# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**(Reopened for deciding rectification application u/s 39 of RERA Act, 2016)**

**COMPLAINT NO. 2663 of 2023**

Jotindra Steel and Tubes Limited ....COMPLAINANT

VERSUS

Shilpa Jain .....RESPONDENT

**CORAM: Nadim Akhtar** **Member**

**Chander Shekhar** **Member**

**Date of Hearing:** 13.05.2024

**Hearing:** 1st (Reopen)

**Present:** - Adv. Vikalp, counsel for complainant through VC.

Adv. Vikas Sharma, proxy counsel for Adv. NK Sharma, counsel for respondent.

**ORDER ( NADIM AKHTAR –MEMBER)**

1. Learned counsel for the complainant, i.e., Jotindra Steel and Tubes Limited filed an application on 19.12.2023 praying for the rectification of the disposal order dated 28.03.2023 passed in complaint no. 858 of 2022 titled as *"Shilpa Jain vs. Jotindra Steel and Tubes Limited"*, under section 39 of

Real Estate (Regulation and Development) Act, 2016. Vide order dated 28.03.2023, respondent was directed to refund total amount of ₹4,96,191/- to the complainant. Complainant in the present application has raised the following grounds:

**A.** That Hon'ble Authority failed to appreciate that both the complainant and opposite party are governed by Affordable Housing Policy, 2013 notified on 19.08.2013 by the Town and Country Planning Department, Govt. of Haryana and all its subsequent amendments.

**B.** The complainant is bound to make payments in terms of policy but failed to deposit the same. Moreover he referred to the clause 5(iii)(b) of the policy which states that "*any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form along with 5% amount of the total cost of flat. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for the period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case maybe.* ***The applicant will be required to deposit additional 20%***

***amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount will be recovered in six equated six monthly instalments spread over three-year period, with no interest failing due before the due date for payment. Any default in payment shall invite interest @15% per annum."***

**C.** The complainant has admittedly committed default in payments of instalments. Clause 5(iii)(i) of the policy stated that "*if any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the coloniser,* ***a reminder may be issued to him for depositing the due instalment within a period of 15 days from the date of issue of such notice.*** *If the allotee still defaults in making payment, the list of such defaulters may be published in one regional Hindi news paper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice,* ***failing which allotment may be cancelled.*** *In such cases also an amount of ