HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1141 of 2020

Neetal Relan ...Complainant

Versus

M/s B.P.T.P. Ltd. ...Respondent

CORAM: Rajan Gupta **Chairman**
Dilbag Singh Sihag **Member**

Date of hearing: 17.05.2022.

Hearing: - 21st

Present: - Mr. Vivek Sheoran, Counsel for the complainant through video-Conferencing.

Mr. Hemant Saini and Shri 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 along with 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 sub judice 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 are 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 in above referred SLPs, issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

4. Case of the complainant is that they had booked a flat in respondent's project named 'Park Arena', sector-80, Faridabad. An allotment letter for Flat No. C-1202, 12th Floor, Tower C with 1107 sq. ft. area was issued by respondents in favor of complainant on 21.11.2010. Respondent had sent a draft of builder Buyer Agreement (BBA) on 20.05.2011 but the same could not be executed. Complainants had paid an amount of Rs. 5,56,398/- against basic sale price of Rs. 30,44,250/-. Complainant also sent a legal notice dated 18.01.2013 stating that representatives of company refused to accept payments along with interest but no reply of the same was given by the respondent.

5. In support of the contention that complainants have paid an amount of Rs. 5,56,398/- the complainant refers to statement of accounts dated 07.02.2012 provided by the respondent.

6. It is alleged that construction at site is stopped and there is no progress. Complainant has prayed for refund of the amount paid by him along with interest.

7. 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 summarized as follows: -

(i) Complainant defaulted in making payment of demand raised on 20.09.2011, 12.10.2011 and 06.02.2012. Last and final opportunity letter was issued to complainant on 14.03.2012 wherein it was stated that allotment will be terminated if complainant fails to make payment within 15 days. Thereafter, complainant's unit was terminated on 08.05.2013.

(ii) Two copies of flat buyer agreement were sent to the complainant on 23.05.2011 but they were never returned back by the complainant.

(iii) Respondent replied to the legal notice vide e-mail dated 19.03.2013 wherein it was stated that respondent is unable to receive the payment as complainant has failed to clear outstanding amount within stipulated time.

(iv) Govt. Authorities have failed to develop 24-meter road till date which has hampered and slowed down the project Park Arena.

(v) Delay in completion of the project occasioned due to force majeure conditions. Completion of project has been affected due to reasons beyond control of the respondent. Civil structure of this project was erected on the basis of 650 planned units however later on due to withdrawal of 300 booking all the customers were relocated to 4 towers.

(vi) Complainant has made defaults in making payments and is a defaulter under section 19(6) and 19(7) of the Act.

8. Both parties have argued their case at length. Complainant stated that 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.

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

(i) There is no denial to the fact of Rs. 5,56,398/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the statement of accounts dated 07.02.2012 annexed in complaint issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.

(ii) Factual position reveals that unit was allotted in favor of the complainant on 21.11.2010 however no builder buyer agreement was executed between the parties after receiving a payment of Rs. 5,56,398/- from complainant.

Complainant's unit was terminated on 08.05.2013 by respondent after issuing last and final opportunity letter dated 14.03.2012. Complainant has been defaulting in making due payments. The obligation which was left on the part of the respondent was to refund the amount paid by complainant after deducting earnest money. Respondent has failed to discharge his obligation of returning balance money. In furtherance of termination of allotment, respondent was under obligation to return remaining amount after deduction of earnest money which has not been done till date and as such there is no reasonable justification provided by respondent for withholding the amount of complainant for last 8 years.

RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. Respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. Builder buyer agreement has not been executed. Basic sales price is Rs. 30,44,250/- of which 10 % earnest money can be deducted.

Authority in order to maintain equity between parties decides to dispose of this case with direction to respondent to refund the paid amount after deduction of earnest money to tune of 10% of basic sales price. Basic sales price is Rs 30,44,250/- and 10% of it works out to 3,04,425/-.

In furtherance of aforementioned observations, the complainant being entitled to refund of the amount of Rs. 2,51,973/- (total paid amount Rs.

5,56,398/- - earnest money Rs 3,04,425/-). Authority orders refund of said amount along with interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from date of termination i.e., 08.05.2013 till date of this order.

The total interest for the period ranging from date of termination to date of this final order (17.05.2022) in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.50% payable by the respondents to the complainants works out to Rs. 2,16,224/-. The Authority hereby orders that the respondents shall refund the principal amount of Rs. 2,51,973/- plus interest amount of Rs. 2,16,224/- to the complainant, within a period of 90 days of uploading of this order i.e., the period prescribed under Rule 16 of the RERA Rules, 2017.

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)