



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 644 OF 2021

Ashish Srivastava

....COMPLAINANT

VERSUS

Lotus Infraestates Pvt. Ltd.

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 20.12.2022

Hearing: 6th

Present: - Mr. Anuj Chauhan, learned counsel for the complainant through
VC
None for the respondent

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Learned counsel for the complainant Sh. Anuj, has apprised the Authority that captioned matter had already been discussed and tentatively sdecided by the Authority vide order dated 30.06.2022, whereby Authority has expressed its tentative view that complainant is entitled to refund of the paid amount. However, case was adjourned for settlement on the request of respondent counsel. But no settlement has been arrived between the parties till date.

2. None has appeared on the behalf of respondent-promoter.

3. After going through records, Authority observes that detailed facts of the present complaint has already been recorded vide order dated 30.06.2022. Said order is reproduced below for ready references:

1. " While initiating his pleadings, learned counsel for the complainant submitted that complainant had booked two plots in respondent's project "LOTUS GREEN CITY", Dharuhera, in the year of 2013. As per builder byer agreement dated 08.04.2013, complainant was allotted two plot bearing nos. B5/008 and B6/008 admeasuring 250 sq. mtr. for total sale price of ₹ 71,76,000/- of each plot, against which complainant has already paid an amount of ₹ 1,37,533,16/- . In support of the contention of payment of an amount of Rs. 1,37,533,16/-, complainant refers to receipts issued by respondent which are placed on record as Annexure C- 3 at page no. 63-84 of complaint book. In terms of clause 15 of the BBA, possession was supposed to be delivered by 08.10.2015 but respondent has failed to do so. Complainant further stated that vide an email dated 05.09.2018, he requested the respondent to cancel his allotments and refund his total paid amount of ₹ 1,37,533,16/- as he was going through financial hardship, after delay of almost three years in handing

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over possession of booked plots on part of respondent. Learned counsel for the complainant submitted that despite lapse of seven years from the deemed date of possession, and more than nine years from date of booking, respondent has not given possession of booked plot to the complainant. Therefore, Complainant has sought relief of refund of ₹ 1,37,533,16/- along with permissible interest as per Rule 15 of HRERA Rules, 2017.

2. This matter was adjourned giving opportunity to the respondent to file reply and put forward their arguments. Learned counsel for the respondent Sh. Manoj, has filed an application dated 20.04.2022, whereby he has challenged jurisdiction of this Authority to deal with complaints in which relief of refund has been sought.

In this case, complainant has sought relief of refund of the amount paid by him to respondent alongwith applicable interest. 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 which was subjudice before Hon'ble Supreme Court.

3. 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 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.

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

5. Further learned counsel for respondent argued that the apartment of the complainant is located in an un-registered project of the respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects. Learned counsel while


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arguing on the application, drew attention of the Authority towards Para-54 of the judgement of Hon'ble Supreme Court as reproduced below:-

"54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016." (emphasis supplied).

6. While questioning contention of learned counsel for the respondent, Authority had observed that the orders of Hon'ble Supreme Court have not been understood by respondent in correct perspective. Authority observed that the entire orders especially Paras 32, 33, 34, 40, 53 and 87 should be read with Para 54. Said Paras are reproduced below for reference:

"32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25th March, 2016.

33. Under Chapter II of the Act 2016, registration of real estate projects became mandatory and to make


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the statute applicable and to take its place under sub-Section (1) of Section 3, it was made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by subsection (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.

34. The term "ongoing project" has not been so defined under the Act while the expression "real estate project" is defined under Section 2(zn) of the Act which reads as under: "2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

"40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex facie and without any ambiguity, means and includes those projects which

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were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion

certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

"87. It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the single member of the authority only for hearing complaints under Section 31 of the Act. To meet out the exigency, the authority in its meeting held on 14 th August 2018, had


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earlier decided to delegate the hearing of complaints to the benches comprising of two members each but later looking into the volume of complaints which were filed by the home buyers which rose to about 36,826 complaints, the authority in its later meeting held on 5th December, 2018 empowered the single member to hear the complaints relating to refund of the amount filed under Section 31 of the Act."

7. To answer the questions posed by the learned counsel for the respondents, reference is also drawn to Section-79 and Section-89 of the RERA Act as reproduced below:

"Section 79: Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

"Section 89: Act to have overriding effect - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

8. Conjoint reading of Paras referred to above and Sections 79 and 89 of the RERA Act leads to unmistakable conclusion that the provision of this Act will have over riding effect notwithstanding anything inconsistent therewith contained in any other law. Further after coming into force of RERA Act, exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is empowered under this Act to determine shall be that of the RERA only and not of any other court.

