



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT (REVIEW) NO. 2236 OF 2022

IN

COMPLAINT NO. 1242/2019

BPTP Ltd

....COMPLAINANTS(S)

VERSUS

Priyanka Sharma

....RESPONDENT(S)

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Date of Hearing: 18.10.2022

Hearing: 1st

Present: Shri Himanshu Monga, counsel for complainant.

Shri Shyam, Representative for respondent through VC.

ORDER: (NADIM AKHTAR-MEMBER)

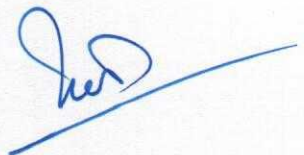
Complainant M/s BPTP Ltd. is seeking review of the order dated 31.05.2022 passed by Authority in the complaint no. 1242/2019. Said order is reproduced below for reference:-

“In 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 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) 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 decision of above referred SLPs, issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

4. Case of the complainant is that complainant executed a builder buyer agreement with respondent on 23.07.2009 for an apartment in respondent’s project named ‘Park Floors, Sector-77, Faridabad, for flat bearing no. 204, 2nd floor, Block H with area admeasuring 1177 sq. ft. Complainant has paid an



amount of Rs. 4,95,000/- against basic sale price of Rs. 22,85,010/-. Complainant had opted for construction linked payment plan. Complainant alleges that booking amount was supposed to be 2 lacs for 2 bed rooms and 2.5 lacs for 3 bed room apartments, and payment of 20% basic sales price was to be made in next 60 days. However, respondent on 11.08.2009, that is just 20 days after execution of BBA, raised demand of Rs. 13,43,270/-. Complainant states that she had deposited more amount than was required for booking but respondent raised next demand just after 20 days which was supposed to be paid in next 60 days. Complainant visited respondent's office, and respondent admitted their mistake of sending demand letter dated 11.08.2009. Complainant requested respondent to refund his money but same has not been refunded till date. Complainant also sent a legal notice dated 24.12.2018 for refund of Rs. 4,95,000/- to complainant. Complainant however has not annexed any proof of having paid Rs. 4,95,000/- to the respondent. An e-mail dated 10.06.2022 was sent to the complainant for submission of receipts however no receipts, have been submitted by the complainant.

5. Complainant has prayed for refund of the amount paid by him along with interest.

6. The respondents have sought to defend themselves in broad and general terms. 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 applied for allotment in respondent's project on 07.08.2008 by paying Rs. 2,00,000/-. Allotment letter was issued to the complainant on 11.12.2008. In the said allotment, respondent admitted to have received an amount of Rs. 3,97,000/- and called for an amount of Rs. 7,14,490.50 from the complainant. Builder buyer agreement was executed between the parties on 23.07.2009. Respondent sent various payment requests dated 01.09.2010, 04.10.2010, 17.01.2011, 31.03.2011 and 18.04.2011. Final opportunity letter was issued to complainant on 28.05.2011. On 19.12.2011 complainant sent an e-mail for unblocking her unit as her unit was blocked after issuing final opportunity letter. Respondent replied to the e-mail dated 19.12.2011 stating that complainant may apply for new booking in other projects and thereafter respondent will initiate the process of merger of funds from Park Floors to new booking. Thereafter through e-mail dated 01.02.2012 complainant requested for refund of paid amount. Respondent sent a reply to complainant's e-mail stating that refund would be processed as per forfeiture clause and asked complainant if she wishes to buy back her unit at current market price but no response on the same was received from her. Complainant's unit was finally terminated on 01.07.2013 on account of non-payment by the complainant.

(iii) With respect to payment of Rs. 4,95,000/- respondent has admitted to have been received only an amount of Rs. 3,97,000/-.

7. Both parties have argued their case at length. Complainant press for refund of the amount paid by them along with interest as applicable under the Rules.

8. Complainant's basic case is that builder buyer agreement was executed on 23.07.2009. She alleges that she had paid an amount of Rs. 4,95,000/- against basic sale price of Rs. 22,85,010 however she has failed to submit receipt of payments even after getting one more opportunity to submit the same. She requested respondent to refund her money but same was not been refunded. Her unit was terminated on 01.07.2013.

Respondent's case is that various payment requests were issued to the respondent dated 01.09.2010, 04.10.2010, 17.01.2011, 31.03.2011 and 18.04.2011 but complainant chose not to make any payments. Thereafter, final opportunity letter was issued on 28.05.2011. On account of non-payment complainant's unit was finally terminated on 01.07.2013. Further, respondent has stated that only an amount of Rs. 3,97,000/- has been paid by the complainant.

