

Brig. Jagbir Singh
Vs.
M/s Sai Apartments and Infrastructures and others
(Unregistered project)

Present: Sh. Anubhav Bansal, Advocate for the complainant.
Respondents ex-parte.

The complainant purchased a plot no. 154 measuring 125 sq. yards. in residential township Vishranti at Zirakpur on 20.06.2011, for a total sale consideration of Rs.25,37,500/-. However, he entered into a buyer back agreement with the respondent on 27.12.2012 for a sale consideration of Rs.30,00,000/- as against his purchase price of Rs.25,37,500/- i.e. at a profit of Rs.5 lakhs approximately. The respondent duly paid Rs.5.00 lakhs to the complainant on 27.12.2012 with a commitment to pay the balance sum of Rs.25.00 lakhs by 15th April, 2013. The respondent did not make the balance payment within the stipulated period but made few further payments till 12.06.2014. As per own admittance of the complainant, the balance outstanding amount was Rs.20,40,000/- as on 12.06.2014.

Notices were repeatedly sent to the respondents but the same were received back undelivered. The project is not registered with the RERA as provided U/s. 3 of the Real Estate (Regulation and Development) Act, 2016.

However, in the interest of justice, as per the order dated 24.07.2019 of the Punjab Real Estate Appellate Tribunal dated 24.07.2019 in matter of *M/s. Silver City Construction Ltd. Vs. State of Punjab through Principal Secretary, Department of Housing and Urban Development and others* it held the following:-

- i. *Appeal No. 49 of 2018 is allowed and the impugned order dated 21.12.2017 (A-1) passed by the Real Estate Regulatory Authority, Punjab is quashed and set aside.*
- ii. *The proceedings of complaints No. 5 & 7 are remitted to the Real Estate Regulatory Authority, Punjab for decision on merits of the complaints.*
- iii. *The Real Estate Regulatory Authority, Punjab shall also decide the validity of the revisional order dated 04.03.2016 (A-2) on its own merits after hearing the rival parties.*
- iv. *The Full Bench judgment dated 13.12.2017 passed in complaint No. 3 of 2017 titled as "Bikramjit Singh and other Versus State of Punjab and others" holding that the complaints against promoters in relation to the projects that are not registered with Real Estate Regulatory Authority, Punjab are not maintainable is declared as no longer good law with reference to para 41(2) thereof".*


Accordingly, the Appellate Tribunal has held that the Authority is competent to proceed against the projects, irrespective of the fact whether they are registered or not.

Hence, the proceedings were initiated against the respondent by issuing a notice and after repeated adjournments, in the absence of the respondent during proceedings, it was decided to proceed ex-parte.

Today, the arguments of the counsel for the complainant were heard in detail. He reiterated the facts mentioned above and argued for issuing directions to the respondent for making the balance payment of Rs.20,40,000/- alongwith interest @ 24% or alternatively execute a conveyance deed of a plot measuring 100 sq. yards in place of the original 125 sq. yards in favour of the complainant and also levying of penalty etc. The matter has been examined in detail. The documents submitted by the complainant with the complaint clearly reveal that the complainant bought 125 sq. yards plot on 20.06.2011 for a sale consideration of Rs.25,37,500/- which was duly paid by him upto 20.09.2011. Subsequently, he sold the plot back to the respondent on 27th December, 2012 i.e. after approximately 1 year of the purchase for a consideration of Rs.30,00,000/- with a profit of Rs.5.00 lakh approximately. Out of this sale consideration, by his own admittance he has already received an amount of Rs.9,60,000/- but the balance amount has not been paid by the respondent so far.

Perusal of the documents reveals that the dispute between the complainant and the respondent is primarily in relation to a sale agreement of a plot duly purchased by the complainant after making the full payment. This sale agreement pre-supposes that the complainant opted for not taking possession and with an eye on profit sold the plot back to the builder by earning a profit of Rs.5.00 lakhs within 1 year approximately of purchase of the plot. The subsequent sale agreement relates to the contractual obligation of the respondent in regards to property purchased by him from the complainant. It does not relate to non-fulfillment of obligations/contraventions on the part of the promoter in respect of a project executed by him as provided under the Real Estate (Regulation and Development) Act, 2016 and Punjab State Real Estate (Regulation and Development) Rules, 2017 & Regulations made thereunder. This matter is purely civil in nature and does not lead to any contraventions of the Act & Rules. Accordingly, the complaint is not maintainable before this authority. The same is dismissed as being not maintainable. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent. He shall however be at liberty to file a fresh complaint in respect of contraventions of provision of the Act & Rules made thereunder, if any.

Chandigarh
Dated: 09.07.2020


(SANJIV GUPTA)
Member
RERA, Punjab

09/07/20