



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 04.05.2023
Complaint No.	CR/6559/2022 Case titled Lokesh Dhaiya Vs Puri Construction Limited
Complainant	Lokesh Dhaiya
Represented through	Ms Tanya Adv
Respondent	Puri Construction Limited
Respondent Represented through	Ms Smriti Rani AR
Last date of hearing	
Proceeding Recorded by	Jyoti Malik

Proceedings

By filing this complaint, the complainant (Sh. Lokesh Dahiya) has sought compensation, to be paid by respondent under 18 heads, well described in the complaint. According to complainant, same is joint owner of 1/3rd share in land comprising in rectangle no. 18, kill no. 1(7-0), 10(7-0), rectangle no. 19. Killa no. 4(8-0), 5(8-0), 6(8-0), 7(8-0), 14(8-0), 15(8-0), 16(2-0) kitta 9 in total as measuring 64 kanal 0 marla at Village Dhanwapur, Sector 104, Gurugaon (hereinafter referred as the "land"). He (complainant) along with one Mr Jaiprakash Anand, one Mr Vijay Dahiya and respondent no. 2 entered into a development agreement by virtue of which, the incumbrance free land was transferred to respondent no. 2, who was obliged to develop the land and procure the licenses/permissions/sanctions required for fresh development.

A General Power of Attorney dated 24.0.2007 was executed by him (complainant), in favour of respondent no. 2, giving the latter right to make development as per terms of agreement, mentioned above. Respondent no. 2 transferred developing rights in favour of respondent no. 1 and the latter (respondent no.1) became responsible for developing and constructing a

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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group housing project, which came to be known as "**Emerald Bay**", registered with Haryana RERA by respondent no. 1.

Briefly stated, alleging certain deficiencies in service and unfair trade practice, the complainant has approached this forum seeking certain amounts of compensation from respondent, as mentioned above.

The Respondents filed an application under Section 8 of The Arbitration and Conciliation Act, 1996, with a prayer to dismiss the complaint in view of Section 8 of the Act.

It is submitted by learned counsel representing the respondent that at the time of execution of development agreement, as relied upon by the complainant, the parties agreed that if any dispute takes place between the parties, then the same can resolved through a dispute resolution mechanism, by way of initiating arbitration proceedings. Respondent no. 1 has already issued notice to the complainant in this regard.

According to learned counsel, The Real Estate (Regulation and Development) Act, 2016 (in brief the Act) presupposes relationship of Buyer and Builder/Developer, between the parties, before any complaint seeking compensation under Section 12,14, 18, and 19 of act is filed before the Adjudicating Officer. The complainant in this case cannot be termed as a 'buyer' same being co-owner of land of the project rather he is a co-developer. The complainant ~~has~~ ^{no} *locus standi*, to approach this forum, seeking compensation.

It is not denied that agreement executed ~~by both of~~ ^{between 2 among 2} parties of this case contained an Arbitration Clause (Clause 20). The relevant portion of, which is reproduced as under:-

"20 Arbitration

All the disputes and differences between the parties hereto arising out of or in connection with this agreement, which cannot be settled amicably, the same shall be referred by the parties to the sole arbitration of a Retired Judge of the Delhi High Court or of the Supreme Court....."

It is pointed out that one of parties (respondent no.1) has already approached High Court of Delhi, seeking appointment of sole arbitrator, in view of aforesaid agreement.

As per Section 31(1) of the Act of 2016, any aggrieved person may file a complaint, with the authority or the adjudicating officer, as the case may be,

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Handwritten signature and initials
A.O.



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for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

According to Section 71, of the act, an Adjudicating Officer is appointed for the purpose of adjudging compensation under sections 12,14,18 and 19 of the Act. Sub-Section 2 obliges Adjudicating Officer to adjudge compensation under sub-Section 1 i.e. filed in view of Sections 12,14,18 and 19 of the Act. Section 12 enumerates obligations of promoter regarding veracity of advertisement or prospectus. Section 14 casts a duty to develop project by the promoter in accordance with the sanctioned plans, lay out plans, and specification as approved by the competent authorities. Section 18 provides for return of the amount and compensation to the allottee, if the promoter fails to complete or is unable to give possession of an apartment, in accordance with the terms of agreement. Section 19 reminds rights and duties of allottees.

Even as per complainant, same handed over land, jointly owned by him to the respondent, for its development. Apparently, there was no relationship between him (complainant and respondents) as buyer and promoter. I find weight in the contention of learned counsel for respondents claiming that the complainant can be termed as 'co-promoter' being owner of land.

Admittedly, parties reached an agreement for the purpose of development of land, jointly owned by the complainant. In such a circumstance, in my opinion, rights/duties of the parties are determined in the light of said agreement. Through said agreement, the parties agreed to refer the matter to Sole Arbitrator, in case of any dispute/differences arising out of or in connection of said agreement. Basis of claim of present complainant is that agreement itself. Proceedings for the appointment Sole Arbitrator, have already been initiated, by one of the parties (respondent no.1).

On the basis of the above discussion, in my opinion, present complaint is not maintainable, before this forum. Same is thus dismissed.

File be consigned to the records.

(Rajender Kumar)
Adjudicating Officer
04.05.2023