

Before the Real Estate Regulatory Authority, Punjab

Complaint No. 31 of 2017

Rajiv Chopra

Complainant

Versus

Air Force Naval Housing Board, New Delhi.

Respondent

Present:- 1) Sh. Rajiv Chopra , Complaint in person.
2) None for the Respondent.


Date of decision : 05/12/2017

ORDER

This complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 has been filed by the allottee against the respondent Board, and alleges delay in completion of the dwelling unit allotted to the complainant. Relief by way of an immediate possession of unit, interest for the period of delay and compensation for harassment etc. has been claimed.

Notice was issued to the respondent who put in an appearance through its Assistant Manager (Legal) and submitted a reply. It has been contended that the complaint was not maintainable as the respondent Board had not registered the project with this Authority under Section 3 of the Act, since they had already obtained a Partial Occupation Certificate and were hence exempt from the purview of the Act. On merits, it has been claimed that it was the complainant himself who had requested for cancellation of his allotment and return of his money. He had been asked to file an application for restoration of the allotment, but had not done so and instead filed the present complaint.

Arguments were held on 15/11/2017 and pronouncement of order was reserved.

 In view of the pleadings and reply filed by the Board, it is first necessary to decide the preliminary objection regarding maintainability. The respondent's objection is based on the argument that projects which have already been completed do not fall in the purview of the Act. Section 3 of this Act, makes it mandatory to the promoters to register their projects with the Authority before advertising, marketing or selling any plot or apartment therein. The same Section however provides, in sub-clause 2(b), that where the promoter has received completion certificate for a real estate project prior to commencement of the Act, such projects will be exempted from the requirement of the registration. The respondent's contention is that it had received a Partial Occupation Certificate, which is a

stage subsequent of that completion certificate, and hence was not answerable to the complainant under the Real Estate (Regulation and Development) Act, 2016. As against this, Counsel for the complainant pointed out that the Authority had been established to provide a forum for grievance redressal and the respondent could not deny its obligation to be answerable to the Authority. He submitted that the Partial Occupation Certificate relied upon by the respondent was issued on 02/06/2017, after the enforcement of Real Estate (Regulation and Development) Act and hence the respondent could not take the benefit of Section 3 (2) (b) of the Act. He further contended that the complaint was maintainable regardless whether the project registered or not, and pleaded that immediate possession of the dwelling unit, and interest for the period of delay in handing over the possession, should be awarded to the complainant.

I have considered the rival contentions and found that it is undisputed that the project has not been registered with the Authority. The crux of the matter would therefore be to decide whether the Act applies to the projects which have not been registered under it or not. Having considered the matter carefully, I am of the view that the Act would not apply to the projects that have not been registered. It is applicable only to the promoters whose projects are registered under the Act that would be answerable to its jurisdiction. This seems clear from the scheme of the Act. It is noteworthy that the first Sections of the Act after its title and definitions- Sections 3 and 4 – deal with the registration of projects. The Act further provides in Section 5 that after registration a promoter shall be given a Login id and password. Section 11, which lays down functions and duties of the promoter, also casts duties upon him".....upon receiving his Login id and password....." Further, Section 34 of the Act which delineates the functions of the Authority lays down the first of these as: "to register and regulate real estate projects and real estate agents registered under this Act," Finally, Section 59 of the Act provides for the consequences of non-registration, and makes a promoter liable for the imposition of penalty, and even imprisonment in case of continued violations.

In my view, therefore all rights, duties and obligations of the promoter under the Act arise only upon obtaining the registration under the Act. Since this project has not been registered, a complaint relating to it cannot be entertained.

This complaint is therefore rejected as not maintainable. The complainant may pursue his remedy before an appropriate forum, if so advised.


Chairman

Real Estate Regulatory Authority, Punjab.