



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**COMPLAINT NO. 562 OF 2020**

Manu Bansal and Monika Bansal

...Complainants.

Versus

1. M/s B.P.T.P. Ltd.
2. Countrywide Promoters Pvt. Ltd.
3. HDFC Ltd.

...Respondents.

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 01.06.2022**

**Hearing: 5<sup>th</sup>**

**Present: -** Shri Rakshak Gupta, Proxy counsel for the complainant through VC.

Shri Hemant Saini and Shri Himanshu Monga, Counsels for the

Respondent.

## **ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. In this case, complainants have sought relief of refund of the amount paid by them 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.

9

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 of above referred SLPs, the issue relating to the 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 an apartment in respondent's project named 'Park Arena', sector-80, Faridabad, on 27.08.2010 by paying an amount of Rs.3,07,725/-. An allotment letter for Flat No. D-603 with 1150 sq. ft. area was issued by respondents in favor of complainants on 16.11.2010. Builder Buyer Agreement (BBA) was executed on 16.05.2012. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which comes to 16.11.2015. Complainants alleges that they have so far paid an amount of Rs. 29,27,504/- against basic sale price of Rs. 31,62,500/-.

5. In support of the contention that complainants have paid an amount of Rs. 29,27,504/- the complainant has submitted receipts of payments issued by

respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged. Complainants had also executed a tripartite agreement for loan of Rs. 25,00,000/- with HDFC Ltd on 22.06.2012.

6. Complainants have prayed for refund of the amount paid by him along with interest for the reason that respondents have inordinately delayed completion of project.

7. Respondent no. 1 and 2 have not filed their reply even after the expiry of more than 1 year and 10 months. Therefore, the Authority is constrained to proceed ex-parte against them in this case. Respondent no. 3 HDFC Ltd. has filed reply. In said reply it is stated that there is no allegation of deficiency in service against respondent no. 3 and therefore case should be dismissed qua them.

8. Both parties have argued their case. Complainant reiterates that they do not wish to continue with the project any longer. Accordingly, they 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 forth by parties. It observes and order as follows: -

- (i) Basic facts of the matter are undisputed that the apartment was allotted to the complainants on 16.11.2010 and Builder-Buyer Agreement was duly executed on 16.05.2012. It is evident from receipts of payments issued by respondents that complainants have made payment of Rs.



29,27,504/-to the respondents. Said receipts have been duly annexed in the complaint. Deemed date of possession was 16.11.2015. There has been a delay of nearly 7 years. Possession has not been offered and respondent has not even filed reply. Nothing has been submitted by ld. counsel for the respondent in regard to stage of construction.

(ii) 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.

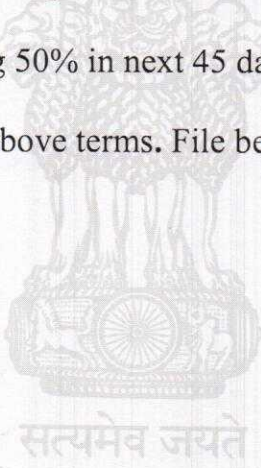
(iii) In these circumstances, it has been observed by the Authority that by virtue of section 18 of RERA Act, 2016 allottee is within his right to ask for refund and as such when unit is not ready and no timeline is committed by respondent for handing over of possession, allottee cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.50%) from the respective dates of making payment till the actual realization of the amount.



(iv) In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 29,27,504/- to the complainant.

(v) Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order (01.06.2022) at the rate of 9.50%. Now, respondent has to pay total amount of ₹ 29,27,504/- + ₹ 28,34,457/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days in two equal instalments. First instalment of 50% of total amount shall be payable by respondent to complainant within 45 days of uploading of this order and remaining 50% in next 45 days.

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



.....  
RAJAN GUPTA  
(CHAIRMAN)

.....  
DILBAG SINGH SIHAG  
(MEMBER)