HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 17 OF 2021

Ottoman Industries Pvt. Ltd. ....COMPLAINANTS(S)

VERSUS

BPTP Limited ....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Hearing: 20.12.2022

Hearing:4th

Present: Mr. Rahul Srivastava, Complainant through VC.

Mr. Hemant Saini, Counsel for the Respondent through VC.

ORDER: (NADIM AKHTAR-MEMBER)

Captioned complaint was disposed of vide order dated 01.06.2022.

Said order is reproduced below for reference:-

While perusing case file, it is observed that complainant has sought relief of refund of the amount of Rs. paid by him to respondent along with applicable interest. In this case initially Authority had not been hearing the matters in which relief of refund was sought on the ground of jurisdiction dispute 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, issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

4. While perusing case file it is observed that case of the complainants is that a unit no. N-501 measuring 3061 sq. ft. was allotted in the name of the complainant in respondent's project named 'The Deck, Sector-82, Faridabad, on 03.04.2012. Builder Buyer Agreement (BBA) was executed on 07.08.2013. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 36+6 months, which comes to 07.08.2017. Complainants alleges that they have so far paid an amount of Rs. 1,53,50,961/- against basic sale price of Rs. 1,48,45,850/-.

5. In support of the contention of complainant of payment of an amount of Rs. 1,53,50,961/- complainants refer to receipts of payments annexed as annexure C-4 and C-5 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 delayed completion of the 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 the 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) Possession timelines were subject to timely payments and force majeure clause. Complainant are abysmal defaulters and have failed to make payment of Rs. 30,051.59/- till date. They are at default under section 19(6) and 19(7).

(iii) Complainant is not entitled to for any refund as respondent is entitled to complete the project within the validity period of RERA registration that is 31.12.2022.

8. Ld. counsel for the respondent argued that complainant is not entitled to refund because respondent has time to complete the project till validity period of RERA registration that is 31.12.2022.

9. Ld. counsel for the complainant stated that complainant is well within his right to seek refund in terms of section 18 of RERA Act 2016. Further, he referred to para 33 of a judgement of Hon'ble Supreme court that is Civil Appeal no. 3581-3590 of 2020 titled as Imperia Structures Ltd. vs Anil Patni. Said para is being reproduced below for ready reference

"We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission"

He further argued that merely registration is valid till 31.12.2022 does not disentitle complainant's right under section 18. As per section 18, complainant may withdraw from the project and promoter is liable to return amount paid by him along with interest. Complainant do not wish to continue with the project any longer and 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 by both the sides while passing following orders: -

(i) Basic facts of the matter are undisputed regarding allotment of the apartment to the complainants on 03.04.2012; execution of builder buyer agreement dated 07.08.2013. Payment of Rs. 1,53,50,961/- is adequately proved from the receipts of payments issued by respondents.

(ii) No specific time period has been committed by the respondent for its completion in written statement.

(iii) Declared policy of this Authority in all such cases where the projects are not likely to be completed within foreseeable future and extraordinary delay has taken place then complainants would be entitled to relief of refund as 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 allotee is within his right to ask for refund and as such when unit is not ready and no timeline is committed by the respondent for handing over of possession. Allotee 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. 1,53,50,961/- 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 ₹ 1,53,50,961/- + ₹ 1,32,28,912/-/- 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.

2. Complaint has been re-opened and listed for today for the reason that complainant's counsel Mr. Rahul Srivastava had filed an application under Section 39 of RERA Act,2016 dated 13.07.2022 in registry of office seeking rectification of two clerical errors in order dated 01.06.2022. First one is regarding mentioning of wrong name of complainant's counsel in presence of said order. Name of Sh. Vikrant Rana, has been mentioned instead of correct counsel name i.e Sh. Rahul Srivastava. Second in first para of order dated 01.06.2022 only Rs. has been written, no amount has been mentioned thereafter. Fact remains that amount of Rs 1,53,50,961/- is duly recorded in said order.

3. On perusal, it is found that typographical/clerical errors pointed out by complainant's counsel are apparent on record and said errors can be rectified by virtue of Section 39 of RERA Act,2016. So, application for rectification stands allowed. Accordingly, after rectifying said errors, the name of complainant's counsel in order dated 01.06.2022 be read as Sh. Rahul Srivastava and in para 1 of order dated 01.06.2022 which is reproduced below for reference:-

While perusing case file, it is observed that complainant has sought relief of refund of the amount of Rs. paid by him to respondent along with applicable interest.

Rs. be now read as Rs. 1,53,50,961/-.

4. In view of rectification of errors stated aboveherein, the name of complainant's counsel should now be read as Sh. Rahul Srivastav and amount in first para should be read as Rs 1,53,50,961/- in order dated 01.06.2022.

5. Case is **disposed of** in above terms. File be consigned to record room.

.....

DR. GEETA RATHEE SINGH
[MEMBER]

.....

NADIM AKHTAR
[MEMBER]