



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1008 OF 2018

Arun Kumar Goel

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd.

....RESPONDENT

2. COMPLAINT NO. 1009 OF 2018

Bhagat Ram Aggarwal

....COMPLAINANT

VERSUS

Alpha Corp Development Pvt. Ltd.

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** Member

Nadim Akhtar Member

Date of Hearing: 15.03.2023

Hearing: 16th

Present: Mr. Vikas Verma , Ld. counsel for the complainants through VC.

None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

Present rectification applications have been filed for rectification of orders dated 06.12.2022 passed by this Authority in the present cases. In both the cases, the allottees had sought relief of refund but on account of the fact that

the project had been completed and the promoter had received occupation certificate of the project, request for refund was declined and instead relief of possession was granted. Relevant part of the order dated 06.12.2022 is reproduced below:

Perusal of record reveals that Authority had already dealt with this case at length and has passed a detailed order vide order dated 20.07.2022. Further Authority has given its tentative view. Relevant part of the order is reproduced below for reference.

Captioned complaints were disposed of vide order dated 11.04.2019. In this complaint the complainant has sought relief of refund but on account of the fact that the project had been completed and the respondent had applied for the grant of part completion certificate in respect of the project, request for refund was declined and instead relief of possession was granted. It was further directed that respondent should send a fresh offer of possession along a fresh statement of accounts to the complainants stating therein the amount to be paid by complainants after making suitable adjustment on account of delay compensation to be paid to the complainants by the respondents in accordance with directions issued in said order.

2. *As is gathered from the order dated 22.09.2020 passed by learned Adjudicating Officer, appeal no. 558 of 2019 against order dated 11.04.2019 was filed before Hon'ble Real Estate Appellate Tribunal, Haryana. Hon'ble Appellate Tribunal had disposed of said appeal vide their order dated 19.08.2020 with a direction that complaint is sent back to Adjudicating Officer, Panchkula for deciding the complaint*



afresh in accordance with law. The orders passed by Hon'ble Appellate Tribunal is reproduced below:

"At the very outset, Shri Alok Jain, Ld. counsel for the respondent promoter contended that the appellant-allottee has filed the complaint for grant of relief of refund along with interest @18% per annum. The appellant has also sought the loss of amount of housing opportunity which is in the shape of compensation. Thus, he contended that the Ld. Authority had no jurisdiction to deal with the complaint. He has also raised certain other objections regarding maintainability of the complaint alleging that the project was complete and even the possession was offered before the enforcement of the Real Estate (Regulation & Development) Act, 2016. Faced with this situation, Ld. counsel for the appellant contended that as the appellant-allottee intends to withdraw from the project and wants refund of the amount deposited by him along with interest and compensation, so the present appeal may be allowed and the complaint may be transferred to the Ld. Adjudicating Officer, Panchkula for fresh decision of the case in accordance with law. Shri Alok Jain, Ld. counsel for the respondent has no objection to this proposal. However, he stated that the respondent-promoter should be allowed to raise all the issues raised by it, before the Ld. Adjudicating Officer which should be considered in a judicious manner. Thus, keeping in view the aforesaid statements at bar, the present appeal is hereby allowed. The impugned order dated 11th April, 2019 passed by the Ld. Authority is hereby set aside and the complaint filed by the appellant-allottee stands transferred to the Ld. Adjudicating Officer, Panchkula for adjudication in accordance with law. It is made clear that the



parties shall be at liberty to raise all the issues available to them before the Ld. Adjudicating Officer which shall be considered in a judicious manner. It is further made clear that the Ld. Adjudicating Officer will decide the matter afresh independently irrespective of the observations of the Ld. Authority in the impugned order. Parties are directed to appear before the Ld. Adjudicating Officer, Panchkula, on 22nd September, 2020. Copy of this order be communicated to the Ld. counsel for the parties/parties, Ld. Haryana Real Estate Regulatory Authority, Panchkula and the Ld. Adjudicating Officer.”

3. Thereafter matter remained adjourned for the reason that jurisdiction of the Authority to decide the complaints in which relief of refund had been sought was sub-judice first before Hon'ble High Court and then before Hon'ble Supreme Court.

4. It is pertinent to mention here that Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction 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.

5. 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 to deal with such matters was subjudice before Hon'ble Supreme Court.

6. *Authority observes that it has already passed its final order dated 24.01.2019 in captioned complaint. It further observes that the only reason for which Hon'ble Appellate Tribunal had remanded this case to learned Adjudicating Officer was the dispute relating to jurisdiction of the Authority to deal with complaints in which relief of refund had been sought. Now the question of jurisdiction of Authority stands finally settled 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.*

7. *In view of above, Authority observes that order dated 19.08.2020 passed by Hon'ble Appellate Tribunal now has become infructuous. Accordingly, the original order dated 11.04.2019 passed by Authority stands revived. The Authority cannot decide the same matter again once it had disposed it of by giving its final order. Accordingly, the Authority proposes to dispose of the captioned complaint in terms of the same order dated 11.04.2019.*

2. *During proceedings none of the parties raised any objections or put forth any contention on merit of the case. Authority confirms its tentative view and dispose of both cases in terms of order dated 11.04.2019.*

2. Complainants in their rectification applications have requested to correct/amend the deemed date of possession to be 12.10.2013 i.e. 28 months



from the date of booking (i.e.13.06.2011). Complainants have further requested to amend the date of offer of possession be considered as 28.11.2018 instead of May 2016.

3. Perusal of record reveals that the original complaint was disposed of vide order dated 11.04.2019 taking lead case as complaint no. 731 of 2018 titled Krishi Rasayan Exports Pvt. Ltd. vs Alpha Corp Development Pvt. Ltd., wherein, facts of the said complainant were taken on account for disposal of the bunch matter. Vide order dated 19.08.2020 Hon'ble Appellate Tribunal remanded the said cases to the Court of Ld. Adjudicating Officer. Said cases were reopened and were put up for hearing before the Court of Ld. Adjudicating Officer. Vide order dated 15.03.2022 the said cases were transferred to the Authority for hearing. Said complaints were disposed of vide orders of the Authority dated 06.12.2022 in view of original order passed by the Authority dated 11.04.2019. It is made clear that there was no addendum to the original order dated 11.04.2019. Complainants in their rectification application requests to mention particulars of their complaint files. Authority observes that the same cannot be allowed as the original order clearly mentions that the cases were disposed of in a bunch. Therefore, Authority observes that there is no scope of clarification left in the order of the Authority to mention specific particulars. Authority further observes that relief sought by the applicant/complainant is in the nature of review application and if the relief is allowed the same shall result in change of the operative/substantive part of the order of the Authority.



Furthermore, Authority under section 39 of the RERA Act, 2016 only have the power to rectify clerical mistake apparent on the face of record and the prayer made in the rectification application amounts to review the final order. The RERA Act, 2016 does not entrust the power of review on the Authority. If the Legislature ever intended to entrust such powers upon the Authority the same would have been specifically provided in the Act itself, which is a comprehensive and exhaustive power of legislature. In fact the proviso 2 to section 39 categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act. Therefore, Authority disallows the prayer of complainants/ applicants and dismisses these complaints..

5. Cases are **disposed of as dismissed.** Files 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]