



Complaint no. 805 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 805 OF 2020

Simrit Monga

....COMPLAINANT(S)

VERSUS

Suncity Projects Pvt Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 26.04.2022

Hearing: 14th

Present through: - Mr. Shubhnit Hans, Learned counsel for the complainant
Video conferencing Mr. Kamal Dahiya, Learned counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

In this case complainant had booked a unit in the project of respondent namely 'Parikrama', situated at Panchkula in respect of which buyer's agreement was executed between both parties on 02.11.2011. As per the agreement possession should have been offered in the year 2014. Complainant has made full payment to the respondent in respect of the unit and possession of the unit was handed over to the complainant on 29.05.2018. It is alleged by the complainant that she had paid an additional amount of ₹ 3,00,000/- to the

respondent for allotment of car parking space. As per agreement car parking space should have been allotted to her beneath her residential tower but she has been allotted parking space far away from the building in which her flat is located. Therefore, she has filed present complaint seeking directions to respondent for allotment of parking space in residential tower in which her apartment is located.

2. Respondent in his written submissions pleaded that the project of the respondent is complete and occupation certificate has been received on 29.08.2017. Possession was offered to the complainant on 29.05.2018 and conveyance deed for said unit has also been executed on 27.08.2018. Further, the parking space has been allotted to the complainant in accordance with the terms of agreement and complainant cannot raise any grievance in regard to the same. Since all obligations between the parties stand discharged, present complaint therefore is not maintainable, and is thus liable to be dismissed.

3. Shri Shubhnit Hans, learned counsel for complainant submitted that as per terms of conveyance deed executed between the parties complainant should have been allotted car parking space under the tower in which apartment of the complainant is situated i.e Tower 9-B, the location of which has been specifically mentioned in the map annexed with conveyance deed annexed at page 48 of the complaint file. However, complainant has not been granted possession of agreed and designated parking, rather a parking far away from her residential tower has been allotted, which is in total contravention of the terms



of executed conveyance deed. Even in the schedule I of the conveyance deed it is clearly mentioned that complainant shall have exclusive rights to a car parking space in the same residential tower. He further submitted that on hearing dated 12.01.2021, parties were heard at length on the issue concerning the complainant's grievance that she has been allotted parking space far away from the building in which flat has been allotted to her and Authority had issued certain directions to respondent. Relevant part of order dated 12.01.2021 is reproduced below;

"2. The Authority vide its order dated 11.11.2020 had directed the respondent to furnish the explanation for not allotting parking space to the complainant near to his flat. Today, the respondent has filed his reply in the matter and his explanation is that the parking space has been allotted in accordance with the terms of the agreement entered between the parties and the complainant thus cannot raise any grievance for the same. The clauses of agreement relied upon by the respondent are Clause 1.1 at Page 52 of the paper book and Clause 2.6 at page 55 of the paper book. Said clauses read as under:-

"1.1 In total sale consideration of Rs. 83,10,580/- (Rupees eighty three lakh ten thousand five hundred eighty only) paid by the Vendee(s) to the Vendor, the receipt whereof the Vendor hereby admits and acknowledges, the Vendor hereby grants, conveys, transfers absolute ownership rights, title and interests of the residential apartment No. 502 (in 5th Floor) in Tower -9B in the Parikrama Group Housing situated at Village Kundi, Sector-20, Panchkula, Haryana admeasuring 1850 Sq. ft. or 171.870 sq. mtrs. And more fully described under Schedule-I herein below and shown in the Plan-A enclosed herewith alongwith exclusive rights to use the Car Parking No. B124 in the basement of the Building for parking of the vehicle of the

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vendee; together with impartible proportionate share in the land underneath the said building which has been calculated in the ratio of super built up area of the said apartment to the total super areas of all the apartments within the said tower/building) together with the right to use all the common areas, common amenities and facilities for ingress and egress purposes situated in the said Tower/Building; in favour of the Vendee(s) together with all rights, interest, easements whatsoever attached or deemed to be attached with the said Apartment and to Have and to Hold the same forever as its absolute owner.”

