HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1347 OF 2021

Rakesh Chawla ....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd. ....RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 07.07.2022

Hearing: 3rd

Present: - Ms. Devika Gaur, counsel for the complainant through video conference

Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. Facts of the complainant's case are that in the year 2008, complainant booked a 2BHK flat bearing no. T4-703, seventh floor,

admeasuring 1310 sq. ft. in a project named 'Parsvnath Preston' being developed by respondent by paying booking amount of ₹1,44,000/-. As per clause 10(a) of flat buyer agreement executed between the parties on 20.03.2008, respondent was under an obligation to hand over possession of the flat within a period of 36 months from the date of start of foundation of particular tower along with grace period of 6 months, but respondent has failed to fulfil his promises. Copy of said flat buyer agreement has been annexed as Annexure A-1 with the complaint. The unit was booked as per EMI subvention scheme of the builder wherein down payment of ₹4,30,083/- was made by the complainant and a bank loan of ₹22,93,776/- was got disbursed from Axis Bank Ltd. to builder in April 2008. Thus, a total amount of ₹27,23,859/- was paid to the respondent till April 2008 out of the basic sale price of the unit amounting to ₹28,67,220/-. As per EMI agreement dated 24.03.2008, respondent was supposed to pay the EMI's for the bank loan till the date of offer of possession of the flat was made to the complainant. Copy of EMI agreement dated 24.03.2008 is annexed with complaint as Annexure A-2.

2. It has been submitted that EMI for said loan was ₹25,620/- every month out of which respondent agreed to pay ₹22,127/-. Respondent has paid his own share of instalments from 2008 to 2021, but during this period respondent skipped EMIs multiple times and was not regular due to which the entire amount of EMI was paid by complainant for many months.

Complainant has submitted that total EMI reimbursed by respondent till filing of complaint is ₹31,86,288/- and a sum of ₹4,20,413/- was not reimbursed by respondent. It has also been submitted that total outstanding bank loan against complainant as on 08.12.2021 was ₹7,69,050/-. Complainant has annexed loan statement as Annexure A-4 with the complaint. It has been contended that complainant has paid 95% of the payment to respondent but project is nowhere near completion and even more requisite permissions from competent authorities are not in place which makes the viability of project improbable. Complainant has submitted that neither any possession has been offered till date nor, allegedly, the construction has started at the site of the project. There has been lapse of more than 13 years from the date of booking, so the complainant has lost faith in respondent and has no hope of getting the flat. Respondent has utilized the money of the complainant for his own benefits and has violated the terms of agreement. Therefore, complainant wishes to withdraw from the project and has filed present complaint praying for refund of the amount deposited by him along with interest. Further prayer has been made that pre-EMI loan liability plus remaining loan liability may be cleared by respondent as there is no hope that possession of flat will be offered in near future.

3. Respondent in his reply has admitted the fact of booking of the apartment under EMI subvention scheme, agreed sales consideration, area and location of apartment as well as payment of ₹27,23,859/- made by

complainant. It has been contended project is being developed in terms of statutory approvals granted by competent authority. It has been submitted that licence no. 1205-1206 of 2006 dated 06.10.2006 had been duly issued by department respondent has applied for its renewal for the period from 06.10.2019 to 05.10.2024. It has also been submitted that EDC, IDC, conversion charges etc have been paid in full to the Competent Authority. There is no intentional delay on part of respondent and project has been delayed for reasons beyond control of respondent company. Time is not essence of contract. It has also been contended that till date a sum of ₹31,86,288/- has been paid to complainant as EMIs.

4. Complainant has filed rejoinder on 05.07.2022 submitting the facts as were already submitted in complaint and denying the submissions made by respondent in his reply. Learned counsel for both parties reiterated their arguments were submitted in writing. Learned counsel for respondent also submitted that project was being developed in terms of statutory approvals granted by competent authority. She further stated that respondent is determined to give possession of booked flat to the complainant, and if deposited amount of the complainant is refunded to him then entire project will be halted.

5. Learned counsel for respondent further argued that the apartment of the complainant is located in an un-registered project of the respondent company. Further, Hon'ble Supreme Court in the matter titled

Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects. Learned counsel while arguing on the application, drew attention of the Authority towards Para-54 of the judgement of Hon'ble Supreme Court as reproduced below:-

> "54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016." (emphasis supplied).

6. Learned counsel also drew attention of the Authority towards similar view taken by learned RERA Punjab that un-registered projects do not fall within jurisdiction and purview of the Authority.

