

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY
AUTHORITY, PUNJAB**

Date of Decision: 07.01.2020

Complaint No. 1211 of 2019

Date of Institution: 24.06.2019

Dewan Bal Krishan, House No.111, Model Town, Narwana, Jind,
Haryana - 126116

....Complainant

Versus

1. M/s Opera Infratech & Developers, SCO No.36, Sector 3,
Panchkula, Haryana - 134109
2. Ajay Veer Sehgal, Managing Director, M/s Opera Infratech
& Developers, SCO No.36, Sector 3, Panchkula, Haryana -
134109
3. Anil Sharma, Manager, M/s Opera Infratech & Developers,
SCO No.36, Sector 3, Panchkula, Haryana - 134109
4. Chandigarh Colonizers Private Limited, SCO No.36, Sector
3, Panchkula, Haryana - 134109
5. Jasmine Sehgal, SCO No.36, Sector 3, Panchkula, Haryana
- 134109

.... Respondents

Present : Shri Rachit Kaushal, Advocate for the complainants
Shri Amit Sharma, Advocate for respondents no.1 to
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ORDER

This is a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) by Shri Dewan Bal Krishan against the respondents seeking the cancellation of registration of their

projects 'Opera Garden' bearing registration numbers PBRERA-SAS79-PR0232 and PBRERA-SAS79-PR0282 respectively.

2. The above 2 projects are in fact one contiguous development. As per the available record, the project registered as PBRERA-SAS79-PR0232 has been developed by M/s Chandigarh Colonizers Pvt. Ltd. who became owners of 34 Bighas 1 Biswa (34B-1B) of land by virtue of registered sale deeds no. 2061(20B-1B), 2231(7B-7B), 2284(4B-0B), 4301(0B-3B) and 5547(2B-10B) registered between 06.06.2006 and 14.11.2006 in the name of the developer. Similarly, the project registered as PBRERA-SAS79-PR0282 has been developed by a partnership concern M/s Opera Infratech and Developers who became owners of about 29B-10B of land through sale deeds no.2265(16B-2B) and 5551(13B-8B) executed on 07.06.2004 and 21.09.2004 respectively.

3. The grounds urged in the complaint seeking cancellation of the registration of the projects are as follows:-

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- i. that the promoters had represented to be exclusive owners of the land on which project was located and hence obtained the registration by misrepresentation and fraudulent practices.
 - ii. the complainant and some other persons were co-owners in possession of the land over which the project was being developed and the respondents

had undertaken construction even on land which fell to the share of the complainant.

Copies of the order and decree dated 05.05.2009 of the Trial Court, decree and judgement dated 18.05.2010 of the Additional District Judge, SAS Nagar (Mohali) and copies of judgments dated 18.03.2011 of the Punjab and Haryana High Court in R.S.A no.3421 of 2010 (O&M) and R.S.A no.3422 of 2010 (O&M) have been annexed with the complaint.

4. Notice of the complaint was served on the respondents who submitted a reply. The reply has been filed on behalf of respondents no.1 to 4 only, on the ground that respondent no.5 had nothing to do with the project. It is contended in the reply that the respondents were lawful owners of the land in question. The complainant and his associates had attempted to purchase the land in a fraudulent manner in the year 2010-11 on the basis of forged documents, and FIR No.141 of 2018 had been registered at Police Station Sector 5, Panchkula, Haryana in this regard. It is further pointed out that the construction had been done only in a small part of the total area owned by the respondents and there was no question of encroaching upon the land owned by anyone else. It is further pointed out that the total land was around 80 Bighas out of which the complainant had only a minor share. Finally, it was alleged that the complainant had sought an injunction against the respondents seeking to restrain them from raising any construction on the specific area belonging to the complainant. However, this

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injunction had been declined by the Civil Judge, Derabassi vide its order dated 28.05.2019 – hence the compliant was totally misconceived.

