



Complaint no. 928 of 2019

# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 928 OF 2019

Abhay Jain

....COMPLAINANT(S)

VERSUS

Vipul Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**  
**Dilbag Singh Sihag**

**Chairman**  
**Member**

**Date of Hearing:**

22.03.2022

**Hearing:**

7th

**Present through:-**

Mr. Rishabh Jain, Counsel for the complainant

**Video conferencing**

Mr. Vineet Sehgal, Counsel for the respondent.

### ORDER (RAJAN GUPTA-CHAIRMAN)

In this case complainant had booked a flat in the project of the respondent namely 'Vipul Gardens, Dharuhera' in May 2012. He was allotted flat bearing no. 101, 1st Floor, Tower 7 on 24.05.2012. Basic sale price of the unit was Rs 40,20,978/- against which complainant has paid an amount of Rs. 10,08,000/- till December 2012. No builder buyer was executed between both the parties. It is alleged by the complainant that respondent failed to develop said project and to execute a builder buyer agreement. Upon realising that no construction work was being carried out at site and there was no



possibility of completion of construction at site, complainant decided to withdraw from the project. He wrote various letters to the respondent seeking refund of the already deposited amount with interest but the respondent neither refunded the amount nor delivered possession of booked unit. Feeling aggrieved complainant filed present complaint seeking refund of paid amount alongwith interest.

2. Since in the present complaint, complainant had sought relief of refund, Authority vide order dated 15.01.2021 had adjourned the case sine die awaiting orders of the Hon'ble Supreme Court of India with regard to jurisdiction of the Authority for adjudicating upon the complaints where in relief of refund was sought.

3. For adjudication of such like issues of the parties, Authority has passed its resolution no. 6705-6709 dated 14.01.2022 which is also available on website of the Authority. Relevant part of aforesaid resolution is reproduced as 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. In present complaint, respondent namely 'Vipul Ltd' filed a short reply submitting that M/S Mudra Finance Ltd is the necessary party to the complaint for the reason that the payment receipts as well as allotment letter placed on record have been issued to the complainant by M/S Mudra Finance Ltd, as it is the owner and developer of said project. Role of respondent company i.e Vipul Ltd is only limited to the extent of a marketing agent. Respondent further pleaded that he has not collected any money from the complainant and thus there is no privity of contract between the respondent company and complainant.

On hearing dated 25.09.2019, Authority after hearing both parties and perusing available documents observed that respondent company admitted to being a marketing agent of the project whereas the payment receipts issued to the complainant bore the seal and signatures of the officials of M/S Mudra Finance Ltd. Therefore, Authority directed the respondent company to file a detailed reply on the point as to what kind of relationship existed between respondent and M/S Mudra Finance Ltd. Further, complainant was directed to implead M/S Mudra Finance Ltd as a respondent in the case.





5. In compliance of order dated 25.09.2019, complainant filed amended complaint on 12.02.2020 impleading M/S Mudra Finance Ltd as respondent no. 2. Sh. Vineet Sehgal, learned counsel for respondent no. 2 had filed reply on its behalf on 19.10.2020.

6. Respondent no. 2 in its reply submitted that the project in question was floated by respondent no. 2 i.e M/S Mudra Finance Ltd who is the owner of land and has sole development rights. It is further submitted that the project belongs to M/S Mudra Finance Ltd and it is the answering respondent who has issued all relevant documents including allotment letter dated 24.05.2012 as well as payment receipts have been issued to the complainant by respondent no. 2. Respondent no. 1 has not received any payment from the complainant. There is no privity of contract between respondent no. 1 i.e Vipul Ltd and the complainant and thus complainant has no right to file present complaint arraying respondent no. 1 as a party for seeking relief.

7. When the matter had come up for hearing on 20.10.2020, Authority after going through all facts and submissions of both parties had passed a detailed order, relevant part of which is reproduced below:-

*“4. Complainant states that he had booked a flat in the year 2012 and has paid an amount of 10,08,000/- till December 2012 but the respondent has failed execute flat buyer agreement till date. The project is not complete and therefore, he wants refund of the amount already deposited by him.*



Complainant however agrees that 10% of basic sale price of 31,64,018.75/- may be deducted and remaining amount be refunded to him.

5. On the other hand, learned counsel for respondent no.2 states that the project is complete and OC has been received by the respondent promoter. The complainant had been defaulting in making timely payment of instalments, therefore he is not entitled to any relief. On being posed the question as to whether or not respondent raised any demand after December 2012, ld. counsel replied in negative. Authority, further asked the reason for non-execution of agreement after receiving 25% of total sale consideration and why allotment of complainant was not cancelled when he stopped making timely payments? Posed by these questions, ld. counsel sought some time to file an affidavit furnishing information in this regard.

He however avers that respondent has deposited service tax to the Government which can't be refunded. Also, as per clause 6 of 'terms and conditions of allotment of flats', the respondent is entitled to forfeit the earnest money deposited by the complainant at the rate of 10% of total sale consideration i.e 10% of 40,20,978/- and not of basic sale price.

6. The Authority observes as follows:

(i) In brief the rival contentions are that the complainant says that 10% of the basic sale price (i.e.31,64,018.75/- (amounting to about Rs.3.16 lacs) should be deducted, whereas according to the respondent 10% of the total sale consideration (Rs.40,20,978/- (amounting to Rs.4.02 lacs ) deserves to be deducted from Rs.10.08 lacs paid by the complainant. Further, some service tax has been paid by the respondent which also cannot be refunded as the same has been paid to the relevant Government.

(ii) Since only verbal statement has been made by the complainant in regard to deduction of 10% of the sale price, he is directed to submit the same in writing before the Authority. It is noteworthy that a builder-buyer agreement has not been executed by the parties. In the absence of the agreement, the



*detailed terms and conditions agreed between the parties are not possible to be determined. The Authority further observes that in the absence of an agreement a sale could not said to have been completed and accordingly service tax was not liable to be paid. The Authority assumes that no services tax was paid by the respondent unless a proof thereof is produced by the respondent on the next date.*

*(iii) Further, in the absence of the agreement, the Authority finds it just and equitable that 10% on account of earnest money to be deducted should be determined on the basis of the basic sale price of the apartment and not the total sales consideration.*

*Both parties shall present their arguments on the above tentative findings of the parties on the next date of hearing when final orders will be passed."*

8. Today, Shri Rishabh Jain, representative of the complainant submitted that complainant was allotted a flat in the project of the respondent in May 2012. Basic sale price of the unit was Rs 31,64,018/- against which complainant had paid an amount of Rs 10,08,000/- by 11.12.2012 which is more than 25 % of the total cost of the flat despite non -execution of the buyer's agreement. No flat buyer agreement has been executed by the respondent till date. It is alleged by the complainant that respondent failed to develop said project and complete construction work at site. Since buyer's agreement was not executed and there was no possibility of completion of construction of project as per the commitments made by respondent, complainant lost all confidence and decided to withdraw from the project. He wrote various letters to the respondent requesting for refund of paid amount but received no response. Letter for refund of paid amount sent to the respondent namely Vipul Ltd has

9



been annexed as Annexure A-5. It is pertinent to mention here that said letter for refund of paid amount bears no date.

Learned counsel further submitted that no agreement has been executed between both the parties till date and that respondent has failed to even issue him an offer of possession for booked unit despite claiming that the project has already been completed and occupation certificate received has been granted for the tower in question in the year 2014. In the absence of a buyers agreement and the fact that construction work had been stalled at site, complainant had requested the respondent for refund of paid amount. Learned counsel argued that in case the project had been completed, respondent should have issued the complainant an offer of possession along with a demand of balance amount but respondent has till date not issued him any offer of possession. Rather respondent has not even raised any demand from the complainant after December 2012. As per respondent's submission it was the complainant who had defaulted in making timely payment of instalments, if that was the case then respondent should have placed on record demand/reminder letters issued to the complainant which the complainant had failed to adhere and further on account of non-payment of outstanding dues respondent should have cancelled the allotment in favour of the complainant. However, in present case respondent has neither issued any offer of possession to the complainant nor cancelled the allotment of the flat.

4



9. Learned counsel for the complainant further submitted that Authority vide its order dated 20.10.2020 had tentatively observed that on account of non-delivery of possession of booked unit complainant is entitled to refund of deposited amount after deduction of 10% earnest money. However, allowing respondent to charge forfeiture of 10% as earnest money would be unfair to the complainant as it was the respondent who has defaulted in this case on account of failure in timely delivery of possession of booked unit. Complainant had deposited an amount of Rs 10,08,000/- with the respondent by the year 2012 which has been wrongfully retained by the respondent for more than 8 years. Respondent has neither issued the complainant and offer of possession for booked unit nor has responded to the requests of the complainant for refund of the deposited amount in case respondent is unable to deliver possession as promised. Complainant has suffered a huge loss because of the negligent and callous behaviour of the respondent and now allowing forfeiture of 10% earnest money would be completely unfair. Therefore, learned counsel for the complainant prayed to the Authority to issue directions to the respondent to refund the entire amount paid by the complainant alongwith admissible interest.

