

**Before Sh. Balbir Singh, Adjudicating Officer,  
Real Estate Regulatory Authority, Punjab, Plot No.3,  
Block-B, First Floor, Madhya Marg, Sector 18A,  
Chandigarh-160018.**

Complaint No. AdC.No.1335 of 2019

Dated of Institution: 25.09.2019

Date of Order: 09.06.2020

Ritzy Enterprises, D-832, Second Floor, New Friends  
Colony, Central Delhi, Delhi-110065.

Complainant

Versus

DLF Limited, DLF the Shopping Mall, 3<sup>rd</sup> Floor, Arjun Marg,  
DLF City Phase-1, Gurgaon, Haryana-122002.

Respondent

Complaint under Section 31 read with Section 71  
of the Real Estate (Regulation and Development)  
Act 2016 in form N.

Present: Ms. Manju Goyal, Advocate, representative for the  
complainant.  
Shri Shekhar Verma, Advocate, representative for  
the respondent.

**O R D E R**

1. Ritzy Enterprises through its authorized representative Satish Kumar Sethi (hereinafter called as the complainant) filed this complaint against DLF Limited (here-in-after called as the respondent) alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund and interest etc. as per the provisions of the Act. It is the case of the complainant that unit No.JLM-222 was got booked in the project **Galleria-DLF** Jalandhar and the



complainant paid the booking amount of Rs.31,84,200/- on 09.06.2006. Thereafter, the respondent offered the complainant to purchase retail units JLM-216 to 219 instead of JLM-222 the combined space of the said units was larger than the earlier booked single unit and the complainant agreed to purchase the said units at the total cost of Rs.2,64,71,257.92 including BSP, service tax, property registration etc. The allotment was converted and the parties entered into written document in this behalf dated 27.09.2012. Demand notice was issued to the complainant to clear the dues on 27.12.2012 and on 28.03.2013, the parties entered into retail/ commercial space buyer agreement. The respondent was to hand over the possession within 36 months from the date of execution of agreement. The complainant repeatedly requested the respondent to hand over the possession and the necessary documents, but, the same had not been provided. The complainant paid an amount of Rs.2,21,89,720/- till date and also issued legal notices dated 26.07.2016, 18.11.2016 and 16.02.2017, but, the respondent did not respond. As the respondent failed to supply the relevant documents as per agreement, as such, the complainant could not be compelled to continue with the agreement and had the option to terminate the agreement in the light of clause



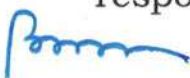
11(4) thereof. The complainant prayed for refund of the above said paid amount alongwith interest, compensation and litigation expenses as prayed.

2. Upon notice, the respondent through its representative contested the complaint by way of filing written reply raising the preliminary objections that the instant project had been developed by the respondent after obtaining all the necessary approvals and sanctions from the competent authority. After completion of the project, completion certificate/occupancy certificate had been issued by the competent authority on 26.09.2011 much prior to the coming into force of this Act. Even offer of possession had also been made to the complainant vide letter dated 30.12.2015. In these circumstances, the instant matter was not covered under the Act and the complaint was liable to be dismissed. It was further alleged that there was no delay on the part of the respondent in delivery of possession, rather, the complainant himself failed to obtain the possession. The factum of booking of units No.JLM-222 and then allocation of units No.JLM-216 to JLM-219 instead of Unit No.JLM-222 and receipt of an amount of Rs.31,84,200/- at the time of booking was admitted. On merits, it was stated that the complainant had no cause of action to file the instant complaint and RERA Authority had no jurisdiction to



adjudicate the matter in dispute, the provisions of the Act being not applicable to the present case. Rest of the paras of the complaint had been denied and prayer for dismissal of complaint had been made.

