



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3081 of 2019

Manish Gandotra

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 29.03.2022

Hearing: 5th

Present: Shri Akshat Mittal, Counsel for the Complainant through VC.

Shri Hemant Saini and Shri Himanshu Monga, Counsel for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainant has sought relief of refund of the amount paid by him to respondents along with 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 sub-judice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. vide order dated 13.01.2022.

3. Consequent upon above judgement passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

“ 4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.

Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.



It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly."



4. Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

5. Case of the complainant is that he had booked an apartment in respondent's project named 'Park Arena, sector-80, Faridabad, on 08.09.2010 by paying an amount of Rs. 3.5 lacs. An allotment letter for flat bearing no. D-1201, 12th floor, Tower D with 1382 sq.ft. area was issued by respondents in favour of complainant on 25.11.2010. Respondent collected an amount of Rs. 11,27,269.30/- from the complainant on 11.09.2010, 04.02.2011 and 11.07.2011. On 28.03.2012, complainant sent an e-mail stating that he wants to surrender his allotment due to shortage of funds and the same was accepted by the respondent via e mail dated 03.04.2012. In reply to said e-mail of the complainant, respondent stated that refund would be processed as per the forfeiture clause mentioned in the application form. Complainant sent various e-mails dated 16.04.2012, 29.08.2012, 10.09.2012 and 27.09.2012 to the respondent for return of the money paid by him but nothing was done by the respondent to refund complainant's money. Feeling aggrieved, complainant sent a legal notice dated 30.04.2013 for return of his paid amount along with interest. Respondent in response to the said legal notice sent a reply dated 03.07.2013 denying the allegations of the complainant.



On 18.07.2013, respondent terminated complainant's allotment. Thereafter complainant approached Consumer Forum Faridabad but his complaint was dismissed by the Id. forum on technical grounds observing that the bench had no pecuniary jurisdiction to try the complaint.

It is stated by the complainant that even if respondent wish to deduct earnest money the same must not be more than 10% of the total sales consideration as reiterated by Hon'ble National Consumer Disputes Redressal Commission in case titled as DLF Ltd. Vs. Bhagwanti Narula, 2015(1) C.P.J. 319.

6. Complainant has prayed for refund of the amount paid by him along with interest.

7. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Respondent has admitted of having received an amount of Rs. 11,27,269.30/-. Averments made by the respondents in their reply are summarised as follows: -

(i) Complainant unit stands terminated on 18.07.2013 on account of defaults in making payments.

(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) In Para "F" in which the details of the projects have been given, the respondent has very clearly stated that the project was comprised of 10 towers but on account of non-construction of 24-meter-wide internal circulation road by the State Government agencies the project could not be completed. The scope of the project was reduced to 4 towers from 10. Further, majority of the customers have already withdrawn from the project and now only a small number of allottees remain in the project.

8. Both parties have argued their case at length. Complainant reiterates that 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.

9. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes an order as follows: -

- i) Respondents first of all have challenged 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 respondents is no longer sustainable.

ii) There is no denial to the fact of Rs. 11,27,269.30/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts annexed by the complainant in his complaint. Receipts are annexed as Annexure C-2 with the complaint.

iii) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have 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.

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

- iv) Factual position reveals that unit was allotted in favor of the complainant on 25.11.2010 however no builder buyer agreement was executed between the parties as complainant after making a payment of Rs. 11,27,269.30/- expressed his willingness to surrender his unit which was duly accepted by the respondent vide e-mail dated 03.04.2012. In the event of surrender by the complainant and acceptance of the same by the respondent, contract of selling the unit stands terminated. Only obligation which was left on the part of the respondent was to refund the



amount paid by the complainant after deducting earnest money. Respondent has failed to discharge his obligation of returning the money. Rather, respondent went ahead and terminated allotment of complainant's unit on 18.07.2013 on account of default in making payments.

Further it is observed that that complainant has not prayed for quashing of termination letter and as such it is not required because complainant is not seeking possession. Rather, he is interested in refund of paid amount which he otherwise deserves to be after termination of allotment. Fact remains that no amount was refunded/returned by respondent after termination in year 2013 which implies that respondent has been illegally withholding the amount of complainant till date. In furtherance of termination of allotment, the respondent was under obligation to return remaining amount after deduction of earnest money which has not been done till date and as such there is no reasonable justification provided by respondent for withholding the amount of complainant from last 9 years.

RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice.



Respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. However, in this case agreement has not been executed so basic sales price is not known. In this eventuality, 10 % earnest money will be deducted from the total amount paid by the complainants till date.

Since both parties are at fault and contributory to the frustrated contract, the Authority in order to maintain equity between the parties decides to dispose of this case with direction to respondent to refund the paid amount after deduction of earnest money to tune of 10% of amount paid. Amount paid is Rs 11,27,269.30/- and 10% of it works out to 1,12,726.93/-.

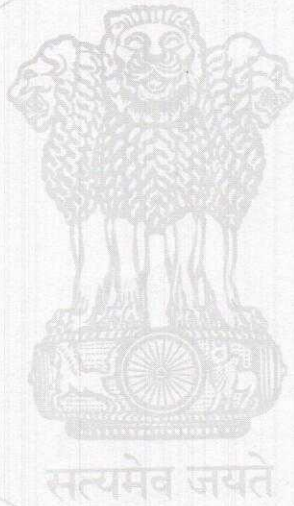
- v) In furtherance of aforementioned observations, the complainant being entitled to refund of the amount of Rs. 10,14,542.37/- (total paid amount Rs 11,27,269.30 - earnest money Rs 1,12,726.93/-). Authority orders the refund of the said amount along with interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from date of termination i.e. 18.07.2013 till date of this order.
- vi) The total interest for the period ranging from date of termination to date of this final order (29.03.2022) in terms of Rule 15 of HRERA



Rules,2017 i.e @ 9.30% payable by the respondents to the complainants works out to Rs. 8,21,254/-.

vii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 10,14,542.37/- plus interest amount of Rs. 8,21,254/- 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.

10. **Disposed of** in above terms. File be consigned to record room.



.....
RAJAN GUPTA
(CHAIRMAN)

.....
DILBAG SINGH SIHAG
(MEMBER)