



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 78 OF 2023

Kapil Jain And Anu Jain

....COMPLAINANTS

VERSUS

Raheja Developers Limited & OTHERS.

....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar Member

Member

Date of Hearing: 22.08.2023

Hearing: 3rd

Present: - Sh. Himanshu Raj, Counsel for the Complainant through VC.
Ms. Navneet Advocate, Counsel for the respondent

ORDER (NADIM AKHTAR -MEMBER)

1. Advocate Sh. Himanshu Raj, counsel for complainants apprised the Authority that even after availing two opportunities respondents have failed to file reply till date. So, he requested the Authority not to grant any further opportunity to respondents for filing of reply and to hear the matter on merits while striking off defence of the respondents.
2. Learned counsel for complainants argued that present complaint has been filed for contravention of Section 63 of the Real Estate Regulatory Authority Act 2016, for failure on part of the respondent to comply with the order dated 01.04.2022 passed by this Authority, in complaint no. 529 of 2018, where by relief of refund of ₹32,63,807/- to be paid by respondent to the complainants was granted. Authority vide this order had directed the respondent promoter to make the payment above stated amount within 90 days, which lapsed on 30.06.2022. However, respondents had miserably failed to refund the said amount as directed. Learned counsel stated that said order had been duly communicated to the respondents, as counsel for respondents was present at the time of pronouncement of the order. This non-compliance of the order of the Authority dated 01.04.2022 is punishable by way of imposition of penalty, for everyday for which such default continues, which may extend upto 5% of the estimated cost of the project as



determined by the Authority. Furthermore, counsel for complainants stated that relief sought in present complaint is distinct from the provisions provided under section 40 of the Real Estate Regulatory Authority Act 2016, for execution of the orders passed by the Authority. In the present case, complainants are seeking imposition of penalty which shall not be payable to complainants but to the State Government as provided under Section 76(2) of the Real Estate Regulatory Authority Act 2016. Therefore this will not amount to double enrichment of the complainants, as complainants shall only get refund of paid amount along with interest as directed by the Authority. Further, counsel for complainants has referred to following sections of the Act 2016 to substantiate the present complaint:

- i. Section 31 of the Real Estate Regulatory Authority Act 2016, states that for any violation or contravention of the provisions of the Act or the rules and the regulations made thereunder, by any promoter, allottee, real estate agent, a complaint may be filed. Therefore, this section nowhere limits the scope of violation/ contravention or provides for any separate mechanism to be followed for dealing with the offences under Chapter VIII of the Real Estate Regulatory Authority Act 2016. Thus present complaint under section



31 of the Real Estate Regulatory Authority Act 2016, is very much maintainable.

- ii. Section 34(f)(g), 37,38, 63 of the Real Estate Regulatory Authority Act 2016, provides for functions of the Authority which shall include:

Section 34“ (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder.

*(g) to ensure compliance of its regulations or **orders** or **directions** made in exercise of its powers under this Act.*

*Section 37-The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to promoters or allottees or real estate agents and such **directions shall** be binding upon all the concerned.*

*Section 38- **The Authority Shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, allottees and real estate agent, under this Act.***

Section 63- Penalty for failure to comply with orders of the Authority by promoter:

*If any promoter, who fails to comply with or contravenes any of the **orders** or **directions** of the Authority, he shall be liable to penalty for every day...”*

Cumulative reading of all the above sections if read with the factual matrix of present case, then it states that in order to ensure compliance of the obligations casted upon respondent under Section 34(f) of the Real Estate Regulatory Authority Act 2016,



Authority in exercise of its powers under Section 37 and 38 of the Real Estate Regulatory Authority Act 2016, had issued directions to the respondent vide order dated 01.4.2022 which were binding upon promoter as word "SHALL is used and not MAY" in section 37 of the Real Estate Regulatory Authority Act 2016. Hence, only remedy available for non-compliance of the orders and directions is under Section 63 of the Real Estate Regulatory Authority Act 2016. Thus, the present complaint is maintainable and case is made out for imposition of penalty against the respondent for deliberate non-compliance of order or direction issued by the Authority even after lapse of 9 months of passing the order.

3. Further, complainants have also filed Caveat petition under Section 148-A before the Real Estate Appellate Tribunal, Haryana (copy of the same is annexed as Annexure C-2, however no caveat petition no. has been mentioned therein). No appeals have been filed by the respondents till date. Lastly, counsel for complainants has also referred to a Judgment dated 31.05.2022, titled as Amandeep Kaur and Sukwant Singh Bhatti Versus ATS Infrabuild Pvt Ltd. passed by RERA Punjab, wherein same relief has been adjudicated and granted to the complainants upon by the



said forum, which is annexed as Annexure C-4 of the complaint book.