3. I have heard the learned representatives for the parties and with their assistance have gone through the record.
4. Both the representatives for the parties advanced arguments on the lines of respective averments as contained in their respective pleadings and would be elaborated in the discussion part.
5. It is admitted fact between the parties, that earlier the complainant booked Unit No.JLM-222 in Galleria-DLF, Jalandhar, on 09.06.2006 and paid an amount of Rs.31,84,200/- as booking amount and then the parties agreed to sell/purchase Units No.JLM-216 to JLM-219 instead of above Unit No.222 and retail space buyer agreement Annexure-CIII was executed on 28.03.2013 by the parties in respect of above said four units. There is also no denying the fact that the total sale price of the four units including service tax, registration charges etc. was Rs.2,64,71,257.92 and complainant paid an amount of Rs.2,21,89720/- till 27.12.2012.
6. In the instant complaint, the complainant is seeking refund of the paid amount on the ground that the respondent failed to furnish the relevant documents



required under law and as such the complainant was not obliged to continue with the agreement and was at liberty to terminate it. On the other hand, the respondent's case is that the project was complete way back in the year 2011 and completion certificate/occupancy certificate was issued by the Competent Authority on 26.09.2011 vide Annexure-R2. It is further the stand of the respondent that the possession was offered to the complainant in the year 2015 vide offer letter dated 30.12.2015 Annexure-R3 (colly) alongwith the details of the due amount, but, the complainant himself failed to obtain the delivery of possession.

7. The complainant side did not dispute the completion of the project and issuance of offer of possession vide letter dated 30.12.2015, but, asserted that it was not possible for the complainant to accept the offer of possession, without receipt of documents i.e. copy of occupancy/completion certificate, copy of sanctioned plan and various clearances from the concerned departments etc. It is mentioned in the legal notices Annexure-CV (Colly) that the above documents were not supplied to the complainant despite writing of letters dated 25.03.2013 to 14.04.2016, but, no such letters have been placed on record. Even the legal notices are dated 26.07.2016, 18.11.2016 and



16.02.2017 i.e. after the issuance of letter of offer of possession on 30.12.2015. The perusal of the completion certificate/ occupancy certificate dated 26.09.2011 Annexure-R2 shows that the project was complete in the year 2011 and as such the controversy of the case in hand did not fall within the purview of the Act, which came into force w.e.f. 01.05.2017 and that is why the project did not require registration with the Punjab State Real Estate Regulatory Authority, the exclusion cause of which is Section 3 (2)(b) of the Act, which reads as under:-

(2) (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

8. In these circumstances, when the project was complete and offer of possession was already made to the complainant in the end of December, 2015, the complainant cannot now seek refund of the amount paid to the respondent in the year 2019 by way of filing this complaint, though, the complainant being an allottee was entitled to take physical possession of the units, within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be as per Section 19(10) of the Act. As per Section 19(5) of the Act, the complainant was also entitled to have the necessary documents and plans, including that of common area, after handing over the physical possession




of the units in question, by the promoter. However, in the instant case, the complainant side never took possession of the property in question. Had the complainant obtained the possession of the units in question consequent upon the offer of possession made by the respondent, then the matter would have been different and in case of any defect in the structure of the property or any other violation of terms and conditions of the agreement, the complainant could approach the Competent Authority, within a period of five years to redress the grievances if any as per the provisions of Section 14(3) of the Act. In these circumstances, the complainant never issued any notice for terminating the agreement and further never obtained possession for a period of about five years from the date of offer, till filing of this complaint, no case for refund of the amount paid by the complainant is made out. Hence, the complainant is not entitled to the relief of refund alongwith interest and compensation.

9. As a sequel of what has been discussed above, the complaint fails and the same is hereby dismissed. However, before parting, it is observed in the interest of justice that huge amount had been paid by the complainant side to the respondent and offer of possession had already been made, the complainant if advised could take possession of the units in question and the respondent shall facilitate the delivery of possession



as per the terms and conditions of the agreement subject however to payment of dues, if any, to the respondent within a period of two months from this order. File be consigned to record room after due compliance of notifying the parties of this order well in time. .

Dated:09.06.2020

  
(Balbir Singh)  
Adjudicating Officer,  
Real Estate Regulatory Authority, Punjab.