



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 239 OF 2020

Rishi RajgarhiaCOMPLAINANT

VERSUS

Ferrous Township Pvt. Ltd.RESPONDENT

Hearing : 8th

2. COMPLAINT NO. 639 OF 2020

PratibhaCOMPLAINANT

VERSUS

Ferrous Township Pvt. Ltd.RESPONDENT

Hearing : 8th

3. COMPLAINT NO. 1332 OF 2020

Satish Kumar GaurCOMPLAINANT

VERSUS

Ferrous Township Pvt. Ltd.RESPONDENT

Hearing : 7th

CORAM:

Rajan Gupta
Dilbag Singh Sihag
Nadim Akhtar
Dr. Geeta Rathee Singh

Chairman
Member
Member
Member

Date of Hearing: 07.09.2022

Present: -

Mr. Shubhnit Hans, learned counsel for the complainant through VC (in complaint no. 239 of 2020)
Mr. Pawan Bansal, learned counsel for the complainant through VC (in complaint no. 639 of 2020)
Mr. Prabhat Kaushik, learned counsel for the complainant through VC (in complaint no. 1332 of 2020)
Mr. Sourabh Goel, learned counsel for the respondent through VC (in both complaints)

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. Perusal of record file reveals that this is 8th hearing of the captioned matters today. These cases were adjourned during previous hearings at the request of Sh. Sourabh Goel, learned counsel for respondents who sought some time to settle these matters. But, no settlement has been arrived at between parties, despite availing several opportunities by the respondents. Therefore, learned counsel for complainants requested the Authority to proceed on merits as they are not willing to settle their matters. Therefore, Authority decided to hear these cases on merits.

2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent, i.e., "Ferrous Megapolis City", situated in Sector-70, Faridabad.

Complaint no. 239 of 2020 titled "Rishi Rajgarhia Vs M/s Ferrous Township Pvt. Ltd." has been taken as lead case for disposal of the matters.

3. Complainant had booked a plot bearing no. B-160, covered on two sides by park and north and east facing in respondent's project "Ferrous Megapolis City", situated at Sector-70, Faridabad by paying an amount of Rs. 5,60,000/- as earnest money on 10.02.2012. Total sales consideration of the plot was Rs. 71,00,000/-. Thereafter, respondent promoter demanded further payment but that was for a different plot, i.e., C-165 instead of plot B-160. On being questioned by the complainant, he clarified that allotted plot is exactly the same, with only change in plot number. Thereafter, again, complainant was re-allocated another smaller plot, i.e., plot C-177 measuring 200 sq. yards. Both parties signed builder buyer agreement on 21.11.2012 for plot no. C-177 against total sales consideration of Rs. 55,96,000/-. As per Clause 34 of the builder buyer agreement, possession of booked property was to be delivered within 36 months. Therefore, deemed date of possession in this case was 21.11.2015. However, no offer of possession has been made by the respondent till date. Complainant also visited the project site but there were no signs of development of project. Therefore, complainant sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.

While perusing case file, it is also observed that a discrepancy is found with respect to total amount paid by complainant in complaint case no. 239 of

2020. As per relief clause of complainant in Para 4(xxv)(k) at page 15 of his complaint book, complainant claims to have paid Rs. 49,41,365/- whereas, as per ledger placed on record by the complainant, annexed as Annexure P-2 of complaint book, total amount paid by the complainant is Rs. 51,42,318/-. Therefore, a clarification is required as to total amount paid by the complainant.

4. On the other hand, respondent vide his written submissions dated 07.09.2020, submitted that they have not been able to complete the project due to force majeure circumstances, i.e., a litigation was going on in the Hon'ble Punjab and Haryana High Court challenging partition proceedings of some piece of land. As a result of the same, Hon'ble Punjab and Haryana High Court vide its order dated 01.07.2014 directed parties to maintain status quo with respect to land in question. Besides, CWP No. 25226/2013 was filed in Hon'ble Punjab and Haryana High Court, which was finally disposed off on 09.05.2016 with direction to remand back the matter to Assistant Collector, Ballabgarh for fresh adjudication. To safeguard interest of allottees, respondent challenged this order dated 09.05.2016, by way of LPA No. 2129, 2131, 2081 and 2142 of 2016 and vide order dated 26.10.2016, Hon'ble Punjab and Haryana High Court stayed passing of final order and fixed the matter for 30.09.2020. Thus, respondent promoter demands reasonable extension of time for completion of project in question and period during

which land in question remained under stay be excluded from 36 months time period for delivery of possession to complainant.

He further stated that plot no B-160 was changed to C-177 after consent and full satisfaction of complainant. So, allegation as to re-allocation of plot is meaningless.

5. Today, during hearing, learned counsel for the complainants reiterated the factual matrix of the case as narrated above and apprised the Authority that copy of reply is not yet received in above captioned matters. He further stated that there has been an inordinate delay of more than 6 years since deemed date of delivery of possession of plot stands expired. Therefore, complainant wish to withdraw from the project of the respondent and prays for refund of the paid amount along with interest.

6. On the other hand, Sh. Sourabh Goel, learned counsel for respondents submitted that there is possibility of arriving at settlement in complaint case no. 639 of 2020. Therefore, he prayed that one last opportunity be granted to him to settle captioned matter.

7. After considering facts and circumstances of the case, Authority observes and directs as follows:

- i. Perusal of record file reveals that complainants booked flat in respondent's project on 10.02.2012, by making payment of earnest money of Rs. 5,60,000/-. Total sale consideration of plot was Rs. 55,96,000/-, as has been evident from BBA annexed as Annexure P-5

of complaint book. Deemed date of delivery of possession as per the BBA was 21.11.2015. No offer of possession has been made till date. This clearly explains inordinate delay of more than 6 years in handing over possession of plot by respondent to complainants.

