



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1138 OF 2021

LT GEN A.P. Singh

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 31.05.2022

Hearing: 4th

Present: -

Mr. Ravi nayak, counsel for the complainant through video conference

Ms. Rupali S. Verma, 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 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 first before Hon'ble High Court and later 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 have been 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.

Consequent to the decision of above referred SLPs, the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.

3. Facts of complainant's case are that flat no. B-69-G, admeasuring 1450 sq.ft. was booked by complainant and his wife Ms. Geeta Singh in a project named 'Parsvnath Elite Floors, Parsvnath City, Dharuhera, Rewari' being developed by respondent. Builder Buyer agreement was executed between the parties on 21.09.2009. A copy of original BBA has been annexed as Annexure C-I with the complaint.



Basic sale price of apartment was ₹20,38,940/-. In accordance with the payment plan, complainant by the year 2010 had paid a total amount of ₹6,68,104.50/-.

4. As per clause 9(a) of BBA construction of flat was to be completed within 24 months from the date of commencement of construction on individual plot on which flat is located with grace period of 6 months but respondent has failed to do so till date. Complainant approached the respondent several times and asked him to complete the project and hand over the possession of the unit but to no avail. Complainant felt aggrieved by the status of the project and hence vide letter dated 12.09.2020 asked the respondent to refund his money along with interest. Complainant even sent a legal cum demand notice on 22.12.2020 for refund of his amount with interest and compensation but there was no response received from the respondent. Complainant has come to know that the construction of the project is still pending and development of the project is into doldrums and project is far from completion. No offer of possession has been made despite lapse of more than 11 years from deemed date of possession. Since there is no hope of completion of the project, present complaint has been filed seeking relief of refund of the amount deposited along with interest, compensation and litigation expenses. Further, on 02.04.2015, wife of complainant passed away, therefore present complaint has been filed by



complainant in his individual capacity and being the legal representative of his wife.

5. Respondent in his reply filed on 14.01.2022 has stated that present complaint is not maintainable and barred by limitation; so liable to be dismissed. Respondent has admitted the fact of booking of the apartment, the agreed sales consideration, the area and location of the apartment as well as payment of ₹6,68,104.50/- made by the complainant. It has been contended that the project is being developed in terms of statutory approvals granted by competent authorities and that licence nos. 129 to 138 of 2007 were granted to respondent for project in question and respondent company has applied for renewal of said licences which are pending with competent authority. Respondent has also stated that it has completed all the development works in the project related to infrastructure and basic amenities. On 25.05.2016, the Office of Senior Town Planner (STP), Gurgaon had affirmed to DTCP, Haryana that all the development works of the project site as per the approved layout plan are completed. It has been submitted that basic facilities and infrastructure like roads, service roads, services including sewerage line, storm water lines, temporary electric lines, water lines have already been constructed/installed and respondent is trying to complete the project for which purpose they have applied for registration with RERA. It has been submitted that respondent has duly complied with the payment of dues and is in the process of availing relief policy for



depositing the outstanding EDC. Further it has been contended that time is not essence of the contract and that there is no intentional delay on his part rather project has been delayed for the reasons beyond his control. Respondent has referred to clause 9(c) of the flat buyer agreement wherein it has been stipulated that in the event of delay caused on account of force majeure conditions, complainant shall be paid compensation @ ₹5/- per sq.ft per month. In brief the respondent has raised certain technical objections but has admitted all the facts alleged by complainant.

6. Learned counsel for the respondent stated that project was being developed in terms of statutory approvals granted by competent authority but due certain reasons beyond control of respondent company, project got delayed. She further argued that respondent is trying to complete the project and if refund is allowed at this stage, it would hamper the progress of the project.

7. After hearing both the parties and going through the documents on record, Authority observes as under:

- (i) That the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. Booking of the apartments have been done from the year 2009 onwards. This project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing

project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. In its project jurisdiction, this Authority has passed following order on 22.03.2021:

“1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

3. Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.

4. The Authority does not agree with the contentions of the learned counsel Shri Shekhar

Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arranged by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for



recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021.”

(ii) Authority has offered numerous opportunities to the respondents to commence development works of the project.

Repeated directions have been given to them to deposit some money in the Escrow Account but respondents have failed to comply with any of the orders. Respondents have been making repeated assurances but have been failing to keep them.

(iii) Further fact of the matter is that due date of offering possession was 2012. Already delay of more than 10 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if respondent had commenced its development or an application for grant of occupation certificate was filed. On the contrary, in this case development is not taking place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project. In fact, a thought process is going on to hand over the project to association of allottees, which in other

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words mean that Authority considers that respondents will not be able to complete the project at their level.

8. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of the complainant. Hence, Authority directs respondent to refund the complainant the amount paid by him along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.50% (7.50% + 2.00%) from the date amounts were paid till today.

9. Authority has got calculated the interest payable to the complainant and accordingly total amount payable to the complainant including interest calculated at the rate 9.50% is depicted in table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 31.05.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹50,000/-	10.08.2009	₹60,878/-	₹1,10,878/-
2.	₹5,00,739/-	05.09.2009	₹6,06,292/-	₹11,07,031/-
3.	₹1,17,365.50/-	03.02.2010	₹1,37,493/-	₹2,54,858.5/-
Total	₹6,68,104.50/-		₹8,04,663/-	₹14,72,767.5/-

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Respondent is directed to make the entire payment of ₹14,72,767.50/- to the complainant within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

10. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