“2.6. That the Vendee(s) shall be entitled for Reserved Car Parking Space bearing No. B124, situated in the basement of the residential complex to use the same only for purpose of parking of private vehicle with the condition not to use the said Reserved Car Parking for any purpose other than parking of light motor vehicles and his/her private use together with the Apartment and not independent or detached from the Apartment. The Vendee has/have agreed that the Reserved Car Parking space herein conveyed to the vendee shall be used together with the Apartment and not as an independent unit and the Vendee undertake not to sell, transfer, deal with Reserved Car Parking Space independent of the said Apartment.”

3. The above clauses in the considered opinion of the Authority, entitles an allottee to have a car parking in the basement of the building itself and not far away from the building in which he has been allotted flat. So, in order to find out whether or not the other allottees of the building of which complainant's flat is part, have been allotted parking space under the same building or at far away sites, the Authority would direct the respondent to furnish further information on the points namely (i) total number of total flats in the building and in which complainant has been allotted the flat; (ii) number of parking sites situated under the said building; (iii) the details of persons and their flat number who had been



allotted such parking sites; (iv) the details of the persons who have not been allotted parking space underneath the building in which their flats are situated; (v) the criteria adopted for allocation of parking space to those allottees whom parking has been assigned far away from the parking sites located in their building."

4. Learned counsel for complainant further averred that to avoid inconvenience complainant though began using visitors parking space, but that does not change the fact that respondent should have given parking space to the complainant underneath her own residential tower as agreed. It is also alleged by the complainant that respondent has been selling car parking spaces to some outsiders. Authority vide order dated 12.01.2021, and order dated 12.10.2021 had established that complainant has a right to have a car parking space in the basement of same building in which she has been allotted the flat and not far away from it. In order to ascertain availability of car parking in the basement of the tower of complainant, Authority had directed respondent to furnish information sought in para 3 of this order, but despite availing several opportunities respondent failed to comply with the directions. Respondents are allegedly deliberately avoiding furnishing of information demanded by the Authority

5. In view of continuous default on part of respondent to comply with the orders, Authority vide order dated 25.11.2021 had summoned original records of the respondent company pertaining to information sought vide order



dated 12.01.2021. However, respondent has yet again failed to comply with the directions. On last date of hearing respondent was granted last opportunity to submit relevant documents.

6. Shri Kamal Dahiya, Learned counsel for respondent reiterated the averments put forth in para 2 of this order and submitted that in rejoinder dated 13.09.2019 complainant has herself admitted to illegally using visitors parking from 2018 to 2020. Despite repeated notices from respondent, the complainant did not refrain from using said facility. When said facility was shut down, the complainant filed present complaint despite having been allotted a specific parking place. Car parking space numbered B124 has been allotted to the complainant as per agreement and the complainant had given her consent to the same at the time of signing of conveyance deed. All documents were voluntarily signed by complainant. He further submitted that conveyance deed has been executed between both parties in the year 2018 which is before filing of this present suit, thus present complaint is not maintainable and complainant is not entitled to any relief.

Learned counsel for the respondent further argued that apartment of the complainant is located in an un-registered project of the respondent company and 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 complaint relating to



un-registered project. Therefore, he abstained from complaining with the directions issued by the Authority vide its order dated 12.01.2021.

7. Considering submissions of both parties, Authority observes that complainant had agreed to purchase a flat from the respondent along with a preferential car parking space for which he paid an additional amount of Rs 3,00,000/- . Complainant made full payment to the respondent in respect of the unit and possession of the unit was handed over to the complainant on 29.05.2018 alongwith a car parking space. In the Schedule I of the Conveyance deed, complainant was allotted a car parking space in the basement of her own residential tower however, the space allotted to her was at a location far away from the residential unit of the complainant which is causing her great inconvenience. On perusal of agreement annexed at page 18 of the complaint file and the conveyance deed annexed at page 48 of the file it is noteworthy that allottee/complainant had exclusive rights to the use of Car parking space situated in the building of residential complex (Clauses 1.1 & 2.6 of agreement & Schedule I of conveyance deed). Such clauses entitles an allottee to have a car parking space in the basement of the building itself and not far away from the building in which she has been allotted the flat. Therefore, in order to ascertain whether or not the other allottees of the building of which complainant's flat is part, have been allotted parking space under the same building or at far away sites, Authority vide orders dated 12.01.2021 had



directed respondent to produce certain information. Said information was vital for proper adjudication of the matter however, despite availing several opportunities respondent have failed to comply with the directions. In such circumstances, Authority, by virtue of powers vested with it under section 35 of RERA Act had summoned original records of the respondent-promoter pertaining to information sought vide order dated 12.01.2021. However, the respondent again deliberately failed to comply with said orders without providing any justification.

