



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 728 OF 2020

Sumit Tarneja and Gunjan Tarneja

....COMPLAINANT(S)

VERSUS

BPTP Ltd & others

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 18.05.2022**

**Hearing: 14<sup>th</sup>**

**Present: -** Mr. Himanshu Raj, Counsel for the complainant through VC  
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the  
respondent.

### ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainants have initially sought relief of possession alongwith delay interest but during course of hearing dated 17.05.2022 proposal of refund of paid amount alongwith interest was made by ld. counsel for respondent to the complainant. Today, ld. counsel for complainant has made a statement that proposal of refund of paid amount with interest has been accepted by his client so present complaint be proceeded with relief of refund only.

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

3. 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.

4. 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.

5. Case of the complainants are that they had booked an apartment in respondent's project named 'Park Elite Floors', sector-75, Faridabad, on 08.06.2009 by paying an amount of Rs. 2 lacs. An allotment letter for Unit No. E-41-06-GF with 876 sq.ft. area was issued by respondents in favour of complainants on 24.12.2009. Thereafter, respondent has arbitrarily re-allotted/changed unit from E-41-06 to PE-53-GF having area of 1024 sq ft. Builder Buyer Agreement (BBA) for new/said unit was executed on 15.07.2013. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 15.01.2016. Complainants alleges that they have so far paid an amount of Rs. 27,19,953.66/- against basic

sale price of Rs. 19,66,903/-. In support of the contention that complainants have paid an amount of Rs. 27,19,953.66/- complainants has annexed receipts issued by the respondents to them and statement of account dated 08.06.2018 issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged. Copies of said receipts and statement of account have been made part of the complaint and annexed as Annexure C-7 and C-13 respectively.

6. Further facts of the matter are that respondents offered possession of the booked apartment to the complainant on 19.06.2018. The said offer of possession was conveyed with an additional demand of Rs. 8,81,641.46/-. The complainants alleges that they did not accept said offer of possession given by the respondent for the reasons of wrongful additional demand of Rs. 8,81,641.46/- made by the respondents; and also that the offer was without obtaining occupation certificate of the building from authorities concerned of the State Government. Further, the respondent had not incorporated the interest payable to them for having caused delay of more than two years in offering possession. Therefore, present complaint has been filed seeking relief of possession of unit alongwith delayed interest. However, now complainant is praying for refund of paid amount in lieu of acceptance of proposal of refund made by respondent at the time of hearing dated 17.05.2022.

7. Respondents in their reply have admitted allotment of booked unit in favour of the complainants. They have also admitted that said Floor Buyer



Agreement had been executed. The respondents have not denied the payments made by the complainants. The respondents however submit as follows:-

- i) That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.
- ii) That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
- iii) Respondents have stated that complainants were informed regarding re-allocation of unit no. E-41 and option was given to them to take refund of paid amount @ 9% in case they are not satisfied with re-allotment of unit. They opted for re-allotment and signed consent letter dated 29.04.2013.
- iv) Completion of the project has been delayed on account of certain force majeure conditions.
- v) Regarding possession it has been stated that offer of possession was made to complainant on 19.06.2018, though occupation certificate which was applied prior to said offer was received on 21.06.2018. Several reminders dated 31.07.2018, 14.09.2018, 31.07.2019, 10.12.2019 and 19.02.2020 were sent to complainants for payment of amount demanded alongwith offer of possession.



But it is the complainant who is at fault by not taking possession after making balance payment.

8. During course of hearing dated 17.05.2022 , Sh. Hemant Saini, learned counsel for the respondents argued that respondents are ready to refund entire payment made by the complainant if the complainants are not interested in taking the unit. His proposal has been accepted by the complainants.

9. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes and order as follows:-

- i) Respondents first of all have challenged the jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with and forgoing para No.s 3 and 4 of this order. Accordingly, this objection of the respondents is no longer sustainable.
- ii) There is no denial to the fact of Rs. 27,19,593.66/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the statement of accounts dated 08.06.2018 and receipts issued by the respondents to the complainant. The said statement and receipts are annexed as Annexure C-13 and C-7 respectively with the complaint.
- iii) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents

have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other in regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.

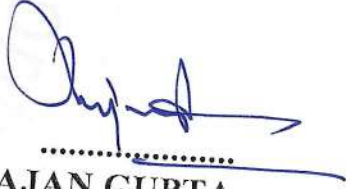


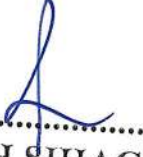
Subject to the above, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

- iv) Considering the fact that complainants have accepted the proposal of refund of paid amount with interest made by ld. counsel for respondent at the time of hearing dated 17.05.2022, therefore complainants being entitled to refund of the entire amount of Rs. 27,19,593.66/- paid by them, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainants against the admitted payment have attached statement of accounts of Rs. 27,19,593.66/- as Annexure C-13 and receipts of Rs 26,63,154.66/- are annexed as Annexure C-7 of complaint. Since the complainants are entitled to refund of the amount w.e.f. the date of their payments, an e-mail dated 03.06.2022 was written to the complainants to submit the receipts of balance payments so as to verify the date with such payments were made to enable the Authority to calculate the payable interest thereon. The complainants have not submitted the receipt of the amount of Rs. 56,439/-. However, total paid amount is Rs. 27,19,593.66/- as per statement of accounts dated 08.06.2018. So, the amount of 56,439/- of which the receipt has not

been submitted, the interest is being calculated from the date of issuance of the statement of accounts dated 08.06.2018.

- v) The total interest for the period ranging from receipt of payments to date of this final order (18.05.2022) in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.50% payable by the respondents to the complainants works out to Rs. 23,85,104/-.
- vi) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 27,19,593.66/- plus interest amount of Rs. 23,85,104/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.
10. **Disposed of** in above terms. File be consigned to record room.

  
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RAJAN GUPTA  
[CHAIRMAN]

  
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DILBAG SINGH SIHAG  
[MEMBER]