HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**214 of 2022**
Date of Filing:	**21.04.2022**
First date of hearing:	**30.06.2022**
Date of decision:	**17.05.2023**

Anand Kumar & Bimlesh Kumari

House No.2089 Ashok Garden Gali no 1

Rajendra Park Gurugram ....COMPLAINANT(S)

VERSUS

Jindal Realty Ltd

DSM 648, 6th Floor, DLF Tower,

Shivaji Marg (Najafgarh Road) Moti Nagar,

New Delhi-110015 ....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Date of Hearing: 17.05.2023

Hearing: 4th

Present: Mr. Neeraj Raizada, Counsel for the Complainants.

Mr. Anand Kumar, Complainant in person.

Mr. Drupad Sangwan, Counsel for the respondent through VC

Rathee

ORDER: (DR. GEETA RATHEE SINGH- MEMBER)

Complainants case is that they had applied for allotment of unit in respondent's project-Jindal Global City, Sonipat in July,2011 by paying Rs 1,20,000/-, following which unit no. D-64, measuring area 1067 sq ft was allotted to them. Builder buyer agreement was executed between the parties on 17.08.2011 and as per terms of the same, the possession was supposed to be delivered within 30+6 months i.e. 17.08.2014. Complainants visited the office of respondent several times during period from August, 2014 to September, 2017 for possession of the unit but lame excuses were made by the respondent at all times. Being fed up with said excuses the complainants requested the respondent for refund of whole deposited amount with interest. At that stage, respondent suggested for cancellation of the deed for the refund of whole amount. Accordingly, the deed of cancellation dated 27.09.2017 was executed under pressure and coercion for refunding the amount of Rs 19,05,446/- paid by complainants. But respondent very cleverly refunded an amount of Rs 16,19,628/- only that too without any interest against the deposited amount of Rs 19,05,446/- and Rs 2,85,818/- was deducted. Feeling aggrieved by the said action of the respondent present complaint has been filed seeking following reliefs:-

(i) Interest on the whole amount which comes to Rs 26,36,755.34/- as per calculation sheet as shown in Appendix DDD on page no. 15 of complaint.

(ii) Total amount demanded Rs 29,22,573.34/- (Interest amount Rs 26,36,755.34/- plus less amount paid by the developer Rs 2,85,818/-) with future interest till the realization of the amount.

(iii) Cost of the petition/legal expenses and mental agony to the complainant is Rs 50,000/-

2. Respondent in his written statement has accepted the allotment and execution of builder buyer agreement with the complainants. Payment of Rs 19,05,446/- has also been admitted. Further, it has been stated that after completion of development work in the area, construction of the unit booked by complainants was started in the month of June, 2015. A prior intimation of the same was sent to the complainants. During the commencement of construction, the respondent demanded various installments as per the plan adopted by complainants but complainants had defaulted in payment of installments on time. Initially demand of Rs 5,92,225/- was raised vide demand letter dated 04.06.2015 which was not paid by the complainants. Subsequently reminder letter dated 12.10.2015 was issued followed by pre-termination notice dated 29.10.2015. Complainants did not pay the demanded amount so termination

notice dated 16.11.2015 was issued to them. After receipt of said notice, complainants had come to the office of respondent and assured that balance payment will be made timely. Further subsequent demand letter dated 21.03.2016 was sent to the complainants following the reminder letters dated 21.07.2016, 09.08.2016, 18.04.2017 but the complainants did not pay. Complainants had again approached the respondent and expressed their inability to pay the demanded amount and, therefore,both the parties reached to an understanding amicably and signed a deed of cancellation dated 27.09.2017, annexed as Annexure R-7. In the said deed, complainants accepted that they have not paid the due amount and as per the terms of buyer agreement the earnest money to the tune of 15% of sale consideration along with interest due on part of complainants will be forfeited and the balance amount will be refunded. However, complainants requested that forfeiture of aforesaid 15% be restricted to 15% of amount paid by them and to exempt the amount of interest of Rs 59,000/-. Accordingly, respondent has deducted/forfeited an amount of Rs 2,85,817/- out of the total paid amount of Rs 19,05,446/- and refunded the amount of Rs 16,19,630/-. Further allotment rights of said unit was transferred to the third party vide conveyance deed dated 17.12.2018 annexed as Annexure R-8. It is denied that respondent pressured the complainant for signing cancellation deed. Respondent prayed for dismissal of complaint as no cause of

action arose for any such relief sought by complainants as amount agreed vide cancellation deed stands refunded to the complainants.

3. Ld. counsel for complainants argued that his claim of refund of total paid amount remains unsettled as refund was given to them without any interest. He referred to notice dated 26.11.2021 annexed at page no. 70 of complaint file sent to respondent for claiming refund of remaining amount, i.e., Rs 2,85,818/- alongwith interest. In rebuttal, ld. counsel for respondent argued that complaint is not maintainable as there does not exist any relation of allotee-developer between the parties. Complainants have duly accepted the refund of amount of Rs 16,19,630/- as per deed of cancellation dated 27.09.2017 without any protest. No cause of action survives in favor of complainants to file this complaint in year 2022 for seeking the relief of refund of whole of paid amount with interest.