5. When the matter was taken up for arguments, Shri Rachit Kaushal, Counsel for the complainant pointed out that initially Shri Yogeshwar Singh and Hindbir Singh had been declared to be the owners in possession of the land by virtue of order dated 05.05.2009 of the Additional Civil Judge (Senior Division), Derabassi passed in Civil Suit No.RT278/7.9.1990/3.4.2008. This order had been upheld upto the level of the High Court. The present complainant had obtained his title from these owners. However, the respondents had claimed to be the sole owners of the land in question and therefore misled the Authority. He pointed out that the complainant being a co-sharer was entitled to a share in every inch of the land, and hence the respondents could not undertake construction thereon without getting the land partitioned. Counsel cited the ruling (2000) 126 PLR 216 and pointed out that the High Court had held that if the acts of a co-owner in possession were detrimental to the interest of other co-owners, the latter could seek an injunction to prevent such acts. Countering this contention, Shri Amit Sharma, Counsel for the respondents pointed out that the predecessors-in-interest of the complainant had initially been held to be owners to the extent of only 9B-10B of land out of the total land. On the other hand, respondents were owners to the extent of nearly 65 Bighas. Counsel further pointed out that it was wrong to say that

the High Court had held the predecessors-in-interest of the present complainant to be exclusive owners of the land. Only a part of the total land measuring more than 80B was under dispute before the High Court and its order was confined only to land measuring 29B-10-1/2B. Counsel cited the ruling 1981 LJ 204 to the effect that a co-sharer can sell land to the extent of his share and also put the vendee in possession of the area under his possession. He pointed out that this Full Bench decision (*Bhartu Vs. Ram Sarup*) had since been applied in various other decisions too. Counsel highlighted the fact that the complainant had filed a suit for injunction against the respondents but the same had been dismissed. Shri Sharma finally relied upon Memo No.18/02/19-5H2/1414558/1 dated 08.02.2019 of the Department of Housing and Urban Development, Punjab and pointed out that at the relevant time approvals for development of a project were given only after ascertaining the actual possession of the co-owners at the spot. They had obtained all approvals before starting construction, the necessary implication being that development was being carried out only on the area under their possession.

6. Both parties have also submitted written arguments reiterating the above contentions.

7. Shri Kaushal has submitted some annexures along with the written arguments. 2 of these are reports of the Patwari of Village Kishanpur giving the respective shares of the parties over the land. Apart from the fact that these reports have not been

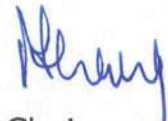
relied upon while approving the registration of the projects, these only confirm the fact that the complainant and the respondents are co-owners of the land in question. The other annexure is a copy of the Non Encumbrance Certificate issued by the Joint Sub Registrar, Zirakpur on 24.11.2017. The contention in this regard is that these certificates had been applied for on the same date as the date of their issue, and the undue haste cast considerable doubt about the genuineness of these certificates.

8. I have considered the rival contentions carefully and also perused the record of the case. To my mind there is no doubt that the respondents are co-owners of the land, and have nowhere represented to the Authority that they were exclusive owners of the entire land. In fact, the record relating to the registration shows that the respondents had submitted title deeds to the extent of their share, as has been noted in para 2 above. In this context, it is noteworthy that the complainant and his family had themselves filed the Civil Suit No.CS/413/2017 seeking partition of the land. In this suit, they had also sought an injunction restraining the present respondents *inter alia* from raising construction on the property belonging to the plaintiff/complainant. This injunction has been declined vide order dated 28.05.2019 by the Civil Judge, Derabassi as mentioned in the reply filed on behalf of the respondents. There is no contention or argument that this order has ceased to subsist. Even otherwise there is no evidence on record to prove

the allegation that the construction is being carried out on the portion of the land that is under the complainant's possession. Under the law a co-owner is entitled to raise construction on the land within his possession. The plans for the project have been approved by the Municipal Committee, Zirakpur in December 2006. The respondents have also fulfilled other requirements for the registration of the projects.

9. The outcome of the above discussion is that no ground to set aside the registration of the projects in question have been established. The complaint is accordingly declined.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab