



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 744 OF 2020

Vinay Kumar Singh

....COMPLAINANT(S)

VERSUS

1. M/S BPTP Ltd.

2. Countrywide Promoters Pvt Ltd.

....RESPONDENT(S)

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

**Chairman**  
**Member**

**Date of Hearing:** 31.05.2022

**Hearing:** 22<sup>nd</sup>

**Present:** - Mr. Piyush Bansal, Counsel for the complainant through VC.

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 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 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. Brief facts as averred by the complainant are that complainant was allotted office space No. U-43 with super area of 558 sq. ft. in the respondent's project Park Central, Sector 85, Parklands on 12.05.2011. Buyer Agreement (BBA) was executed between the complainant and respondent on 27.11.2012. In terms of clause 4.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to 27.05.2016. Complainant had paid an amount of Rs. 38,78,325/- against basic sale price of Rs. 33,20,100/-. Complainant had sent an e-mail dated 22.02.2020 for



withdrawing his allotment from the project and refund of the amount paid by him but respondent did not return his money.

5. In support of the contention that complainants have paid an amount of Rs. 38,78,325/- 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.

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

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) 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.
- (ii) Various allottees of the project including the complainant has defaulted in making timely payments and therefore possession timelines stood diluted. Respondent sent reminder letters dated 06.07.2011, 08.01.2013 and 08.02.2013 and final opportunity letter





dated 12.03.2013. Complainant is at default under section 19(6) and 19(7) of the Act.

- (iii) Space buyer agreement was never executed between the parties as respondent sent agreement to the complainant on 21.12.2012 but the same was never returned by the complainant.
- (iv) Complainant was given an option of the alternative unit in the project Next Door and Parkland Pride Floor.
- (v) Respondent has accepted the payments made by the complainant and denies to have been received any e-mail dated 22.02.2020 from the complainant.

8. Both parties have argued their case at length. Complainant 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. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes and order as follows: -

- (i) Basic facts of the matter are undisputed that the apartment was allotted to the complainants on 12.05.2011. However, on perusal of record, it is observed that Builder-Buyer Agreement dated 27.11.2012 has not been signed by the respondent. No



builder buyer agreement was executed between the parties. It is evident from receipts of payments that complainants have made payment of Rs. 38,78,325/- to the respondents and respondent has also admitted to have received the same from complainant. Respondent in his reply has stated that he had offered alternative unit to complainant. Nothing has been stated with regard to stage of construction by respondent. Respondent's offer of alternate apartment is not acceptable to complainant. No specific time period has been committed for completion of the project. 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. Also offer of alternate unit can not be forced upon the allottees against their will.

(ii) 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 respondents have not completed the project in time frame within which it was to 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.

iv) 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



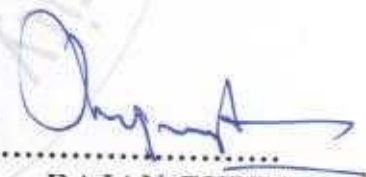


the respective dates of making payment till the actual realization of the amount.

v) In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 38,78,325/- to the complainant.

vi) Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order (31.05.2022) at the rate of 9.50%. Now, respondent has to pay total amount of ₹ 38,78,323.77/- + ₹ 35,58,548/- 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)