7. While questioning contention of learned counsel for respondent, Authority had observed that the orders of Hon'ble Supreme Court have not been understood by respondent in correct perspective. Authority observed that the entire orders especially Paras 32, 33, 34, 40, 53 and 87 should be read with Para 54. Said Paras are reproduced below for reference:

> "32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a central legislation in the

paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25th March, 2016.

33. Under Chapter II of the Act 2016, registration of real estate projects became mandatory and to make the statute applicable and to take its place under subSection (1) of Section 3, it was made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by subsection (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.

34. The term "ongoing project" has not been so defined under the Act while the expression "real estate project" is defined under Section 2(zn) of the Act which reads as under: "2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures

thereon, and all easement, rights and appurtenances belonging thereto;"

"40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, exfacie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

"87. It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the single member of the authority only for hearing complaints under Section 31 of the Act. To meet out the exigency, the authority in its meeting held on 14 th August 2018, had earlier decided to delegate the hearing of complaints

to the benches comprising of two members each but later looking into the volume of complaints which were filed by the home buyers which rose to about 36,826 complaints, the authority in its later meeting held on 5th December, 2018 empowered the single member to hear the complaints relating to refund of the amount filed under Section 31 of the Act."

8. To answer the questions posed by the learned counsel for the respondents, reference is also drawn to Section-79 and Section-89 of the RERA Act as reproduced below:

> "**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 overriding effect** - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

9. Conjoint reading of Paras referred to above and Sections 79 and 89 of the RERA Act leads to unmistakable conclusion that the provision of this Act will have over riding effect notwithstanding anything inconsistent therewith contained in any other law. Further after coming into force of RERA Act, exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is empowered under this Act to determine shall be that of the RERA only and not of any other court.

10. Question that arises herein is that numerous complaints are filed before this Authority by allottees who have booked/purchased apartments in all kinds of projects including compleed projects, under construction projects, registered projects as well as unregistered projects. An unregistered project can be a completed project which has not received Occupation Certificate or an ongoing project which has not been registered by the promoter in gross violation of Section 3 of the RERA Act. Further, allottees of incomplete or completed, as well as registered and unregistered projects have variety of grievances against the promoters. Such grievances includes the grievances like excess money demanded by promoters over and above agreed sale consideration; common facilities not being provided; deficiencies in construction due to which the apartments are inhabitable; change of plans made at the level of the promoters thus adversely affecting rights of the allottees; apartments having been delivered after delay of 5-10 years and promoters refusing to pay to the allottees interest/compensation admissible as per law; even though possession is handed over but conveyance deeds not being executed, etc.etc. These are but only a few illustrations of the grievances of the allottees against the promoters. Such grievances relate to registered as well as unregistered projects, and in fact even relates to completed projects.

11. A considered view of this Authority is that two distinct kinds of jurisdictions have been conferred upon the Authority by the RERA Act,

2016. The first jurisdiction is in relation to registration of the projects. Section 3 of the Act mandates that all new projects shall be registered with the Authority before an advertisement for booking of plots/apartments is issued. Further, all those projects which are ongoing and have not received a completion certificate from the competent authorities shall be registered within a period of 3 months. Section 4 of the Act provides for a long list of disclosures to be made by promoters for getting the project registered. The purpose and intention of the law in this regard is to bring about transparency in the functioning of real estate promoters. They are bound to disclose full details of ownership of the land of the project; details regarding development plans got approved from competent authorities; the timelines within which project is proposed to be completed; specifications of the apartments to be constructed, etc. Further, the process of registration mandates that 70% of money collected from allottees shall be spent only on development of the project. In the event of violation of provisions of law and stipulations made by Authority, registration of the project can be cancelled. A consequence of cancellation of registration is that alternate mode for getting the project completed can be explored, including by handing it over to association of allottees.

12. The process of registration, therefore, is meant to bring in transparency, and to bring full facts about the project as well as its promoters in public domain to enable prospective allottees to make informed decision

of making investment of their hard earned money for their future homes. Sections 3 and 4 read with certain provisions relating to respective obligations of promoters and allottees are meant to provide level playing field for both sides.

13. In the above context it is relevant here to briefly discuss the concept of completion/occupation certificate. What is a completed project or a project fit to be granted occupation certificate has not been defined anywhere in the RERA Act, 2016. These concepts have been somewhat defined in relevant laws of different states of the country. The completion certificates and occupation certificates are granted by the State Government authorities as per their own laws and policies. Grant of completion/occupation certificate by State Government authorities only signifies that relevant project has fulfilled certain requirements stipulated by certain laws enacted by State Government. It does not signify that the promoter has fulfilled its obligations towards allottees in terms of builder buyer agreements.