- ii. Secondly, in lead complaint case no. 239 of 2020, there exist a discrepancy as to total amount paid by complainant. Therefore, complainant is directed to provide clarification as to total amount paid by him, placing on record relevant receipts before the next date of hearing.
- iii. Thirdly, as regards contention of respondent promoter that they have not been able to complete the project due to force majeure circumstances, i.e., a litigation has been going on in the Hon'ble Punjab and Haryana High Court challenging partition proceedings of some piece of land on which project was supposed to be developed, Authority has comprehensively dealt with this matter in its project jurisdiction, vide its order dated 05.01.2022, relevant part of which is reproduced as under:

“14. The Authority has considered the arguments put-forth by both sides and it observes and orders as follows:

- (i) That analysis of arguments put-forth by both sides reveals that basic



controversy is regarding interpretation of orders of Hon'ble Division Bench in LPAs No. 2129, 2142, 2081 and 2131 of 2016 passed on 8.4.2021. In this order, Hon'ble Division Bench has categorically set aside the order dated 9.5.2016 passed by Hon'ble Single Judge and has also remanded the case back to Hon'ble Single Judge for a decision afresh.

(ii) Argument of applicant-promoter is that having set aside the order dated 9.5.2016, the matter stands reverted back to the stage when Financial Commissioner had upheld partition of the land carried out by learned Assistant Collector Ist Grade. Further, Hon'ble Single Bench will now decide the appeal filed against said partition proceedings afresh. According to applicant promoter at present no stay order is applicable on the partition already carried out.

(iii) On the other hand, argument of intervener-applicant, is that since the matter has been remanded back to the Hon'ble Single Bench, only final order dated 9.5.2016 has been set aside, and not the interim order dated 1.7.2014 which will become again applicable. Accordingly, no further action can be taken by this Authority to alter the status-quo so obtained on that date i.e., 1.7.2014.

(iv) Authority observes that final order dated 9.5.2016 passed by Hon'ble Single Bench has been set aside, consequently partition of the land carried out by revenue authorities has been recognized.

However, the said partition will be subject to outcome of the CWP filed before Hon'ble High Court which will be decided by Hon'ble Single Bench afresh on account of matter having been remanded back.

(v) Both parties have sought to put-forth their arguments about meaning and purport of the remand orders passed Hon'ble Division Bench. Argument of applicant-promoter is that with the remand order matter becomes sub-judice before Hon 'ble Single Bench but no stay can be said to be operational because interim order dated 1.7.2014 having been subsumed in the final orders dated 9.5.2016 has been set aside, accordingly, even interim order of stay has been set aside. Argument of intervener-applicant however is that only the final orders dated 9.5.2016 has been set aside, but interim order dated 1.7.2014 will remain in operation. In support of this argument, intervener has cited certain judgments.

vi) Authority observes that Town and Country Planning Department has renewed license of the project subject to outcome of proceedings in Civil Misc. Applications and the Civil Writ Petitions pending before Hon'ble High Court. In other words, the Department has put entire responsibility on promoter-company to ensure that their license is implemented in such a manner so as to ensure that outcome of pending petitions before Hon'ble High

Court is appropriately given effect to by the promoters.

vii) Authority, observes that effect of registration granted under RERA

Act, is quite different from the effect of renewal of license. Registration of a project by Authority permits a promoter to develop the project, to sell plots and to alter the current status. Registration is also a guarantee to investing public and future allottees that title of the project is totally clear and their interest will be adequately protected and they are not likely to be adversely affected in any manner.

viii) Admittedly the matter is sub-judice before Hon'ble High Court. Its outcome may go either way.

ix) Further, both parties are seeking to interpret orders dated 8.4.2021 passed by Hon'ble Division Bench. Authority considers that it may be appropriate for the parties to file an application before Hon'ble High Court for seeking clarifications of orders dated 8.4.2021 as to whether it amounts to revival of the stay order dated 1.7.2014 passed by Hon'ble Single Bench or not? It will be appropriate that such a clarification is sought from Hon'ble High Court rather than asking the Authority to interpret the effect of the said order.

x) In the circumstances, Authority directs both the parties to file their respective applications before Hon'ble High Court and submit before the Authority



the orders so passed by Hon'ble Court. The Authority will act accordingly.

15. The applicant-promoters have filed an application for exemption from applicability of additional fees for the reasons of forced majeure circumstances due to pending litigation. Arguments on their application were not heard today. The same will be heard when their application for registration of the project is taken up for consideration after receipt of orders of Hon'ble High Court.

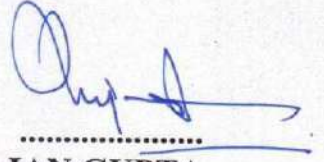
16. This matter is adjourned sine-die. Whenever orders of Hon'ble High Court are received, applicant promoter may file an application for listing up of this matter for consideration of their application for registration.

Adjourned sine-die.”

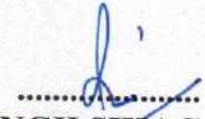
8. Since there has been an inordinate delay of more than 6 years in handing over possession of plot to complainants and project is not likely to be completed in the near future, therefore, Authority observes that by virtue of section 18 of RERA Act, 2016, allottees are within their right to ask for refund as no timeline is being committed by respondent for handing over of possession. Allottees cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority is of tentative view that relief of refund deserves to be allowed. However, since arguing counsel for respondent requested for adjournment to settle the captioned matters, therefore one last opportunity is granted to respondents to argue their case and to comply with

directions of the Authority, failing which above expressed tentative view will be confirmed.

9. Case is adjourned to **10.11.2022.**



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]



NADIM AKHTAR
[MEMBER]



DR. GEETA RATHEE SINGH
[MEMBER]