



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 957 OF 2019

DINESH GARG AND PANKAJ GARG

....COMPLAINANT

VERSUS

LOTUS INFRAESTATES PVT LTD..

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 31.05.2022

Hearing: 10th

Present through video calling: -

Adv. Ramesh Malik, learned counsel
for complainant

Adv. Nitika Sharma , learned 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 respondent 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 before Hon'ble Supreme Court.
2. Now the 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 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 decision of above referred SLPs, the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.
4. Initiating his pleadings, learned counsel for complainant submitted that complainant had booked plot in respondent's project "LOTUS GREEN CITY", Dharuhera, on 14.12.2012. As per builder byer agreement dated



04.01.2013, complainant was allotted a plot bearing no. C2/009 admeasuring 209 sq. mtr. for total sale price of ₹ 65,00,000/- against which complainant has already paid an amount of ₹ 50,83,220/- . In support of the contention that complainant has paid an amount of Rs. 50,83,220/-, complainant refers to statement of account issued by respondent which are placed on record as Annexure C- 3 at page no. 37-41 of complaint book. In terms of clause 15 of the BBA, possession was supposed to be delivered by 05.02.2016 but respondent has failed to do so. Despite lapse of six years from the deemed date of possession, and more than ten years from date of booking, respondent has not given possession of booked plot to the complainant. Therefore, Complainant has sought relief of refund of ₹ 50,83,220/- along with permissible interest as per Rule 15 of HRERA Rules, 2017.

5. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by the respondents in their reply are summarised as follows:-

- I. That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.
- II. Completion of the project has been delayed on account of certain force majeure conditions. Respondent stated that Project in question is 60 % complete as development works including construction of roads, sewerage lines has been laid down but

due to economic slowdown and covid-19, development works were halted. Further, considering such situation respondent applied for migration of licenced land for grant of license under Din Dayal Awas Yojana vide application dated 31.05.2018.

Further, for development and marketing the project, landowning companies had entered into a collaboration agreement with the respondent on 10.03.2013. As per said agreement, respondent was entitled for sale of the project. Respondent had also applied for registration of project vide letter dated 18.01.2018 with Authority. However, Authority had directed the landowning licensee companies along with original developer i.e. AMD Estates Pvt. Ltd. to apply for registration because the respondent herein has no locus to apply for registration of the project. Accordingly, Ms AMD developers are now getting the project registered and the collaboration agreement executed between respondent herein and landowning companies was cancelled on 16.04.2022.

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



other hand argues that construction is going on and an offer of possession will be made soon after completion of the project.

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

1. 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 in forgoing para No.s 2 and 3 of this order. Accordingly, this objection of the respondents is not sustainable.
2. As per information gathered from Project branch of the Authority, certain orders were passed on 11.04.2022 by the Authority in regard to respondent status of the project. Relevant portion of the order is reproduced below:
 - i. “ Five landowning companies were given license no 39/2012 for development of plotted colony in collaboration with M/s AMD Estates Pvt Ltd. M/s AMD Estates Pvt Ltd is also one of the landowner-licensee. In the year 2013, these five licensee companies executed a collaboration agreement with M/s Lotus Infrastructure Pvt. Ltd. M/s Lotus sold 35 plots to allottees. M/s Lotus Infrastructure Pvt. Ltd has not been recognized as promoter by Town and Country Planning Department.
 - ii. Accordingly, **Authority could not considered M/s Lotus Infrastructure Pvt Ltd as a promoter** and the application filed for registration has not considered. Authority was of the view that collaboration agreement executed by 5 licensees



with M/s Lotus Infrastructure Pvt Ltd may has to be rescinded and a fresh collaboration agreement with M/s AMD Estates Pvt Ltd has to be executed because as per license, with M/s AMD Estates Pvt Ltd is developer of the colony.

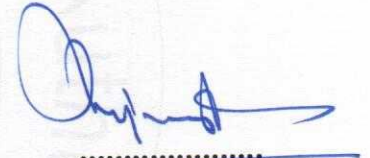
iii. M/s AMD Estates has substituted itself for M/s Lotus Infrastructure Pvt Ltd in respect of 35 allottees with whom Builder Buyers Agreement has been executed by M/s Lotus Infrastructure Pvt. Ltd.”

3. In view of above order, collaboration agreement dated 10.03.2013 has come to an end. Now, admittedly, project in question is neither complete nor registered till date. Further for the reason of inordinate delay of over six years having already occurred and no hope of its completion in near future, relief of refund is admissible. Further there is no denial to the fact of Rs. 50,83,220/- having been paid by complainants to the respondents. Payment of this amount is further adequately proved from the statement of account issued by respondents to the complainant. Said statement has been placed on record as annexure C-3 at page no. 37-41 of complaint.
4. The complainant being entitled to refund of entire amount of Rs. 50,83,220/- paid by him, Authority orders refund of the said amount along with interest from the date of receipt of payment till date of passing of this order. The complainant against the admitted payment has attached receipts of full paid amount vide



an application dated 17.05.2022. The total interest for the period ranging from the dates of receipt of payments upto the date of passing this final order (31.05.2022), in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.50% payable by the respondents to the complainants works out to Rs 42,12,799/-.

5. The Authority hereby orders that respondents shall refund the principal amount of Rs. 50,83,220/- plus interest amount of Rs. 42,12,799/- i.e. Rs. 92,96,019 to the complainant, within a period of 90 days 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]