Authority observes that respondent was justified in terminating the unit of the complainant as complainant failed to make payments. The only obligation which was left on the part of the respondent was to refund the amount paid by the complainant after deducting earnest money. Respondent has failed to discharge his obligation of returning the money.

9. Respondent is directed to refund of the amount of Rs. 1,68,499/- (total paid amount Rs. 3,97,000/- - earnest money Rs 2,28,501/-). Authority orders refund of the said amount along with interest prescribed in Rule 15 of HRERA Rules, 2017 for the period ranging from date of termination i.e., 14.01.2011 till date of this order.



The total interest for the period ranging from date of termination to date of this final order (31.05.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e. @ 9.50% payable by the respondents to the complainants work out to Rs. 1,42,839/-. The Authority hereby orders that the respondents shall refund the principal amount of Rs. 1,68,499/- plus interest amount of Rs. 1,42,839/- to the complainant, within a period of 90 days of uploading of this order i.e., the period prescribed under Rule 16 of the RERA Rules, 2017.

Disposed of in above terms. File be consigned to record room."

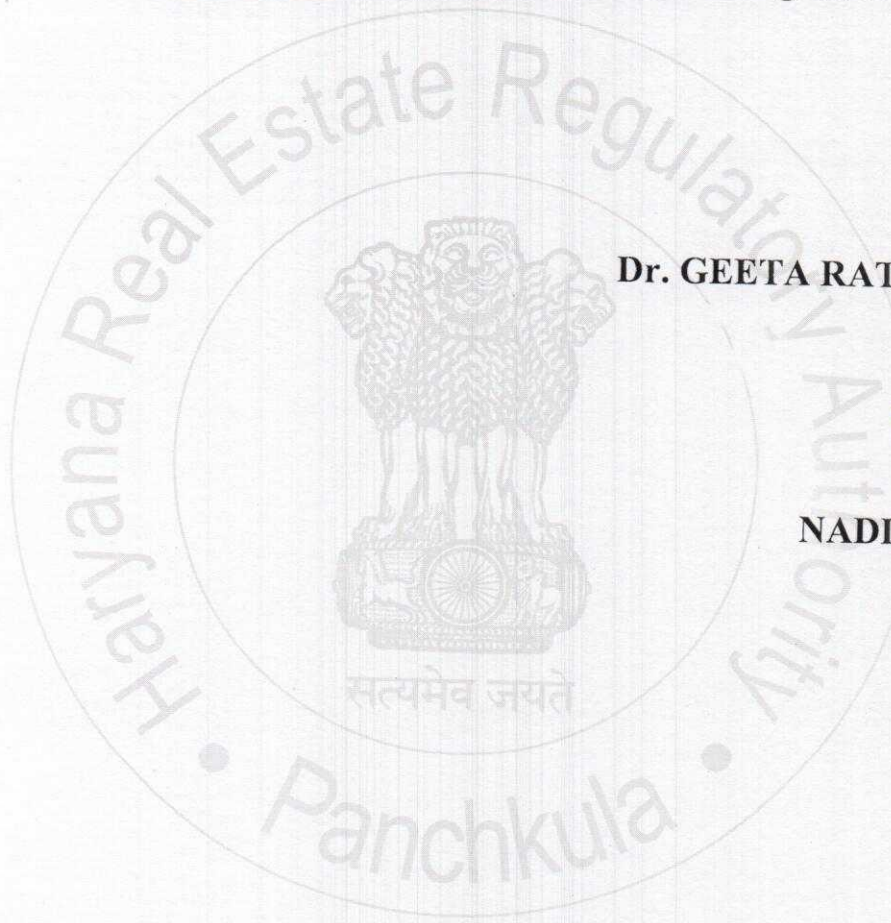
2. In the said order the complainant was awarded refund of paid amount with interest for the period ranging from date of termination (i.e., 01.07.2013) to date of order (i.e., 31.05.2022). However, the date of termination in paragraph no. 9 of above referred order is written as 14.01.2011 instead of correct date 01.07.2013. Complainant M/s BPTP Ltd filed present review seeking rectification of date of termination mentioned in paragraph 9 and calculations made thereof in respect of interest.

3. On perusal of record and calculations made for interest, it is found that calculations were made correct, in accordance with the time period of date of termination (01.07.2013) to date of order (31.05.2022) for the said time period. However, inadvertently the date of termination was written as 14.01.2011

instead of correct date 01.07.2013. The error is apparent on face of record so present rectification complaint is allowed.

4. In view of rectification of error of date of termination mentioned as 14.01.2022 in para 9 of referred order be now read as 01.07.2013. Calculations of interest remains same as there is no error in it.

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



Geeta Rathee

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Dr. GEETA RATHEE SINGH
[MEMBER]

Nadim Akhtar

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NADIM AKHTAR
[MEMBER]