10. On the other hand, learned counsel for respondent no. 2 submitted that the project in question already stands complete and has received occupation certificate on 01.12.2014. The flat in question still stands in the name of the





complainant but it is the complainant himself who failed to come forward to execute a buyer's agreement and further defaulted in making timely payment of instalments. Respondent vide email notification dated 15.06.2013 had requested the complainant for execution of a builder buyer agreement but the complainant failed to come forward for the same. It is pertinent to mention that respondent has not attached a copy of email notification dated 15.06.2013. Failure to execute a builder buyer agreement was on the part of the complainant. Since it is the complainant who is at fault, therefore, in the absence of buyer's agreement the 'terms and conditions of allotment of flats' will prevail. As per clause 6 of the 'terms and conditions of allotment of flats', the respondent is entitled to forfeit the earnest money deposited by the complainant at the rate of 10% of total sale consideration i.e Rs 4.02 lakhs and not of basic sale price. Respondent is ready to refund the amount of Rs 10,08,000/- deposited by the complainant after deducting Rs 4.02 lakhs as earnest money.

11. Authority after considering rival contentions and perusing available records, observes that complainant in present complaint had booked a unit in the project of the respondent in May 2012 and by December 2012 had paid an amount of Rs 10,08,000/- against total sale consideration of Rs 40,20,978/-. No builder buyer agreement was executed between both parties. It is also alleged by the complainant that respondent had failed to develop the project and deliver possession of the unit as promised at the time of booking. Complainant upon





realising that the project was not being developed by the respondent had decided to withdraw from the same and requested the respondent to refund the amount paid by him however, it is submitted by the complainant that despite repeated requests, respondent did not refund him the deposited amount.

On the other hand, respondent in its reply submitted that the project in question is already complete and has also received occupation certificate in the year 2014. Respondent further submitted that it was the complainant who had failed to come forward to execute a builder buyer agreement and also defaulted in making timely payment of instalments. However, respondent had failed to produce on record any documentary evidence corroborating its submissions that the respondent had approached the complainant and it was the complainant who failed to acknowledge it. The fact of the matter is that complainant deposited the last instalment in December 2012 and after that respondent had not raised any demand from the complainant. Respondent has not attached any copy of a demand letter issued to the complainant after 2012. Respondent has also failed to apprise the Authority as to what steps were taken after receiving occupation certificate whether the complainant was issued an offer of possession along with demand of balance payment or the unit allotted to the complainant was cancelled on account of non payment of dues. Respondent has also not attached a copy of offer of possession or cancellation letter, in case issued to the complainant in the written submissions.





12. In light of the above facts and submissions, Authority reconsiders the tentative view observed in order dated 20.10.2020 in respect of refund of paid amount after forfeiture of 100% earnest money. Complainant had deposited an amount of Rs 10,08,000/- with the respondent towards booking of a unit in the project by the year 2012. Complainant upon realising that the project was not in a position to be developed in foreseeable future had requested the respondent for refund of paid amount. However, respondent neither returned the amount deposited by the complainant nor delivered him the possession of the booked unit which is highly unjust and unconscionable. Authority observes that respondent has rather unlawfully retained the amount of Rs 10,08,000/- deposited by the complainant. Further respondent has failed to prove that it was the complainant who had defaulted in making payment of instalments when the fact of the matter is that respondent had not even issued him any demand letter after 2012. If the project had already been completed as claimed by respondent then respondent should have started the process of handing over of possession and demanding payment of outstanding dues. However, in this case respondent did not issue the complainant any letter. Respondent has retained an amount of Rs 10,08,000/- for more than 8 years which is wrongful gain on the part of respondent and loss to the complainant. Complainant has been bereft of his money for such a long time and has also not received possession of booked unit.

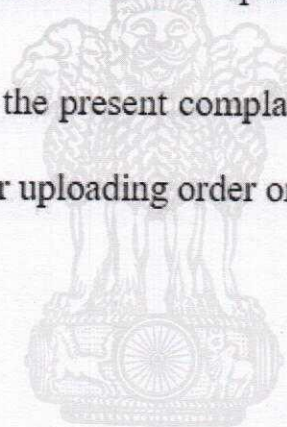
4



Therefore, Authority finds that in this case it is the respondent who is at fault here and thus cannot be allowed to forfeiture of 10% earnest money.

In the interest of equity and justice, Authority directs the respondent to refund the entire amount paid by the complainant alongwith interest payable in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2%( = 9.30%). Said amount works out to be Rs 8,99,001/-. Therefore, respondent is directed to pay an amount of Rs 19,07,001/- as refund of deposited money alongwith interest to the complainant.

13. In these terms, the present complaint stands disposed of. File be consigned to record room, after uploading order on website of Authority.



सत्यमेव जयते

.....  
**RAJAN GUPTA**  
**[CHAIRMAN]**

.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**