



Complaint No. 335 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 335 OF 2020

Dheerendra Singh and Ankita pal

...Complainant

Versus

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

...Respondent

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of hearing: 01.06.2022

Hearing: - 4th

Present: - Mr. Pranjal P. Chaudhary, Counsel for the Complainant.

Mr. Hemant Saini and Mr. Himanshu Monga, Counsels for the respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that 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 due to jurisdiction dispute to deal with such matters which was sub judice before Hon'ble Supreme Court.

2. Now, 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, 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 booked an office space in the respondent's project Park Central, Sector 85, Parklands on 05.08.2011 by paying Rs. 3,07,725/-. Buyer Agreement (BBA) was executed between the complainant and respondent on 20.11.2012 for shop no. U-33, measuring super area of 558 sq. ft. In terms of clause 4.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to 20.05.2016. Complainant had paid an amount of Rs. 40,49,693.90/- against basic sale price of Rs. 33,20,100/-. Complainant was offered a commercial unit in another project of the respondent but it was not accepted by the complainant. It is alleged that size of the unit has been decreased from 558 sq. ft to 300 sq. ft.

5. Complainant on 27.05.2018 had filed complaint no. 39 of 2018 for refund of the amount paid by him along with interest. Said complaint was disposed of on 21.08.2018 wherein respondent admitted delay in delivery of

1

possession and undertook that possession will be handed over by July 2019. On the date of disposal of said case, respondent admitted that Rs. 3.09 lacs were charged excessively and therefore respondent returned Rs. 3.09 lacs charged on account of PLC after passing of this order. Complainant alleges that project is far from completion.

6. In support of the contention that complainants have paid an amount of Rs. 40,49,693.90/- complainant has submitted statement of accounts dated 22.01.2018 issued by the respondents vide which receipt of said amount by the respondent from the complainant has been duly acknowledged. Further payment of said amount has been adequately proved in para 1 of previous order of this complaint in complaint no. 39 of 2018 dated 21.08.2018.

7. Complainant has prayed for refund of the amount paid by him along with permissible interest on the ground that respondents have already inordinately delayed completion of project.

8. 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) Complainant is liable to be dismissed as complainants have already accepted delay penalty of Rs. 8,67,192/-. Refund of Rs. 3.09 lakhs has also been made to complainant.

(iii) Various allottees of the project including the complainant has defaulted in making timely payments and therefore possession timelines stood diluted.

(iv) Complainant was given an option of the alternative unit in the project Next Door on 01.06.2016.

(v) With respect to stage of construction it is submitted that work is in progress and is expected to be completed soon.

(vi) With respect to the size of the plot it is submitted that 558 sq. ft is total super area of the shop and not the carpet area.

9. 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.

10. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while passing following order: -

(i) Basic facts of the matter are undisputed that builder buyer agreement was executed between parties on 20.11.2012. It is also undisputed that



complainants have paid an amount of Rs. 40,49,693.90/- the complainant has submitted statement of accounts dated 22.01.2018 issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.

(ii) This case was earlier disposed of by the Authority on 21.08.2018 as case was mutually settled between the parties. Respondent handed over cheques amounting to Rs. 8,67,192/- to the complainant for delay interest and promised to give possession by July 2019. Further, Respondent admitted to refund 3.09 lacs charged excessively by him. Complainant was given liberty to approach this Authority. It is proved from para 1 of said order that an amount of Rs. 40,49,693.90/- stands paid.

(iii) 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 the Authority with retrospective effect, do not hold any ground. In the instant case, relief of refund has been sought and the same is admissible on the ground that respondents have not completed the project in stipulated time. This is a case of breach of contract by the respondents. In case of breach of contract, argument of ld. counsel for the respondent 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

2

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.

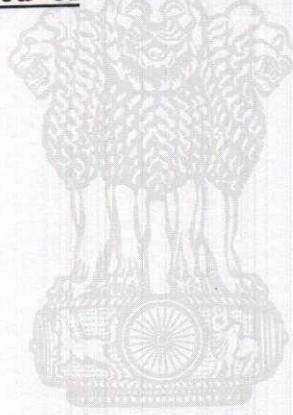
(vii) Respondent has stated that work is in progress and is expected to be completed soon. However, no specific time period has been committed for completion of the project. Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable 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.

(viii) 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.

2

(ix) In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 40,49,693.90/- to the complainant.

(x) 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 ₹ 40,49,693.90/- (Principal amount) + ₹ 37,91,151/- (Interest amount) after adjusting the already paid amount of Rs. 8,67,192/- 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.



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RAJAN GUPTA
(CHAIRMAN)

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DILBAG SINGH SIHAG
(MEMBER)