4. On the other hand, Advocate Ms. Navneet, counsel for respondents appeared before the Authority and stated that since a counsel is representing the respondent promoter, therefore presence of the M.D/Chairman before the Authority as directed vide order dated 26.07.2023 be exempted. She further stated that with regard to filing of reply she does not have any instructions from her client (i.e. respondent-promoter). However, learned counsel for respondent-promoter sought the permission of the Authority and made oral submissions. She orally stated that present complaint is not maintainable for the reasons that complainants have filed the captioned complaint under Section 31 of the Real Estate Regulatory Authority Act 2016, read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Real Estate Regulatory Authority Act 2016 or the Rules and Regulations made thereunder instead of filing an execution petition for enforcement of order dated 01.04.2022 passed by this Authority. As grievance of the complainants already stands dealt with by this Authority in complaint no. 529 of 2018, whereby relief of refund was granted to the complainants vide order dated



01.04.2022, now, complainants cannot come twice before the Authority for the same cause of action. The only remedy now available with complainants as per the procedure laid down under law is to file an execution of the order already passed by this Authority by taking a recourse under Section 40 of the Real Estate Regulatory Authority Act 2016. and get the orders executed. She further stated that complainants are no more allottees in the project as relief of refund has already been granted to the complainants in the year 2022. Therefore, present complaint under Section 31 of the Real Estate Regulatory Authority Act, 2016 is not maintainable in the eyes of law.

5. After hearing both parties and going through previous orders passed by the Authority, it is observed that vide last order dated 26.07.2023, respondent was granted last opportunity to file reply and Managing Director/ Chairman of respondent company was directed to appear before Authority. Today, neither Managing Director appeared to assist the Authority nor has the respondent filed any reply, infact learned counsel for respondent stated that she does not have any specific instructions with regard to filing of reply from respondent-promoter. Furthermore, the counsel has prayed before the Authority that since the respondent is being represented by the counsel, personal presence of MD/Chairman of



respondent-promoter be exempted. She assured to render effective assistance to the Authority during course of hearing.

6. It is the case of the complainants that the Authority vide its final disposal order dated 01.04.2022 passed in complaint no. 529 of 2018, titled as Kapil Jain and Anu Jain Versus Raheja Developers Limited had directed the respondent-promoter i.e. Raheja Developers Ltd and others to refund to the complainant the paid amount along with interest i.e (₹ 32,63,807/-) within 90 days, as provided under Rule 16 of the Haryana Real Estate (Regulatory and Development) Rules 2017. Complainants in its complaint had further stated that as per Section 37 of the Real Estate Regulatory Authority Act 2016, the directions issued by the Authority are binding on all concerned. However, the respondent had failed to comply with the order of the Authority dated 01.04.2022 passed in complaint no. 529 of 2018 and are thus liable for imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016, which may extend to upto 5% of the estimated cost of the development of the project. It is noteworthy here that the complainants by way of filing the present complaint are seeking the relief of “ imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016 upon respondent for non-compliance of the order dated 01.04.2022 passed by the



Authority". Further it is pertinent to mention that the complainants are seeking the above mentioned relief without prejudice to his rights under the Real Estate Regulatory Authority Act 2016, w.r.t. execution of the orders of the Authority.

7. Counsel for respondents had orally challenged the maintainability of the present complaint on the ground that the rights of the complainant had already been adjudicated and appropriate relief under Section 18(1) had already been granted to the complainants. Thus, another complaint on the same facts is not maintainable. Further, complaint under Section 31 can only be filed by an aggrieved allottee against promoter and since refund has been allowed vide order dated 01.04.2022 complainants are not the allottees of the respondent.
8. It is observed that the respondent-promoter, despite been offered sufficient opportunities have failed to file its reply to the present complaint. Authority is of a considered view that the proceedings before it are summary in nature and can be adjudicated based upon the records available and oral submissions of the parties. Accordingly, the Authority strike of the right of defence of respondent-promoter. The Authority takes a serious note of non-appearance by the MD/Chairman of respondent company despite specific orders, however the fact that the counsel for respondent



has assured to render assistance during the hearing proceedings, the Authority allows personal exemption of the MD/Chairman with a strict warning that such act of non-adherence of the orders shall invite heavy cost or penalty as the case may be. Since the counsel for respondent does not have any instructions to file reply despite it been the third hearing in the present summary proceedings, the Authority decides to proceed and adjudicate the matter by considering the document/ complaint or file and oral submissions/averments of the counsels.

