



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2720 OF 2019

Manish and Namita Singh

....COMPLAINANTS

VERSUS

Alpha Corp Development Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 18.02.2021

Hearing: 7th

Present: - Smt. Namita, Complainants-in-person.

Sh. Harsh Bunker, Counsel for respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. The case of complainants is that, complainants booked a plot in respondent/promoter project on 05.05.2012 by paying a booking amount of Rs. 6,75,000/-. Builder Buyer Agreement was executed on 10.05.2012 and as per clause 10.1 of this agreement the development work was to be completed in 28 months plus time to procure government approvals. Further, the possession was to be given within 40 months from the date of first payment. Out of total sale consideration of Rs. 50,12,500/-, complainants have paid Rs. 40,50,000/-.

Possession was offered to the complainants on 29.11.2018. However, due to delay caused in handing over possession, complainants refused to take possession and sought refund. The complainants have now filed the present amended complaint seeking possession along with delay interest under Rule 15 of RERA rules. Calculation sheet has been filed by the complainant calculating the interest on delayed possession @ SBI MCLR rate + 2%.

2. The contention of respondent is that, the present complaint is not maintainable since the project of the respondent is not registered with Haryana Real Estate Regulatory Authority and part completion certificate in respect of the project had been obtained in April 2018. Ld. Counsel for respondent also referred to number of judgments in support of his contention such as Bikramjit Singh versus State of Punjab (Punjab RERA), Silver City RWA versus Chief Adm. GMADA (Punjab RERA), Neelkamal Realtors versus Union of India (Bombay High Court), Mangal Murti Foundation versus Shree Mahavir Developers and Construction Pvt. Ltd. (Maharashtra REAT), M/s Silver City Construction Ltd. Versus State of Punjab (Punjab REAT), Silver City RWA versus State of Punjab (P&H HC), M/s Omaxe Ltd. Versus Mrs. Arun Prabha (P&H HC) and M/s Imperia Structures Ltd. Versus Anil Patni (Supreme Court of India). He also placed compilation of these judgments on record before the Authority.

3. Another contention raised by the respondent is that as per clause 10.1 of BBA, possession of plot was to be offered upon grant of necessary statutory approvals, which in this case was granted on 19.04.2018 and thus, plot was



offered for possession on 29.11.2018. Moreover, part completion was applied on 24.01.2014 and same was granted by the Competent Authority on 19.04.2018 and in pursuance to that possession was offered on 29.11.2018 along with demand of balance payment. However, the complainants refused to take possession and wrote an email to the respondent asking for refund. Thereafter, the complainants approached the respondent for alternative plot. Thus, the respondent offered plot no. 440, Sector 29 in lieu of original plot no. 1520, sector 29. An amended plot buyer agreement was also sent to complainants which was never signed by them. Therefore, there was no delay in offering possession and thus, complainants are not entitled to interest for the alleged period of delay.

4. In response, the complainants state that firstly, they wrote an email to the respondent in September 2016 mentioning that their original plot was not accessible and there was no clear demarcation between the plot and nearby village land. Thereafter, the respondent also offered plot no. 436 in January 2017 but the plot was never shown to the complainants. The respondent claimed the plot to be west-facing but it was north-facing. Thus, the complainants rejected it. Then, the respondent offered plot no. 507 to which complainants agreed after 10 days but in the meanwhile, the respondent sold the said plot. Then, the respondent offered two more plots 543 and 440 with which the complainants had some issue. Therefore, they rejected the said plots also.

5. The Authority, after hearing both the parties at length and going through the case record, observes as follows:



- (i) First of all, the Authority to deal with the question of jurisdiction posed by ld. counsel for the respondent. The arguments of the learned counsel are that the Authority has no jurisdiction to deal with this complaint for the reasons that firstly the project is not registered with the Authority and secondly part completion certificate was obtained in April 2018. The Authority is unable to agree with the contentions of the learned counsel. Principles in this regard have been settled by the Authority in complaint no. 144 of 2019 titled Sanju Jain Versus TDI Infrastructure Ltd. The Authority reiterates that it has two kinds of jurisdictions, first, to register all new as well as ongoing projects for the purpose of placing the details of the project and its promoters in public domain to enable the general public to take an informed decision about investing their money in the project. Registration of a project has a specific purpose which is to ensure that true nature of the project is disclosed and the money collected from the allottees is invested in the project itself. The obligations cast upon the promoters of the project in respect of the allottees in terms of the builder-buyer agreement executed by them will remain enforceable irrespective of the fact whether the project is registered, unregistered, completed or not completed. Completion or non-completion of the project may entail certain liabilities upon the promoters in terms of



the license granted to them by the State Government Authorities. On the other hand, the obligations of the promoters towards the allottee flows from the builder-buyer agreement executed between them and the general law of land including the provisions of Indian Contract Act and now the provisions of RERA. The arguments of the learned counsel therefore are not acceptable. The Authority has full jurisdiction to enforce the agreements executed between the parties in respect of all kinds of project whether registered, un-registered, completed or not completed. It cannot be said that the liability of the promoter towards the allottees get washed away simply by getting their project registered or by obtaining a completion certificate.

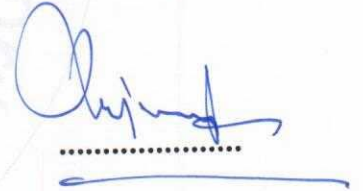
- (ii) In regard to possession of the plot No.1520, the facts which have been brought on record by both the parties reveal that the plot of the complainant was changed multiple times. This, as such, gives rise to presumption that there must have been some problem with the originally allotted plot of which the possession was offered in November 2018. If the said plot had no problem at all at that time, the respondents ought to have insisted on handing over the possession of the plot as was agreed initially. Further argument of the respondents is that as per the BBA offer of possession was to be made after completion of formalities with the State Government.



This argument of the respondents cannot be accepted because they had taken the entire amount of over Rs.40.00 lacs by the year 2013. If their formalities were yet to be completed with the State Government, they could not have accepted such a huge payment from the complainants so early. In the circumstances, it is legitimate for the complainants to expect that the plot would be handed over to them within the stipulated period after making substantial payments. The Authority also considers that the stipulation that the plot will be handed over after completion of the formalities of the Government is vague and non-specific. There are numerous formalities which have to be gone through. There may be delay in getting approvals from the Government for variety of reasons for which liability cannot be cast upon the complainant allottees. Disregarding the arguments of respondent, the Authority would consider that in the case of plotted colonies, the possession should be handed over within 3 years from the date of execution of BBA. Since the BBA was executed in May 2012, the reasonable period for handing over the possession works out to May 2015. Actual possession was offered in November 2018. The Authority would have no hesitation in ruling that the complainants are entitled to interest for the period of delay from May 2015 to November 2018.

- (iii) The Authority considers that the interest for delay beyond November 2018 till date cannot be granted because the respondent had offered the plot but the same was not accepted by the complainant. The repeated alternate offers are presumed to be an effort on part of both the parties is to settle the matter amicably. More importantly, the originally allotted plot No.1520, Sector-29 is now acceptable to the complainant. For this reason, the Authority considers that the complainant will be entitled to delay interest only up to November 2018.

Both parties shall put forward their arguments on the aforesaid tentative conclusions of the Authority. The Authority will give its final verdict after hearing the final arguments of the parties on the next date. Case is adjourned to 31.03.2021.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]