



Complaint nos. 1505, 1506, 1507,
1508, 1509, 1510,
1511, 2419/19

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1505 OF 2019

Anil Kumar

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

2. COMPLAINT NO. 1506 OF 2019

Anil Kumar

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

3. COMPLAINT NO. 1507 OF 2019

Sunila Bajaj

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

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4. COMPLAINT NO. 1508 OF 2019

Sunila Bajaj

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

5. COMPLAINT NO. 1509 OF 2019

Sunila Bajaj

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

6. COMPLAINT NO. 1510 OF 2019

Baldev Kumar

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

7. COMPLAINT NO. 1511 OF 2019

Baldev Kumar

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(5th hearing)

...Respondent

8. COMPLAINT NO. 2419 OF 2019

Neelam Rani

...Complainant

Versus

Alpha Corp. Development Pvt. Ltd.
(3rd hearing)

...Respondent

CORAM: **Rajan Gupta**
 Anil Kumar Panwar
 Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 11.02.2020

Present: - Sh. Munish Kapila, Counsel for complainants
 Sh. Rohit Sharma, Authorized representative for respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Reply has been filed by respondent in all the above-captioned complaints except in complaint no. 2419 of 2019 titled as Neelam Rani V Alpha Corp. Development Pvt. Ltd. wherein no reply has been filed till date despite successful delivery of notice on 14.10.2019. Hence, the respondent in the said case has already incurred a cost of Rs. 10,000/- for not filing reply. The Authority directs the respondent to file his reply and supply its copy to complainant in the said case one week prior to the next date of hearing. He is also directed to pay the above-said cost to the Authority on the next date of hearing.

2. The respondent has filed miscellaneous applications in all the complaints on 16.12.18 requesting the Authority to recall its last order dated 06.11.2019 averring that the counsel for respondent had not shown her willingness to offer delay compensation to the complainants as has been recorded in the order. Further, the maintainability of the complaints is also being challenged by the respondent on the following grounds: -



- (i) Completion certificate qua the area wherein the plots of complainants are situated, has already been obtained by the respondent on 02.07.15 prior to coming into force of Real Estate (Regulation and Development) Act, 2016 (for short the Act) and therefore, his project doesn't fall under the definition of 'ongoing project' and hence, the complaints are not maintainable before this Authority.
- (ii) The complainants have already filed a consumer complaint no. CC/3437/2017 before the Hon'ble National Consumer Dispute Redressal Commission with respect to the same project raising identical issues and therefore, he is precluded from filing the present complaint on the same issues.
- (iii) The agreement entered between the parties provides that dispute arising out of the terms of the agreement between the respondent-promoter and allottee shall be settled either amicably or through an Arbitrator appointed by the respondent-company and therefore, the complainants are debarred from filing the present complaints.

3. Per contra, complainants have filed reply to the above-said applications in all the captioned complaints, copies of which were supplied to the respondent, rebutting the contentions made by the respondent which are as follows: -

- (i) The respondent has failed to read the content of the order dated 06.11.19 passed by the Authority wherein the Authority had simply

given a direction to respondent for endeavoring an amicable settlement of dispute by offering a reasonable compensation to complainants for delay in offering possessions. The Authority has nowhere recorded in the said order that respondent counsel is ready and willing to pay reasonable compensation to complainants.

- (ii) As far as consumer complaints before the Hon'ble National Consumer Dispute Redressal Commission are concerned, the complainants submitted that the remedy availed before NCDRC relates to different plot nos. and complainants have not filed any other complaints regarding the plots involved in present complaints.
- (iii) Mere incorporation of an arbitration clause in the agreements doesn't oust the jurisdiction of this Authority and the complainants have every right to invoke the jurisdiction of this Authority.

4. The Authority, after going through the submissions made by both the parties, observes and orders as follows: -

- (i) The relationship between the complainants and the respondent is still subsisting since it is an admitted fact that the respondent has not given possession of the plots to the complainants. The obligations of the respondent towards the complainants have not ended, by virtue of which, this Authority has jurisdiction to entertain the present complaints.

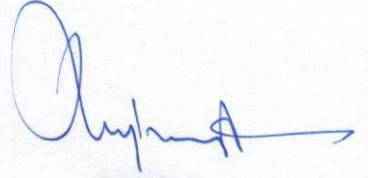
- (ii) The complaints filed by the complainants before the Hon'ble National Consumer Dispute Redressal Commission pertain to different plots for which the parties have entered into separate builder buyer agreements. For each plot, there is a separate cause of action. Hence, for distinct cause of action, complainants can avail any remedy available to him. Therefore, the plea of respondent that the complainants have indulged themselves into forum shopping is baseless and is therefore, rejected.
- (iii) Plea of the respondent that present complaints are not maintainable because as per Clause 24 of the Builder buyer agreement "*all or any dispute arising out of the agreement shall be settled amicably failing which same shall be settled through a sole arbitrator to be appointed by the owner/company*". However, by virtue of Section 89 of the Real Estate (Regulation and Development) Act, 2016, present complaints are maintainable before the Authority. Section 89 reads as under:

"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

By virtue of the over-riding effect which the above-quoted Section confers on the statutory provisions of the RERA Act, the Authority is duty bound to decide the present complaints filed under the provisions of the Act undeterred by the embargo created by the arbitration clause contained in builder buyer agreement.

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5. Both the applications stand **disposed of** and the matters are
adjourned to **19.03.2020** for arguments on merits.



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RAJAN GUPTA
[CHAIRMAN]



.....
ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