9. In order to effectively adjudicate the instant complaint, the Authority deems it appropriate to address the following issues involved:-
- (i) How is the complainants-allottees aggrieved by the non-compliance/ contravention of the orders/ directions issued by the Authority passed vide its order dated 01.04.2023, while disposing of bunch of 15 complaints with lead case no. 529 of 2018 titled as Kapil Jain and Anu Jain Versus Raheja Developers Limited?
 - (ii) In case the allottees are aggrieved by non-compliance/ contravention of the above mentioned order of the Authority, then what is the remedy available to the allottees as per



provisions of Real Estate Regulatory Authority Act 2016 and the Rules and Regulations made there under.

- (iii) Can imposition of penalty under Section 63 of the Real Estate Regulatory Authority Act 2016 be sought as a relief by aggrieved allottees for non-compliance of an order of the Authority or is it a power entrusted upon the Authority.

10. Authority takes up and addresses issue no.1 and 2 together:

With respect to issue as to how the complainants-allottees are aggrieved by the non-compliance of the order passed by the Authority dated 01.04.2022 in complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Versus Raheja Developers Limited. It is observed that the Authority vide its order dated 01.04.2022 had held that respondents-promoter had failed in his obligation to handover the possession of the unit as per time line stipulated in agreement for sale, thus, violated the provisions of Section 11(4)(a) of the Real Estate Regulatory Authority Act 2016. In view of such violation the Authority held that the complainant as per Section 18(1) is entitled to the relief of refund along with interest at the prescribed rate. Accordingly, Authority vide the said order directed the respondent-promoter to refund the total amount of 32,63,807/-, which was inclusive of the principal amount and the interest till actual realization of the amounts at the



prescribed rate, calculated till the date of order (i.e 01.04.2022). Further, the Authority had directed the respondent-promoter to refund the aforementioned amount within the time prescribed under Rule 16 of The Haryana Real Estate (Regulation & Development) Rules, 2017 i.e., 90 days. It is apparent from the present complaint that till the date of filing of the complaint, respondent-promoter had not complied with the orders/ directions issued by the Authority vide its final/ disposal order dated 01.04.2022, disposing bunch of 15 cases with lead complaint no. 529 of 2018. Thus, there remains no ambiguity with regard to the fact that complainants- allottees have till date not received their hard-earned money back and are genuinely aggrieved by this act of non-compliances of the orders of the Authority by the respondent-promoter.

11. Now, the issue that is before the Authority is that in case a promoter fails to comply with the order of the Authority and does not pay the amount as directed, then what will be the appropriate remedy available to the aggrieved complainants- allottees, as per the Real Estate (Regulatory and Development) Act 2016 and the Rules and Regulation made thereunder.

In this regard, the Authority observes that Real Estate Regulatory Authority Act 2016 and Haryana Real Estate



(Regulation & Development) Rules, 2017 provides for a mechanism for recovery of interest or penalty or compensation and enforcement of the order etc. Section 40 of the Real Estate Regulatory Authority Act 2016, provided that if a promoter or an allottee or real estate agent fails to pay any interest or penalty or compensation imposed on him by the Regulatory Authority under the Act or the Rules and Regulation made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner, as may be prescribed, as arrears of land revenue. In the present case, the promoter has failed to refund the amount along with the interest and the complainant – allottees are aggrieved by this fact. Thus an appropriate effective remedy to recover said amount lies under Section 40 of the Real Estate Regulatory Authority Act 2016 read with Rule 27 of Haryana Real Estate (Regulation & Development) Rules, 2017.

Even complainants, in instant complaint have admitted the fact that they have their rights intact to recover the amount by filing execution application under Section 40 of Real Estate Regulatory Authority Act 2016 and they shall exercise the same as and how provided under the Act. Nevertheless, the complainant allottees have filed the present complaint seeking the relief of imposition of penalty under section 63 of Real Estate Regulatory



Authority Act 2016 on the respondent promoter for non-compliance of the orders and directions issued by the Authority vide its order dated 01.04.2022 which they intend to claim as a parallel remedy to execution of the orders under Section 40 of the RERA Act 2016. **Lastly**, the issue before the Authority is whether aggrieved allottees can file a complaint under section 31 and seek a “parallel relief of” **imposition of penalty under section 63 of the Real Estate Regulatory Authority Act 2016** in addition to recover the directed amount by way of filing an execution petition.

