BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY AUTHORITY, PUNJAB

I. Complaint No. 1402 of 2019
Date of Institution: 04.11.2019
Date of Decision: 17.03.2020

Ramandeep s/o of Shri Ramesh Chander, Flat No.693, First Floor, Omaxe Cassia, New Chandigarh, Mohali-Punjab 160014

....Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade Tower, First Floor, Madhya Marg Extension Road, New Chandigarh, Mohali-Punjab, 160014.
2. Facility Plus Estate Management Pvt. Ltd., Flat No.723-B, Ground Floor, Omaxe Silver Birch, Omaxe New Chandigarh, Mohali-Punjab-140901

.... Respondents

II. Complaint No. 1439 of 2019
Date of Institution: 02.11.2019
Date of Decision: 17.03.2020

Sukhpreet Kaur d/o Shri Harjit Singh, 515 Omaxe Cassia, New Chandigarh, Mohali-Punjab-160014

....Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade Tower, First Floor, Madhya Marg Extension Road, New Chandigarh, Mohali-Punjab, 160014.

2. Facility Plus Estate Management Pvt. Ltd., 715, Omaxe Cassia, New Chandigarh, Mohali-Punjab-160014

.... Respondents

III. Complaint No. 1440 of 2019
Date of Institution: 04.11.2019
Date of Decision: 17.03.2020

Devender Gupta s/o Shri T.D. Gupta, 511, Ground Floor, Omaxe Cassia, New Chandigarh, Mohali-Punjab-160014

....Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade Tower, First Floor, Madhya Marg Extension Road, New Chandigarh, Mohali-Punjab, 160014.
2. Facility Plus Estate Management Pvt. Ltd., 715, Ground Floor, Omaxe Cassia, New Chandigarh, Mohali-Punjab-160014

.... Respondents

Present : None for the complainants
Shri Arjun Sharma, Advocate for the respondents

ORDER

This order will decide the above 3 complaints since common point of law and facts are involved in each of these. A copy of the order be placed on each file.

2. The complainants are the allottees of apartments in the project 'Cassia' developed by the respondent no.1, which is a developer and promoter. Respondent no.2 is the maintenance

agency engaged by respondent no.1 for providing maintenance services for the project. It has been alleged in the complaints that since the facilities and amenities promised by respondent no.1 had not been provided within the stipulated time, it was bearing 50% of the Common Annual Maintenance Charges (CAM) that were otherwise the liability of the allottees. Subsequently, however it had started bearing only 40% of the CAM, thus casting an increased the liability upon the allottees. A meeting to consider these issues was held on 23.12.2018 in which it was decided that respondent no.1 would continue to bear 50% of the CAM till the majority of the issues raised in the meeting were resolved. However, from 01.08.2019 onwards the respondent no.1 had gone back on its commitment to pay 50% of the charges even though the deficiencies pointed out by the allottees had not been fully resolved. The relief sought in the complaint is a direction to respondent no.1 to continue paying 50% of the CAM till the issues were settled to the complainants' satisfaction.

3. In the reply filed on behalf of the respondents a legal issue has been raised that the agreement between the parties contains a clause that any dispute will be settled through mutual discussions failing which the matter would be referred to the arbitration. It is contended that the jurisdiction of this Authority was accordingly excluded. This argument only needs to be noted to be rejected, since this Authority has already held in a number of cases that the existence of an arbitration clause would not exclude its jurisdiction. It has further been contended in the

reply that the complainants or their predecessors-in-interest had signed an Operation-cum-Maintenance Agreement with the respondents in which they had clearly undertaken to pay the maintenance charges; and they could not be allowed to resile from keeping their part of the bargain. The respondent no.1, as a gesture of goodwill, had contributed towards the payment of CAM for some time but could not be expected to do so in perpetuity. Instead the complainants were bound by Section 19 (6) of the Act to make payment of due charges. It has finally been contended that the majority of the issues raised by the complainants had actually been sorted out, and hence respondent no.1 was in any case not liable to continue paying 50% of the maintenance charges.

4. The above contentions were reiterated by Counsel for the parties when the matter was taken up for arguments on 25.02.2020. Shri R.P. Singh, Counsel for the complainants, pointed out that the security agency deployed by the respondents was not well equipped; that requisite number of CCTV cameras had not been installed; that the condition of the roads was not satisfactory; and no club house or Sewerage Treatment Plant had been made operational. He pointed out that in this background the agreement for payment of maintenance charges had to be held to be an unfair one and the complainants were not bound by its provisions. He cited the Supreme Court ruling in the case of *'Pioneer Urban Land and Infrastructure Limited and ors Vs. Govindan Raghavan (Civil Appeal No.12238*

of 2018) in this context. On the other hand Shri Arjun Sharma, Counsel for the respondents, pointed out that even as per the complainants' own contention only 9 out of the 22 issues were yet to be resolved; and the respondent no.1 was therefore not bound to contribute anything towards payment of CAM charges. In any case the complainants, or their predecessors-in-interest had signed the maintenance agreement of their free will and were therefore bound by its terms. He cited the rulings (1996) 4 SCC 704 and (1990)SC 699 to support this argument that the terms of an agreement were binding on the parties. He finally pointed out that the maintenance was being charged @ Rs.1.50 per sq. feet per month and could not be held to be unreasonable by any stretch of imagination. The Supreme court judgement in the case of Pioneer Urban Land supra was, therefore, not applicable to the present case.

5. Having considered the rival contentions carefully, I do not find any merit in these complaints. To my mind levy of maintenance charges @ Rs.1.50 per sq. feet per month is not unreasonable and hence the complainants cannot be allowed to escape their liability on this account. It is clear that the due maintenance of the real estate project can be carried out only if the allottees thereof pay the charges they have agreed to bear; and maintenance of the premises cannot be the responsibility of the developer for all times to come. The High Court of Punjab and Haryana has also explained in its order dated 31.01.2019 in CWP No.5532 of 2018 (Raghbir Singh Manak and Ors Vs. State

of Punjab and Ors.) that the allottees are bound to pay the maintenance charges. If at all there is failure of the obligation to provide the amenities mentioned in an advertisement or brochure, or any failure to adhere to the sanctioned plans and project specifications, the remedy is to seek compensation under Sections 12 and 14 of the Act, and not unilaterally to stop paying the maintenance charges as the complainants seek to do. The relief claimed by the complainants cannot be granted under any provision of the Act.

6. As a result of the above discussion these complaints are held to be without merit and are accordingly dismissed.

Announced.

Chairperson
Real Estate Regulatory Authority
Punjab