S. Rastogi

9. Question that arises herein is that numerous complaints are filed before this Authority by allottees who have booked/purchased apartments in all kinds of projects including completed projects, under construction projects, registered projects as well as unregistered projects. An unregistered project can be a completed project which has not received Occupation Certificate or an ongoing project which has not been registered by the promoter in gross violation of Section 3 of the RERA Act. Further, allottees of incomplete or completed, as well as registered and unregistered projects have variety of grievances against the promoters. Such grievances includes the grievances like excess money demanded by promoters over and above agreed sale consideration; common facilities not being provided; deficiencies in construction due to which the apartments are inhabitable; change of plans made at the level of the promoters thus adversely affecting rights of the allottees; apartments having been delivered after delay of 5-10 years and promoters refusing to pay to the allottees interest/compensation admissible as per law; even though possession is handed over but conveyance deeds not being executed, etc.etc. These are but only a few illustrations of the grievances of the allottees against the promoters. Such grievances relate to registered as well as unregistered projects, and in fact even relates to completed projects.

10. A considered view of this Authority is that two distinct kinds of jurisdictions have been conferred upon the Authority by the RERA Act, 2016. The first jurisdiction is in relation to registration of the projects. Section 3 of the Act mandates that all new projects shall be registered with the Authority before an advertisement for booking of plots/apartments is issued. Further, all those projects which are ongoing and have not received a completion certificate from the competent authorities shall be registered within a period of 3 months. Section 4 of the Act provides for a long list of disclosures to be made by promoters for getting the project registered. The purpose and intention of the law

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in this regard is to bring about transparency in the functioning of real estate promoters. They are bound to disclose full details of ownership of the land of the project; details regarding development plans got approved from competent authorities; the timelines within which project is proposed to be completed; specifications of the apartments to be constructed, etc. Further, the process of registration mandates that 70% of money collected from allottees shall be spent only on development of the project. In the event of violation of provisions of law and stipulations made by Authority, registration of the project can be cancelled. A consequence of cancellation of registration is that alternate mode for getting the project completed can be explored, including by handing it over to association of allottees.

11. *The process of registration, therefore, is meant to bring in transparency, and to bring full facts about the project as well as its promoters in public domain to enable prospective allottees to make informed decision of making investment of their hard earned money for their future homes. Sections 3 and 4 read with certain provisions relating to respective obligations of promoters and allottees are meant to provide level playing field for both sides.*

12. *In the above context it is relevant here to briefly discuss the concept of completion/occupation certificate. What is a completed project or a project fit to be granted occupation certificate has not been defined anywhere in the RERA Act, 2016. These concepts have been somewhat defined in relevant laws of different states of the country. The completion certificates and occupation certificates are granted by the State Government authorities as per their own laws and policies. Grant of completion/occupation certificate by State Government authorities only signifies that relevant project has fulfilled certain requirements stipulated by certain laws enacted by State Government. It does not signify that the promoter has fulfilled its obligations towards allottees in terms of builder buyer agreements.*

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13. The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations than provided for in the relevant laws regulating the subjects of grant of completion/occupation certificates. It is reiterated that grant of completion and occupation certificate only mean that certain parameters of laying infrastructure facilities under set laws of the State Government have been complied with by the promoters. They do not in any manner certify that the promoters have fulfilled their obligation towards allottees. The obligation towards the allottees as enlisted in the builder-buyer agreements relate to numerous additional subjects like the consideration to be exchanged; specifications of the apartments; timeline within which the project would be completed; obligation to execute conveyance deeds; obligation to hand over the completed project to the association of allottees; laying of infrastructure facilities and handing them over to the association of allottees in the manner prescribed etc.etc. The promoters of completed as well as unregistered projects could be defaulting in respect of such obligations. If a promoter illegally and unjustifiably demands additional amount over and above the agreed sales consideration, dispute will have to be settled by some court of law. After coming into force of this Act and in view of the provisions of Section 79 and 89, RERA and Consumer Court only will have jurisdiction to deal with such disputes.

14. Authority is of the considered view that respondents are completely misreading provisions of the Act and Para-54 of the judgement of the Hon'ble Supreme Court passed in Newtech Promoters' matter. The question as to which forum will redress the grievances of the kinds listed above of allottees pertaining to ongoing or completed or registered or unregistered projects was not before the Hon'ble Supreme Court in Newtech Matter. In considered view of this Authority operative part in para-54 of the judgement of the Hon'ble Supreme Court is that "...therefore, vested or accrued rights, if any, in no manner are

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affected". Such vested or accrued rights could pertain to new projects, ongoing projects, completed projects, registered projects or unregistered projects. In considered view of this Authority, genuine grievances of the allottees in any kind of project have to be redressed. Therefore, there has to be a forum for this purpose. Such forum is RERA in terms of provisions of the Act, especially Section 79 and Section 89 of the Act. In this regard relevant portion of the judgment dated 09.08.2019 of Hon'ble Supreme Court passed in Writ Petition (Civil) no. 43 of 2019 titled as Pioneer Urban land & Infrastructure Ltd. & Anr. versus Union of India & Ors is reproduced below:

"86(ii). The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

15. *Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.*

J. Lattre

16. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

17. For the foregoing reasons, Authority rejects the arguments of respondent company. Application filed by the respondent promoter is accordingly rejected.

18. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while observing following orders:-

1. Respondents vide application has challenged jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with in forgoing para No.s 3,4 and 5-16 of this order. Accordingly, these objections of the respondents are not sustainable.

2. As per information gathered from Project branch of the Authority, certain orders were passed on 11.04.2022 by the Authority in regard to respondent status of the project. Relevant portion of the order is reproduced below:

i. " Five landowning companies were given license no 39/2012 for development of plotted colony in collaboration with M/s AMD Estates Pvt Ltd. M/s AMD Estates Pvt Ltd is also one of the landowner-licensee. In the year 2013, these five licensee companies executed a collaboration agreement with M/s Lotus Infrastructure Pvt. Ltd. M/s Lotus sold 35 plots to allottees. M/s Lotus Infrastructure Pvt. Ltd has not


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- been recognized as promoter by Town and Country Planning Department.
- ii. Accordingly, Authority could not considered M/s Lotus Infrastructure Pvt Ltd as a promoter and the application filed for registration has not considered. Authority was of the view that collaboration agreement executed by 5 licensees with M/s Lotus Infrastructure Pvt Ltd may has to be rescinded and a fresh collaboration agreement with M/s AMD Estates Pvt Ltd has to be executed because as per license, with M/s AMD Estates Pvt Ltd is developer of the colony.
- iii. M/s AMD Estates has substituted itself for M/s Lotus Infrastructure Pvt Ltd in respect of 35 allottees with whom Builder Buyers Agreement has been executed by M/s Lotus Infrastructure Pvt. Ltd."

3. In view of above order, collaboration agreement dated 10.03.2013 has come to an end. Now, admittedly, project in question is neither complete nor registered till date. Further on the ground of inordinate delay of over seven years having already occurred and further no hope of its completion in near future, relief of refund is admissible. Further there is no denial to the fact of Rs. 1,37,533,16/- having been paid by complainants to the respondents. Payment of this amount is further adequately proved from the statement of account issued by respondents to the complainant. Said statement has been placed on record as annexure C-3 at page no. 63-84 of complaint.

4. Accordingly, Authority is of the view that complainant is absolutely entitled to refund of entire amount of Rs. 1,37,533,16/- paid by him to respondent. However, during hearing learned counsel for respondent requested a short adjournment to settle the matter between parties as settlement talks are going on between them.

5. On request of learned counsel for respondent, Case is adjourned to 16.08.2022 while granting last opportunity to respondent to settle the matter as settlement talks are in progress failing which tentative view expressed above will be finalised on the next date of hearing."


R. K. Rathi

4. In furtherance of above reproduced order and therein mentioned observation, Authority decides to confirm the tentative view taken by the Authority dated 30.06.2022 and dispose of captioned complaint with the order that refund of the amount paid by complainant to the respondent along with interest in terms of Rule 15 of RERA, Rules, 2017 deserves to be granted from respective dates of making payments till passing of this order.

5. It is pertinent to mention that while perusing records, it has come to the knowledge of Authority that complainant had prayed for refund of ₹ 1,37,533,16/- whereas complainant has only annexed receipts of ₹ 1,25,23,848/- with the complaint book. However, complainant has annexed the statement of account issued by respondent on page nos. 63-64 of complaint book, wherein respondent has admitted that amount of Rs. 68,76,659/- for each plot stands paid by the complainant. So, in these circumstances, complainant was informed to file complete detail of paid amount by him to the respondent-promoter. Accordingly, complainant has sent an email dated 19.01.2023, wherein he has furnished the details of paid amount of Rs. 1,37,533,16/-.

Further, in para 9 and 10 of the complaint, complainant has stated that an amount of ₹ 6,57,732/- vide cheque dated 12.08.2019 stands refunded by the respondent-promoter to complainant. So, now complainant is entitled to refund of amount Rs. 1,30,95,584/- (1,37,53,316- 6,57,732/-)



Accordingly, Respondent is directed to refund the amount of ₹ 1,30,95,584/- paid by the complainant to the respondent along with interest @ Rule 15 of RERA, Rules, 2017 i.e on date $8.60+2=10.6\%$ from respective dates of making payments till passing of this order. Authority has got the interest calculated, which works out to ₹ 1,31,19,243/-. Respondent shall pay ₹ 2,68,72,559/- (1,31,19,243/-+ ₹ 1,30,95,584/-) to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e 90 days from the date of uploading of the order on the website of the Authority.

Disposed of. File be consigned to record room after uploading of this order on the website of the Authority.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]