In respect to this issue the Authority observes that the Real Estate Regulatory Authority Act 2016, Rules and Regulations made thereunder provides for various obligations of a promoter including but not limiting to obligations towards the allottees, association of allottees and the competent authority. With respect to the allottees the Act provides that promoter shall:-

- A. Be responsible for all obligations, responsibilities and functions under the provision of the Act.
- B. To fulfil all obligations as per the agreement for sale.

In case a promoter fails to complete or unable to give possession of an apartment, plot or building in accordance with the terms of



agreement to sale or duly completed by the dates specified there in, the complainant shall be entitled to either withdraw from the project and seek refund of the amount paid with interest at such rate as may be prescribed including compensation. Provided, where the allottee does not intend to withdraw from the project, he is entitled to interest at the prescribed rate for every month of delay till the handing over of the possession.

Further, in case promoter fails to discharge “ any other obligation” imposed upon him under this Act or the Rules or Regulations or in accordance with terms of agreement to sale made there under, the allottee is entitled to seek the relief of compensation in the manner provided under the Real Estate Regulatory Authority Act 2016. However, The Real Estate Regulatory Authority Act 2016, nowhere provides that an allottee, aggrieved by an act of non-compliance of an obligation on part of promoter, shall entitle him or her to a “relief of” imposition of penalty.

The Authority observes that when an aggrieved person, who is an allottee in the present case, files a complaint under Section 31 of the Real Estate Regulatory Authority Act ,2016, the same is for adjudication of his rights that have accrued due to the



violations committed by the respondent-promoter. By filing such complaints, the complainant seeks certain relief. The Authority observes that in the present complaint the rights of the aggrieved allottee visa-vis- the respondent with regard to violation of agreement for sale had already been adjudicated and the appropriate relief as provided under the Act had been granted vide order dated 01.04.2022 in complaint no. 529 of 2018 as mentioned above and same has also been admitted by the complainants in complaint. Appropriate remedy/recourse in case of failure to repay the refund amount by the promoter lies under Section 40 of the Real Estate Regulatory Authority Act 2016 read with Rule 27 of Haryana Real Estate (Regulation & Development) Rules, 2017. In fact Section 40(1) of the RERA Act, 2016 deals with such situations where the promoter fails to pay interest as directed by the Authority and specifically provides that "If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land



revenue.”. Since in the present case, promoter has failed to pay refund amount including interest as directed by the Authority vide order dated 01.04.2022, the same can be recoverable only in the manner as prescribed as an area of land revenue.

12. Authority observes that “imposition of penalty” is actually the power entrusted upon the Authority under Section 63 of the Real Estate Regulatory Authority Act 2016. The Real Estate Regulatory Authority Act 2016, provides for extensive powers and mandate to the Authority including the power to impose penalty or interest.

Section 37 of Real Estate Regulatory Authority Act 2016, provides/ gives swiping powers to the Authority for the purpose of discharging its function to issue directions, as it consider necessary and such directions are binding on all concerns. Meaning thereby that if any directions which have been passed against promoter/ he shall be obligated to comply with the same. Further, Section 38 of Real Estate Regulatory Authority Act 2016, which deals with the powers of Authority provides that, if a promoter contravenes an obligation casted upon him which includes the obligations to abide by/ or to comply with the directions issued by the Authority. The Authority shall have the power to” impose penalty” or “interest” against such array



promoter. Furthermore, Section 63 of the Real Estate Regulatory Authority Act 2016, also specifies the quantum of penalty that may be imposed in such circumstances.

However, nowhere does the Real Estate Regulatory Authority Act 2016 or the Haryana Real Estate (Regulation & Development) Rules, 2017, provides that in case of any non-compliance of the obligation towards the allottees, allottee can seek "relief of " imposition of penalty or interest. Where ever the Act provides for relief of refund of amount with interest or interest including compensation it cast "**liability**" on the promoter and entitlement in favour of the allottee to seek the same.

13. Therefore, the Authority is of the considered view that "**exercise of its own powers by the Authority under the Act cannot be sought as a "relief" by an aggrieved person/ allottee**". A person may be aggrieved by contravention or violation of his rights and can seek relief to compensate itself in the best possible manner. The Act effectively deals with such violations of rights of the allottees and also provide adequate relief to the aggrieved complainant. However, by no stretch of imagination, it can be interpreted that the Real Estate Regulatory Authority Act 2016, which is a social piece of legislation and aimed at providing



effective remedy and mechanism to compensate the allottee for violation of their rights, intend to provide for the relief of **“exercising of its powers by the Authority”** to the allottee for violation of their rights.

