



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT No. 123 OF 2020

Tarun Chauhan

....COMPLAINANT

VERSUS

Crown Realtech Private Limited.

....RESPONDENT

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 12.07.2022

Hearing: 21st

Present: - Mr. Himanshu Raj, Ld. Counsel for the complainant
Respondent already ex-parte.

ORDER (RAJAN GUPTA- CHAIRMAN)

1. Facts of the complaint are that on 27.01.2007, complainant had booked a commercial property measuring 2669.42 sq. ft. in project name "Crown Business Park" situated at 12/4, Mathura Road, Faridabad, Haryana to be developed by respondent company. After lapse of 7 years from the date of booking, agreement to sell dated 09.09.2014 was executed between both parties. Total consideration of Rs. 1,40,14,455/- was paid by complainant to the respondent. Allotment letter dated 16.10.2014 also containing proof of payment has been annexed as C-5 at

page 76 of complaint wherein respondent has acknowledged receipt of Rs. 1,40,14,455/-. As per agreement possession was agreed to be delivered after completion of proposed complex and upon receipt of total sale consideration from the complainant. Respondents have neither completed the project nor made any offer of possession. In fact the company is facing liquidation proceedings before NCLT. Accordingly, there is no hope of delivery of possession in a foreseeable future.

3. Vide order dated 23.12.2020, respondent was ordered to be proceeded against ex-parte. In the same hearing, fact that respondent company has gone into liquidation has come into light. Relevant order is produced below:

“1. Case was fixed for arguments on maintainability. None has appeared on behalf of the respondent despite repeated calls. Respondent is ordered to be proceeded against ex-parte.

2. Ld. Counsel for the complainant has stated that respondent Crown Realtech Pvt. Ltd. has gone into liquidation before NCLT and IRP has also been appointed. The respondent is not in a position to deliver possession to the complainant.

3. In these circumstances the counsel for complainant further states that he restricts his relief to refund and other compensation and he would withdraw relief of possession. He would also send mail in this regard.”

4. In the light of the facts and averments, Authority observes and order as follow:

i) Complaint's grievance is that no offer of possession has been made by the respondent till date even after lapse of more than eleven years from the deemed date of possession. So, the complainant has sought relief of refund.

ii) Authority observes that where moratorium proceedings under Section 14 of the Insolvency and Bankruptcy Code 2016 (IBC) are notified and the matter is before Hon'ble National Company Law Tribunal (NCLT) complaint cannot be proceeded further.

(iii) Respondent company is facing proceedings under Insolvency and Bankruptcy Code, 2016 and the matter is before Hon'ble NCLT. An IRP/RP has also been appointed. Now, the fate of the project is uncertain. As such, complainants are entitled to the relief claimed i.e. refund of the money paid by them to the respondent company along with interest as there is no hope of getting the possession.

(iv) Authority had in similar facts and circumstances disposed of a bunch of complaints with lead complaint No.383 of 2018 titled Gurbaksh Singh vs ABW Infrastructure Pvt. Ltd on 30.10.2018. In that complaint, Authority had ruled that allottee of a project should have superior right over the project compared with the other secured creditors. Relevant part of the orders passed by Authority is reproduced below:

13. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other

financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows:-

(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved. Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

(ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.



The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

(iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 18: Return of amount and compensation- (1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

Section 19(3): Rights and Duties of allottees- *The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.*

(4) *The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in*



the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Section 79: Bar of Jurisdiction- *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

Section 89: Act to have over-riding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall be treated superior most. The money paid by the allottees shall be refunded before entertaining claim, if any, of the commercial creditor.

(v) Accordingly, Authority orders refund of the money paid by the complainant along with interest calculated in accordance with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The prevalent MCLR on the date of passing of orders i.e 9.70% (7.70% + 2 %). Therefore, respondent company is directed refund Rs. 1,40,14,455 along with interest amounting to Rs. 1,20,74,012/- to complainant. Total refundable amount works out to be Rs. 2,60,88,467/-. Complainant is directed to place his claim before the IRP so appointed by the NCLT.

5. **Disposed of** accordingly. File be consigned to the record room and these orders be uploaded on the website of the Authority.


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(RAJAN GUPTA)
CHAIRMAN


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(DILBAG SINGH SIHAG)
MEMBER