



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 832 OF 2020

Seema Jain and M K Jain

...Complainants.

Versus

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

...Respondent.

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 01.06.2022

Hearing: 3rd

Present: - Shri Arjun Kundra, counsel for the complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Counsels for the Respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

While perusing case file, it is observed that, complainant has sought relief of refund of the amount of Rs. 1,55,62,960/- paid by him to respondent along with applicable interest. Initially 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 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 complainants are that they had booked a flat in respondent's project named 'The Deck, Sector 82, Parklands Faridabad. An allotment letter for a 4 BHK Flat No. N-502, with 3061 sq. ft. area was issued by respondents in favor of complainants on 03.04.2012. Builder Buyer Agreement (BBA) was executed on 23.11.2012. Complainants opted for construction linked plan. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 36+6 months, which comes to 23.05.2016.



Complainants alleges that they have so far paid an amount of Rs. 1,55,62,960/- against basic sale price of Rs. 1,48,45,850/-.

5. In support of the contention that complainants have paid an amount of Rs. 1,55,62,960/- the complainant has submitted details of payment annexed at page 29-A of complaint along with requisite proof.

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

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 respondents in their reply are summarized as follows: -

- (i) That respondent's project 'The Deck' is a registered project bearing registration no. 183 of 2019 valid till 31.12.2022.
- (ii) Complainants have misrepresented the fact that builder Buyer Agreement (BBA) was executed on 23.11.2012. Complainants never returned the copy of agreement for execution by respondents.
- (iii) Construction of the unit is in full swing and possession will be handed over shortly.
- (iv) Possession timelines were subject to timely payments and force majeure clause. Complainant are abysmal defaulters and have failed to



make payment of Rs. 79,019/- till date. They are at default under section 19(6) and 19(7).

8. Both parties have argued their case at length. Complainants stated 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. Respondents 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.

10. 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 03.04.2012. On perusal of record, it is observed that Builder-Buyer Agreement dated 23.11.2012 has not been signed by the respondent. No builder buyer agreement was therefore executed between the parties. However, there is no denial to the fact of Rs. 1,55,62,960/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts of payments issued by respondents and account statements of the complainants.

(ii) 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.

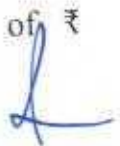


(iii) Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date of offer of possession, is that the complainants would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.

(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. 1,55,62,959/- 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 (01.06.2022) at the rate of 9.50%. Now, respondent has to pay total amount of ₹



1,55,62,960/- + ₹ 1,25,43,320/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days in two equal instalments. Disposed of in above terms. File be consigned to record room.



RAJAN GUPTA
(CHAIRMAN)



DILBAG SINGH SHAG
(MEMBER)