In view of continuous and deliberate default, Authority vide its order dated 05.04.2022 had given respondent one last opportunity to comply with the orders and present its case, failing which matter will be decided on basis of available facts. Even today respondent has chosen not to comply with the orders of Authority and has further taken plea in regard to non maintainability of present complaint on the basis of lack of jurisdiction.

8. Now, factual matrix of the present case provides that as per builder buyer agreement and the conveyance deed, the complainant was entitled to enjoy exclusive rights to a car parking space under the tower in which her flat is located. It is true that in the agreement a specific car parking space bearing no. B124 has been mentioned and same has been allotted by the respondent to the complainant and as such on the face of it there has been no violation on part of respondent. However, it is important to note that alongside the no. B124 it has



also been clearly mentioned 'situated in the basement of the residential complex' (clause 2.6 of agreement.) and same has been reiterated in Schedule -I of the conveyance deed which clearly bolsters the fact that the said car parking space i.e B124 should have located under the residential tower of complainant and not at some far away location. Respondent has very cleverly executed all the documents with the complainant under the pretext that car parking space will be allotted under the residential complex, which has not been the case in reality. In order to ascertain availability of car parking in the basement of the tower of complainant and the criteria adopted in allotment of parking space to other allottees, Authority had directed the respondent to place on record certain relevant information which the respondent repeatedly failed to do despite multiple opportunities. Deliberate non compliance of the orders of Authority by the respondent only supports the fact that conduct of the respondent is not transparent and smacks of malafide.

On the basis of above narrated facts and circumstances it can be presumed that car parking space, ordinarily should be located in the same tower in which residential unit of an allottee is situated. Respondent cannot be allowed to allot a car parking space to a third person whose apartment is not located in the same tower and allot the complainant a site at a far off location. Such an act on the part of respondent is unconscionable. Complainant has verbally stated that respondent has sold car spaces at its own whims and fancies. Facts and



circumstances give credence to such allegations. There seems to be no plausible reason as to why an allottee should be allotted a car parking space at a far off location when sufficient number of spaces are available beneath the residential tower of the allottee. Therefore, Authority deems it fit to issue directions to respondent to allot a car parking space to complainant under the same tower in which flat of the complainant is located and to cancel the allotment of car parking , if given to any other person or allottee whose residential unit is not located in same tower. Respondent shall allot to the complainant a suitable car parking space under her residential tower within 30 days of uploading of this order.

9. In regard to the arguments of respondent pertaining to jurisdiction of this Authority in view of judgement of Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt Ltd. versus State of Uttar Pradesh and others, Authority is of the considered view that respondents are completely misreading provisions of the Act and para-54 of the judgement of Hon'ble Apex Court in Newtech Promoter's matter. The Authority in Complaint no. 191 of 2020 titled 'Mrs. Rajni and Mr. Ranbir Singh Vs Parsvnath Developers Ltd.' has expressed its detailed view in regard to the same. Relevant portion of the order is reproduced below:-

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2. A common application dated 10.03.2020 has been received on behalf of the respondent through Ms. Rupali Verma, learned counsel in which the complaint case nos. titled are: 1010 of 2019, 365 of 2020, 649 of 2020, 654 of 2020, 1087 of 2020, 700 of 2020, 1148 of 2020, 200 of 2020, 201 of 2020, 202 of 2020, 203 of 2020, 204 of 2020, 205 of 2020, 206 of 2020, 207 of 2020, 191 of 2020, 241 of 2020, 455 of 2020, 308 of 2020, 911 of 2020, 912 of 2020, 537 of 2018 and 1212 of 2020 wherein it has been 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).

3. Learned counsel also drew the 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.

4. In regard to the above submissions, a reference is made to Para-53 of the same judgement of the Hon'ble Supreme Court as reproduced below:

“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."

5. Further reference is made to Para-32, 33, 34, 87 and 40 of the same judgment. 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."

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.



11. *The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations than 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.*

12. *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."

13. 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.

14. 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.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.

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Accordingly, Authority cannot accept such interpretation of law as has been sought to be put forward by learned counsel of respondent.

9. With above directions, case is disposed of. Order be uploaded on the website and files be consigned to record room.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]