibilities and the obligations which are cast upon the promoter under the Act, Rule and an agreement of sale shall extend much beyond the date of completion of the project. For example, the obligation for executing conveyance deed extends till the actual execution of the instrument; the obligation for delivery of possession extends till transfer of physical possession to the allottee; the obligation to rectify structural defects in the sold property extends for a period of five years from the date of handing over the possession; the obligation for maintenance of essential services extends till taking over of the maintenance of project by the association of allottees; the obligation to pay all outgoings extend till the transfer of physical possession of project to the association of the allottee etc.



Simultaneously, Section 34(f) of the Act enjoins a duty upon the Authority to ensure compliance of all the obligations by the stake-holders in the real estate project as envisaged under the Act, Rules and Regulations made thereunder. There is no provision in the Act which expressly or impliedly provides that duties, responsibilities and obligations of a promoter towards his allottees will cease to exist upon grant of completion or occupation certificate. So, no promoter can be allowed to argue that he stands absolved of discharging his statutory obligations after receipt of completion certificate or that the Authority after grant of completion certificate will have no jurisdiction to adjudicate the complaints of the allottees.

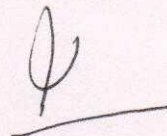
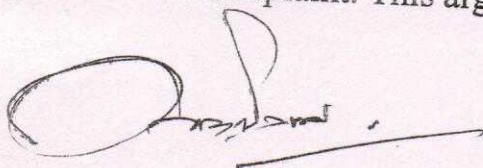
The completion certificate is a requirement of Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 (HDRD Rules) or under sub code 4.10 of Haryana Building Code, 2017 and its grant is aimed at certifying that the project has been laid in accordance with the said Rules. So, grant of completion or occupation certificate can at the most absolve the promoter only of the obligation towards the State under the provisions of HDRD Rules and not in respect of the obligations which such promoter has towards the allottees under the provisions of the Act.

That apart, the issuance of a part or full completion certificate will not be a conclusive proof of the fact that the project has been developed as

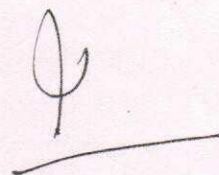
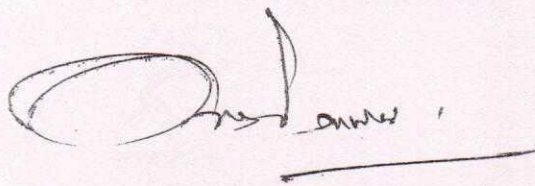


envisaged under the agreement of sale executed between the promoter and the allottee. Unless the development of the project is carried out in the manner as promised to the allottee under the agreement of sale, the allottee may have some genuine grievance against the promoter and will have a right to invoke the jurisdiction of this Authority for redressal of his grievance, irrespective of the fact that the promoter had obtained a completion/part completion or a occupation certificate for his project. The actual status of the project in such eventuality shall always remain a subject for verification by the Authority in order to determine whether or not the promoter has discharged his obligations in respect of development works. Thus viewed, no promoter can save himself from discharging his obligations on the ground that he has obtained a completion/occupancy certificate in respect of his project and this Authority has jurisdiction to adjudicate upon the complaint filed against a promoter regarding non performance of his obligations.

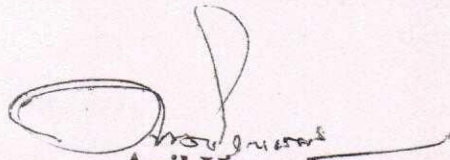
The respondent's learned counsel while referring to the provisions of Section 71 of the Act, has next argued that since the complainant is seeking relief for refund of his money alongwith interest and interest being a component in the nature of compensation payable to an aggrieved person, the Adjudicating Officer alone and not this Authority has the jurisdiction to adjudicate the complaint. This argument too is not acceptable.

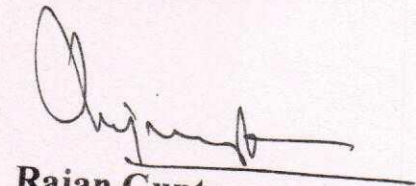


Section 71 of the Act vests jurisdiction in the Adjudicating Officer for adjudging the compensation after holding enquiry and ascertaining the factors as elaborated in Section 72 of the Act. Said provisions do not restrict the power of Authority for grant such relief to the allottees which do not require determination on the basis of detailed enquiry and can be ascertained summarily on the basis of plain language of the Act, Rules or an agreement of sale. The present case is one in which the complainant is seeking refund of money which the respondent had received towards purchase of a residential unit. The respondent has not disputed the money so paid to him and since the money has been paid against receipts, the relief of refund can be granted without making detailed enquiry. The compensation is claimed in the form of money payable on account of damage and harassment caused to a person. Interest claimed on refund is not a compensation for harassment and it is rather a claim for return of earning, which the holder has derived by unlawful withholding the money paid to him by the person claiming refund. So, the interest payable on refund amount would not be in the nature of compensation and the Authority will have jurisdiction to grant relief of refunding the amount alongwith interest to the complainant.



Consequently, the respondent's objection is rejected on the point that this Authority has no jurisdiction to adjudicate the complaints.


Anil Kumar Panwar
Member


Rajan Gupta
Chairman