4. Arguments of both parties have been heard and record has been perused. Authority observes that both parties do not dispute the fact pertaining to allotment of unit in favor of complainants, execution of builder buyer agreement, receipt of total amount of Rs 19,05,446/-, signing of deed of cancellation dated 27.09.2017 and then refund of Rs 16,19,630/- received by complainants in terms of said deed. It is the allegation of the complainants that deed of cancellation dated 27.09.2017 was signed under pressure and coercion

but no documentary evidence or any objection to said deed by way of any form upto year 2021 has been placed on record. Complainants are relying upon the notices dated 14.10.2021 and 26.11.2021 annexed at page 63 and 70 respectively, of their complaint but fact remains that complainants were silent about the execution of impugned cancellation deed for around 4 years. Complainants plea that deed was signed under pressure is not substantiated with any documentary evidence so it cannot be relied upon. Further, complainants and respondent have entered into a proper course of transaction i.e., deed of cancellation whereby terms of BBA pertaining to forfeiture of earnest money was modified and 15% of earnest money was forfeited from the paid amount instead of basic sale price. Both the parties duly acted upon the terms and conditions of cancellation deed and in lieu of same complainants accepted the refund of amount of Rs 16,19,630/- without any objection. In case the complainants were having any objection to the terms of alleged deed then they could have approached proper forum for redressal of their grievances but complainants did not do so. Now, when complainants have already availed the remedy available with them i.e. amicable settlement of dispute out of all other legal course then there remains no cause of action to approach this Authority for the relief of refund of whole of paid amount with interest. In other words, it can be said that when complainants have approached this Authority all contractual

obligations had already ended between the parties in the year 2017 itself. Reliance is placed upon the judgement dated 13.09.2011 passed by Hon'ble Supreme Court in Civil Original jurisdiction in Arbitration petition no. 7 and 8 of 2009 titled as Cauvery Coffee traders, Manglore vs Hornor Resources International Co. Ltd. Relevant paragraphs are reproduced below for reference:-

> *"21. In National Insurance Company Limited v. M/s. Boghara Polyfab Private Limited, AIR 2009 SC 170, this Court held:*
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> *"26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party which has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practised by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable." (Emphasis added).*
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> *29. It is thus clear that the arbitration agreement contained in a contract cannot be invoked to seek reference of any dispute to arbitration, in the following circumstances, when the contract is*

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discharged on account of performance, or accord and satisfaction, or mutual agreement, and the same is reduced to writing (and signed by both the parties or by the party seeking arbitration): 1 (a) where the obligations under a contract are fully performed and discharge of the contract by performance is acknowledged by a full and final discharge voucher/receipt, nothing survives in regard to such discharged contract; (b) where the parties to the contract, by mutual agreement, accept performance of altered, modified and substituted obligations and confirm in writing the discharge of contract by performance of the altered, modified or substituted obligations; (c) where the parties to a contract, by mutual agreement, absolve each other from performance of their respective obligations (either on account of frustration or otherwise) and consequently cancel the agreement and confirm that there are no outstanding claims or disputes." (Emphasis added)

22. In R.L. Kalathia v. State of Gujarat, (2011) 2 SCC 400, this court considered a similar issue and held: "(i) Merely because the contractor has issued "no-dues certificate", if there is an acceptable claim, the court cannot reject the same on the ground of issuance of "no-dues certificate". (ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of such "no-claim certificate". (iii) Even after

execution of full and final discharge voucher/receipt by one of the parties, if the said 1 party is able to establish that he is entitled to further amount for which he is having adequate materials, he is not barred from claiming such amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing "no-dues certificate".

23. In view of the above, law on the issue stands crystallised to the effect that, in case, final settlement has been reached amicably between the parties even by making certain adjustments and without any misrepresentation or fraud or coercion, then, acceptance of money as full and final settlement/issuance of receipt or vouchers etc. would conclude the controversy and it is not open to either of the parties to lay any claim/demand against the other party.

24. The applicants have not pleaded that there has been any kind of misrepresentation or fraud or coercion on the part of the respondents. Nor it is their case that payment was sent by the respondents without any settlement/agreement with the applicants, and was a unilateral act on their part. The applicants reached the final settlement with their eyes open and instructed their banker to accept the money as proposed by the respondents. Proposal itself was on the basis of clause 5 of the Purchase Contract which provided for Price Adjustment. For a period 1 of three months after acceptance of the money under the full and final settlement, applicants did not raise any dispute in respect of the agreement of price adjustment. In such a fact-situation, the

plea that instructions were given by the applicants to the banker erroneously, being, afterthought is not worth acceptance. The transaction stood concluded between the parties, not on account of any unintentional error, but after extensive and exhaustive bilateral deliberations with a clear intention to bring about a quietus to the dispute. These negotiations, therefore, are self-explanatory steps of the intent and conduct of the parties to end the dispute and not to carry it further.

25. In R.N. Gosain v. Yashpal Dhir, AIR 1993 SC 352, this Court has observed as under:– "Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

26. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: Nagubai Ammal & Ors. v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Vs. MR. P. Firm Maur, AIR 1965 SC 1216; Maharashtra State

Road Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors., AIR 1969 SC 329; P.R. Deshpande v. Maruti Balaram Haibatti, AIR 1998 SC 2979; Babu Ram v. Indrapal Singh, AIR 1998 SC 3021; Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, AIR 2004 SC 1330; Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors., AIR 2009 SC 713; and Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., (2011) 5 SCC 270).

27. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. 1 By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

28. In the facts and circumstances of the case, as the respondents resorted to clause 5 of the Purchase Agreement dated 28/6/2008, regarding price adjustment and the offer so made by the respondents has been accepted by the applicants and agreed to receive a particular sum offered by the respondents as a full and final settlement, the dispute comes to an end. The applicants cannot take a complete somersault and agitate the issue that the offer made by the respondents had erroneously been accepted. In view of the above, as no dispute survives, the applications are dismissed."

5. Keeping in view the aforesaid reasoning and circumstances, the Authority observes that no cause of action survives in favor of complainants and therefore, present complaint is **dismissed.** File be consigned to record room.

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NADIM AKHTAR
[MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]