



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1698 OF 2019

URVASHI SANGWAN

....COMPLAINANT

VERSUS

LOTUS INFRAESTATES PVT LTD..

....RESPONDENT

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 31.05.2022

Hearing: 11th

Present through video calling: -

Adv. Sanjeev sharma, counsel for complainant.

Adv. Rupali Verma , counsel for 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 the 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 unit in respondent project named, "Lotus Green City, Panipat" in year 2012. As per application form dated



02.04.2012, complainant was allotted unit bearing no.B3/058, admeasuring 251 sq.yrd. for total sale price of ₹ 38,04,156/- against which complainant has already paid an amount of ₹ 13,12,283/- . In support of the contention that complainant has paid an amount of Rs. 13,12,283/-, the complainant refer to receipts of the paid amount issued by the respondent which are placed on record as Annexures II at page no. 26-28 of complaint book. Builder Buyer Agreement (BBA) was executed on 20.08.2013. In terms of clause 15 of the BBA, possession was supposed to be delivered by 20.02.2016 but he has failed to do so. Despite lapse of six years from the deemed date of possession and more than ten years have gone by from date of booking respondent has not given possession of booked unit to the complainant. Complainant has prayed for possession of the unit along with delay interest.

5. It is pertinent to mention here that though complaint has been filed for relief of possession of booked unit but complainant at the time of hearing dated 01.12.2020 had made a statement that he is interested in refund of paid amount alongwith permissible interest because project has been inordinately delayed for more than five years on the part of respondent and there is no sight of its completion in foreseeable future. Vide order dated 08.03.2022 it was observed by the Authority that relief of refund of paid amount deserves to be granted to complainant as project had been inordinately delayed without any justification and respondent even of today



is not able to commit any timeline for its completion. Therefore, the prayer of complainant for relief of refund alongwith interest was allowed.

6. On the other hand, respondents in their reply have challenged the jurisdiction of Authority to deal with this matter on the ground that in this case, relief of refund has been sought. Respondents have also pleaded that complainant was defaulting in making payments. They had sent various reminders to the complainant to pay outstanding amounts but complainant has only paid three instalments till 2013. Respondents have also pleaded that they had commenced construction of the project, but due to force majeure circumstances they were unable to deliver possession on agreed date.

7. 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 do 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 in full swing and an offer of possession will be made soon after completion of the project.

8. 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. 13,12,283/- having been paid by the complainants to the respondents. Payment of this amount is adequately proved from the receipts issued by the respondents to the complainant. Said receipts have been placed on record as annexure R-3 at page no. 23-28 of reply.
- iii) Respondents admits that construction of project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion.
- iv) Arguments in respect of force majeure conditions cannot be accepted and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now has been shown to have happened. Respondents are defaulting on multiple accounts.
- v) In the instant case, relief of refund has been sought. The refund in this case is admissible because respondent has neither completed the project nor have given any time frame within which it will be completed. The complainant being entitled to



refund of the entire amount of Rs. 13,12,283/- paid by him, Authority orders refund of the said amount along with interest from the date of receipt of payment till date of this order. The total interest for the period ranging from receipt of payments to date of 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 11,71,017/-.

- vi) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 13,12,283/- plus interest amount of Rs. 11,71,017/- to the complainant, within a period of 90 days i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]