HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 169 of 2021

D K Dass ....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd ....RESPONDENT(S)

CORAM: Rajan Gupta Chairman

Dilbag Singh Sihag Member

Date of Hearing: 31.05.2022

Hearing-7th

Present: - Mr. D K Dass, Complainant through VC.

Mr. Hemant Saini & Mr. 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 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. Case of the complainant is that he had booked an apartment in respondent's project named 'Park Elite Floors', sector-77, Faridabad, on 11.05.2009 by paying an amount of Rs. 3 lacs. An allotment letter for Unit No. H-2-39 with 1418 sq.ft. area was issued by the respondent in favour of complainant on 24.12.2009. Builder Buyer Agreement (BBA) was executed on 01.02.2011. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 01.08.2013. Complainant alleges that he has, so far, paid an amount of Rs. 25,42,727/- against basic sale price of Rs. 27,79,101.72/-. Thereafter respondent had sent a letter dated 12.06.2012 stating that due to reason beyond control of the respondent, complainant has been

relocated for allotment of another unit bearing no. PE-109-GF having area of 1510 sq ft. For said unit, fresh builder buyer agreement was signed on 19.12.2013, and in terms of it, possession was supposed to be delivered by 19.06.2016. Further it has been alleged that respondent has not offered possession till date even after receipt of 90% of amount i.e. Rs 25,42,727/-. Feeling aggrieved present complaint has been filed by the complainant seeking possession of unit alongwith delay interest.

5. In support of the contention that complainant has paid an amount of Rs. 25,42,727.-, the complainant refers to receipts of the paid amount issued by the respondent which are placed on record vide an application filed by him in registry on 17.05.2022.

6. It is pertinent to mention here that complainant had filed this case seeking relief of possession of booked unit however, when the matter had come before Authority on 12.05.2022 complainant submitted that construction of the project has been inordinately delayed for more than 7 years on part of respondent and there is no possibility of its completion in foreseeable future. Considering this situation he submitted that he is now interested in seeking refund of paid amount alongwith permissible interest . Vide order dated 12.05.2022 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 by respondent without any justification and even today, respondent is unable to commit to any timeline for

its completion. Therefore, Authority allowed the prayer of complainant for relief of refund alongwith interest .

7. 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) 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) Completion of the project has been delayed on account of certain force majeure conditions.

8. 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 presses for refund of the amount paid by them along with interest as applicable under the Rules.

9. 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. Further they have also made an offer for allotment of an alternate unit in one of the other projects of the respondents.

10. 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. 25,42,727/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainant. Said receipts have been placed on record vide an application dated 17.05.2022.

iii) Respondents admits that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion. The respondents further have offered an alternate unit to the complainant.

Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date

of offer of possession, is that the complainants would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time. Further, complainants cannot be forced to accept alternate unit against their wishes. Alternate unit can be offered only with the consent of the allotee.

iv) Arguments in respect of force majeure conditions also 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.

v) 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.

In the instant case, however, 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. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA will not apply to the agreements executed prior

to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. Provisions of agreement will not come into play when the contract is breached. The general law of the land will regulate such situation and not provision of the agreement.

vi) The complainant being entitled to refund of the entire amount of Rs. 25,42,727/- paid by him, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainant against the admitted payment has attached receipts of full paid amount vide an application dated 17.05.2022.

vii) 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 31,21,618/-.

viii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 25,42,727/- plus interest amount of Rs. Rs 31,21,618/- to the complainant, within a period of 90 days i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

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

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]