



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1002 OF 2019

Amit Kumar

....COMPLAINANT

VERSUS

M S Alpha Corporation and Development Pvt. Ltd.

....RESPONDENT

CORAM: **Dilbag Singh Sihag** Member
Nadim Akhtar Member
Dr. Geeta Rathee Singh Member

Date of Hearing: 12.10.2022

Hearing: 11th

Present: Ms. Navneet, Ld. counsel for the complainant.

Mr. Bahul Bunger, Ld. counsel for the Respondent.

ORDER (DILBAG SINGH SIHAG- MEMBER)

Perusal of record reveals that today is 11th hearing of the case. Complainant had approached the authority in the year 2019 seeking relief of refund. The matter was adjourned sine die vide order dated 08.12.2020 as there was a dispute going on with respect to the jurisdiction of Authority to hear refund matters. The matter was reopened 26.07.2022. Initially Authority had not been hearing the matters in which relief of refund was sought on the ground of

its jurisdiction dispute was sub-judice 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.

3. 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.

4. Facts of the case in nutshell is that complainant booked a plot bearing no. 941 measuring 360 sq. yards in the respondent's project "Alpha International City" phase II sector 28A-29 Karnal, Haryana. The respondent had allotted the plot through an allotment letter dated 30.12.2014. Plot-Buyer Agreement was executed between the parties on 25.06.2015 and as per clause 10.2 respondent agreed to deliver possession of the plot within 28 months from execution of the agreement. Thus, respondent was bound to deliver the possession of the unit by 25.10.2017. Basic sale price of the plot was fixed as Rs. 59,72,400/- against



which complainant has claim to have paid Rs. 43,69,111/- till March, 2016 against the plot. Complainant further submits that he was working in a sterile pharmaceutical company in north Iraq (Kurdish area) and due to unavoidable situations in Iraq he had come back to India and faced financial crisis and was in difficulty to not only arrange funds for payment for plot but also was in severe difficulty to arrange basic amenities for livelihood. Complainant further submits that in February 2016 complainant visited the office of respondent and requested them to cancel the plot or to allot a new plot of any size for the same consideration paid by him till date. As per written submissions of complainant, he averred that respondent ignored his request and kept on sending demand letters for further payment. These demand letters are annexed as C-8 in complaint file. Complainant further submits that respondent had issued offer of possession of plot on 08.11.2017 with a heavy interest. As per reminder letter dated 29.09.2018 issued by respondent that as on 29.09.2018 in the name of remittance of principal amount of Rs.26,88,369/-, interest 6,11,382/- and holding charges amounting Rs. 78,645/- which works out to be Rs.33,78,796/- in total to be paid by complainant. Complainant has annexed various communication emails in his compliant file requesting exemption of holding charges and to consider his request on humanitarian ground on his financial conditions. Complainant has submitted a copy of email dated 07.03.2019 written by complainant to cancel the plot along with a letter of cancellation to respondent, which was again ignored by respondent. Another communication

email dated 10.03.2019 requesting cancellation of plot and refund of paid amount with 15% interest was sent by complainant and he did not take any cognizance of same. Complainant further submits that respondent had offered possession of the plot on 08.11.2017 without valid documentation.

3. Respondent had submitted his written submissions in the Authority on 10.10.2022. Wherein, he submits that respondent obtained licence no.29 of 2011 dated 05.04.2011 for an area measuring 85.569 acres in phase II and the concerned plot falls in the said licensed area. The service plan estimates for internal development work were duly approved by the Directorate Town and Country Planning vide letter dated 13.02.2013. It is further submitted that respondent applied for renewal of license and the same was renewed w.e.f. 05.04.2015 vide letter dated 21.06.2017 upto 04.04.2019 annexed as annexure R-4. Respondent obtained environmental clearances from the concerned departments, vide letter dated 26.11.2014 annexed as annexure R-5. Respondent received the part completion certificate on 19.04.2018 and a copy of same is annexed as annexure R-6 of written submissions. Respondent avers that complainant had failed to abide by the terms of the agreement in making payments on time as per scheduled plan and therefore he is liable to pay the said charges and interests as per terms of agreement.

4. Authority has gone through the facts and submissions of both the parties and observes that the basic facts related to the case are undisputed i.e Plot buyer agreement was executed between the parties on 25.06.2015 and as per terms of

agreement deemed dated was fixed on 25.10.2017. Basic sale consideration of the plot is Rs.59,72,400/- against which complainant has paid a sum of Rs.43,69,140/-. Authority observes that there are two issues that need to be dealt in detail for adjudication. Firstly, whether offer of possession made by the respondent is a legal offer of possession or not. Secondly, that whether request of complainant to cancel the unit is valid or not.

Firstly, it is observed that offer of possession of plot was made to the complainant on 08.11.2017, whereas part completion certificate was obtained by the respondent on 19.04.2018, therefore any offer made prior to 19.04.2018 is illegal in the eyes of the law and hence, offer made to the complainant is illegal and premature.

Secondly, as per written submissions of complainant, file and documents where he has annexed annexure C-9 i.e.copies of email communication where he has time and again made a clear submissions regarding his financial conditions with a request to give certain relief either by waving of holding charges and interest and to deal the matter on humanitarian ground. He had further requested that either his plot be cancelled or he might be allotted another another plot of lesser size against the paid amount till March, 2016. When complainant realised that respondent was ignoring his requests and kept on raising demands time and again on account of interest and holding charges and lastly he prayed for refund and wrote an email on 07.03.2019 and 10.03.2019 to cancel his unit and refund the paid amount. It is very clear as per section 18 of



RERA Act, 2016, the allottee is well within his rights to plead for refund as a valid offer of possession was not made to the complainant as per terms of the agreement.

5. As per principles of Authority, a valid offer of possession is deemed legal from the date of receiving of part completion which in present case is 19.04.2018. Therefore, offer of possession shall be deemed valid from 19.04.2018. Usually Authority does not allow refund in those cases where respondent/promoter has got part completion certificate or occupation certificate of respondent project or part of its but in present case Authority is of view that as an amount of more than 35 lakhs is outstanding as on 29.12.2018, against the complainant and he has shown his inability to pay such heavy outstanding amount due to financial crisis. Therefore, he made tow relief prayers to respondent earlier.


(i) Entire money paid by complainant be refunded with permissible interest as per Rule 15 of HRERA Rules, 2017 or;

(ii) Reduce the size of the plot against the amount already paid without any further demand.

6. Considering his right under section 18 of RERA Act, 2016, Authority allows the prayer of complainant for refund along with applicable interest as per Rule 15 of HRERA Rules 2017. Complainant in his complaint file has claimed to have paid an amount of Rs. 43,69,111/- to the respondent. Perusal of receipts reveals an amount of Rs. 38,77,349/- has been paid. Therefore, Principal

amount to be refunded is Rs. 38,77,349/-. Authority has taken amount of Rs. 38,77,349/- for calculating interest at SBI MCLR +2% (i.e., 10%). The same has been calculated by the Accounts branch of the Authority. Amount of interest works out to Rs. 28,22,939/- on principal amount. Respondent is directed to refund total amount of Rs. 67,00,288/- to complainant. Further respondent is directed to refund the calculated amount along with interest within a period of 90 days, as per Rule 16 of HRERA Rules 2017.

7. Case is **disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]