14. The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations then provided for in the relevant laws regulating the subjects of grant of completion/occupation certificates. It is reiterated that grant of completion and occupation certificate only mean that certain parameters of laying infrastructure facilities under set laws of the State Government have been

complied with by the promoters. They do not in any manner certify that the promoters have fulfilled their obligation towards allottees. The obligation towards the allottees as enlisted in the builder-buyer agreements relate to numerous additional subjects like the consideration to be exchanged; specifications of the apartments; timeline within which the project would be completed; obligation to execute conveyance deeds; obligation to hand over the completed project to the association of allottees; laying of infrastructure facilities and handing them over to the association of allottees in the manner prescribed etc.etc. The promoters of completed as well as unregistered projects could be defaulting in respect of such obligations. If a promoter illegally and unjustifiably demands additional amount over and above the agreed sales consideration, dispute will have to be settled by some court of law. After coming into force of this Act and in view of the provisions of Section 79 and 89, RERA and Consumer Court only will have jurisdiction to deal with such disputes.

15. Authority is of the considered view that respondents are completely misreading provisions of the Act and Para-54 of the judgement of the Hon'ble Supreme Court passed in Newtech Promoters' matter. The question as to which forum will redress the grievances of the kinds listed above of allottees pertaining to ongoing or completed or registered or unregistered projects was not before the Hon'ble Supreme Court in Newtech Matter. In considered view of this Authority operative part in para-54 of the

judgement of the Hon'ble Supreme Court is that "....therefore, vested or accrued rights, if any, in no manner are affected". Such vested or accrued rights could pertain to new projects, ongoing projects, completed projects, registered projects or unregistered projects. In considered view of this Authority, genuine grievances of the allottees in any kind of project have to be redressed. Therefore, there has to be a forum for this purpose. Such forum is RERA in terms of provisions of the Act, especially Section 79 and Section 89 of the Act. In this regard relevant portion of the judgment dated 09.08.2019 of Hon'ble Supreme Court passed in Writ Petition (Civil) no. 43 of 2019 titled as Pioneer Urban land & Infrastructure Ltd. & Anr. versus Union of India & Ors is reproduced below:

> "86(ii). The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

16. Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their

ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

17. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

18. For the foregoing reasons, Authority rejects the arguments put forth by learned counsel for respondent company.

19. Further, after hearing the contentions of both parties and going through documents on record, Authority observes that due date of offering possession was 2011. Already delay of approximately 11 years has taken

place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if the project was completed or an application for grant of occupation certificate had been filed. On the contrary, in this case, project is not complete, nor there is any plan of action for completing it. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants.

20. Complainant in the present case has made down payment of ₹4,30,083/- and a bank loan of ₹22,93,776/- was got disbursed from Axis bank directly to respondent. As per documents submitted by complainant, total outstanding bank loan against complainant as on 08.12.2021 was ₹7,69,050/-. Accordingly, respondent is directed as follows:

(i) To refund the complainant an amount of ₹4,30,083/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.70% (7.70% + 2.00%) from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.70% works out to ₹10,28,314/- as per detail given in the table below:

S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 07.07.2022	**TOTAL AMOUNT PAYABLE TO COMPLAINANT**
1.	₹1,44,000/-	18.02.2008	₹2,01,063/-	₹3,45,063/-
2.	₹2,86,083/-	19.03.2008	₹3,97,168/-	₹6,83,251/-
Total	**₹4,30,083/-**		**₹5,98,231/-**	**₹10,28,314/-**

(ii) To pay the complainant outstanding loan amount of ₹7,69,050/-.

(iii) To refund the complainant amount of EMIs paid by him from 2008 till date (which was not reimbursed by respondent as per terms of EMI agreement executed between them) along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.70% (7.70% + 2.00%) from the date the amounts become due till date of its payment.

Complainant will make demand for payment of these amounts duly supported by bank statements in respect of outstanding loan amount as well as amounts of EMIs paid. The interest on EMIs paid be also calculated and certified by an accountant.

Respondent is directed to make the entire payment of claimed and certified amounts within 90 days from the date of uploading of this order, as

provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

21. Complaint is, accordingly, **disposed of.** File be consigned to the record room and order be uploaded on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]