Instant complaint is very peculiar in nature, wherein the complainants states that for their grievance of non-compliance of the order dated 01.04.022, they reserves their right to go for execution of the order but at the same time they are also aggrieved by the fact that respondent-promoter has dared not to comply with the orders of the Authority and as a relief is seeking that the Authority should exercise its powers under the Act to impose the penalty as provided for such non-compliance of the order. In fact, it would not be wrong to say that complainants, in its relief are actually advising the Authority to exercise its powers. Though, the Authority appreciates the intention of the complainants, however, in case of any violation of rights of the allottees the Act only provides for the relief of refund, interest and compensation to the aggrieved allottee. It is a general law that whatever is the entitlement can be granted as a relief. Here is no specific provision under the Act that provides that an allottee is aggrieved by the fact that the respondent-promoter fails to make payment of refund/ interest/compensation within the timeline as prescribed



under the Rules, he shall be entitled to a “relief of imposition of penalty” on the promoter.

The Authority is conscious of its mandate and powers as entrusted under the Act and have been exercising them since its establishment in the interest of justice. However, it is to be understood that the provisions of the Act have to be read and interpreted in the way they were intended at the time of passing this piece of beneficial social legislation. It has to be understood that there is a wide difference between a relief that can be sought and the powers that can be exercised. An aggrieved person is well within his rights to seek relief, however, the same has to be for the violation by the promoter against him, the allottee. In this instant case, the complaint of allottees regarding violation committed on the part of respondent have been adjudicated and relief had been granted vide order dated 01.04.2022.

The fact that the orders of the Authority have not been complied with does not entrust upon the complainants- allottees, a right to seek the relief of “exercise of its own powers by the Authority to impose penalty”. There is no doubt that the Act provides for parallel remedy of compensation along with interest or refund, however, Act is silent with regard to parallel remedy to seek “imposition of penalty” for violation of any right of the



allottee by the promoter. If separate parallel complaint seeking the relief as such, which are more in the nature of an advice to the Authority to exercise its own powers and impose penalty are allowed for contravention of orders of the Authority, then along with each execution there would be another complaint seeking relief of “imposition of penalty” and the same shall only lead to multiplicity of litigations. Nevertheless, if the Authority in any given circumstances independently feels or is of the view that penalty has to be imposed in order to safeguard the interest of allottee, even then, for recovery of that penalty amount, the Authority itself shall also have to take recourse of Section 40 of Real Estate Regulatory Authority Act 2016 and recovers such penalty arrears of land revenue.

14. Thus, as per the Act, the power to impose penalty can be exercised by the Authority only when the interest of the allottee could be safeguard by imposing such a penalty. Further, the Act also provides that the Authority while exercising its powers shall be guided by the principles of natural Justice.
15. In the present case, the interest of the complainants had been safeguard and entitled relief of refund along with interest had already been granted vide order dated 01.04.2022 in complaint no. 529 of 2018 titled as Kapil Jain and Anu Jain Versus Raheja



Developers Limited. The interest of allottees further stand safeguard under the mechanism of recovery of such amount as provided in the Act. Authority is of the considered view that “imposition of penalty” for non-compliance of order of the Authority cannot be claimed as a parallel right/ relief by an allottee. It is a power that can be exercised by Authority to protect the interest of allottee at its discretion. Authority cannot be compelled to exercise it by filing complaint under Section 31 of the Act. The complainants in the present complaint have failed to make a case/ convince the Authority as to how their interest i.e. recovery of refund amount along with interest would be protected by imposition of penalty on the respondent. Infact from the perusal of the content of the complaint, it appears that the complaint has not been filed by complainants seeking protection of their rights, rather it hints that complainants are more intended to insure that respondent is penalized.

16. The Authority observes that the intention of Real Estate Regulatory Authority Act 2016, is to safeguard the interest of the allottees in the best possible manner and the rights of the complainants- allottees in the present complaint stood safeguard vide order dated 01.04.2022 and in case of failure to refund the amount, appropriate remedy is to get the order executed. When



the complainants shall exercise their right to file execution petition, then it shall be the obligation of the Authority to ensure that the orders passed by it vide order dated 01.04.2022 in complaint no 529 of 2018 are executed as prescribed.

17. Thus, the relief as claimed in the instant complaint i.e. "imposition of penalty" is not tenable. For the above stated reasons, present complaint is **disposed of as dismissed**.

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


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DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]