



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.harvanarera.gov.in

COMPLAINT NO. 112 OF 2022

Atul Seksaria & Ritu Seksaria

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 04.08.2022

Hearing: 2nd

Present: - Mr. Denson Joseph, Complainant through VC.
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file it is observed that complainants have sought relief of refund of the amount paid by them to the respondents alongwith applicable interest. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction to deal with such matters was subjudice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now position of law has changed on account of verdict dated 13.05.2022 passed by Hon'ble Supreme Court in SLP Civil Appeal no. 13005 of

2.

2020 titled as M/s Sana Realtors Pvt Ltd vs Union of India & others whereby special leave petitions have been dismissed with an observation that relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matters.

3. Consequent to the decision of above referred SLPs, issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.

4. Case of the complainants are that they had booked an apartment in respondent's project named 'Park Elite Floors', sector-75, Faridabad, on 26.05.2009 by paying an amount of Rs. 3 lacs. An allotment letter for Unit No. H-2-10-GF with 1418 sq.ft. area was issued by respondent in favour of complainants on 24.12.2009. Thereafter, respondent has arbitrarily re-allotted/changed unit from H-2-10-GF to PE-193-GF having area of 1510 sq ft. Builder Buyer Agreement (BBA) for new/said unit was executed on 18.03.2014. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 18.09.2016. Complainants alleges that they have so far paid an amount of Rs. 27,64,962/- against basic sale price of Rs. 27,79,101.72/-. In support of the contention that complainants has paid an amount of Rs. 27,64,962/- complainants has annexed receipts issued by the respondents to them and statement of account dated 15.09.2021 issued by respondents in

which receipt of said amount by the respondent from the complainant has been duly acknowledged. Copies of said receipts and statement of account have been made part of the complaint and annexed as Annexure C-5.

3. Complainants further alleges that project is still not complete. In fact, it is far from completion and there is no sight of its completion in foreseeable future. Complainants have prayed for refund of the amount paid by him along with interest for the reason that respondent has already inordinately delayed completion of project and even now there is no hope of completion in near future.

4. On the other hand, respondent in his reply has admitted allotment of booked unit and execution of Builder buyer agreement in favour of the complainants. Respondent has neither denied the payments made by the complainants while submitting his following pleadings:-

- i) That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.
- ii) That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
- iii) Completion of the project has been delayed on account of certain force majeure conditions.

iv) Respondent has submitted though the unit in question is near completion, but on asking of complainants they are willing to refund the amount paid by complainants alongwith reasonable interest in an amicable manner.

5. Both parties have argued their case at length. Complainants reiterates that project is nowhere near completion and there is no hope of its completion in near future, therefore, they do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them along with interest as applicable under the Rules.

6. Respondent on the other hand states that they are willing to refund the paid amount at reasonable interest in an amicable manner , essentially out of court settlement if complainant is interested in it. In reply to it, complainants have denied said offer of the respondent and requested the Authority to decide the case on its merit.

7. Authority has gone through respective written submissions apart from careful examining of their oral arguments while observing and issuing following orders:-

i) Respondents first of all have challenged the jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with and forgoing para No.s 2 and 3 of this order. Accordingly, this objection of the respondent is no longer sustainable.

- ii) There is no denial to the fact of Rs. 27,64,962/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts and statement of accounts dated 15.09.2021 issued by the respondents to the complainant. Said statement and receipts are annexed as Annexure C-5 with the complaint.
- iii) Respondent admits that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion. Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date of offer of possession, is that the complainants would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.
- iv) Arguments in respect of force majeure conditions also cannot be accepted and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now has been shown to have happened.
- v) One of the averments of respondent is that provisions of the RERA Act will not apply on the agreements executed prior to coming into

force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.

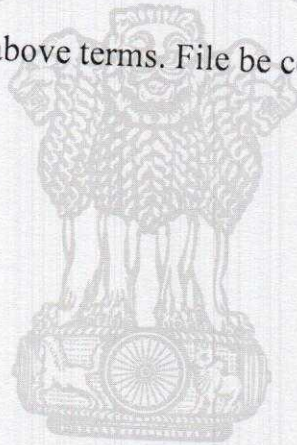
In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other in regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.

As far as, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

In the instant case, however, relief of refund has been sought. Refund in this case is admissible ASrespondent has neither completed the project nor has given any time frame within which it would be completed. This is a case of breach of contract by the respondent. In the case of breach of contract, counsel's arguments that provisions of RERA will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. Provisions of agreement will not come into play when the contract is breached. The general law of the land will regulate such situation and not provision of the agreement.

- vi) Complainants being entitled to refund of the entire amount of Rs. 27,64,962/- paid by them, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order.

- vii) The total interest for the period ranging from receipt of payments to date of this final order (04.08.2022) in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.80% payable by the respondents to the complainants works out to Rs. 26,27,535/-.
- viii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 27,64,962/- plus interest amount of Rs. 26,27,535/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.
8. **Disposed of** in above terms. File be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]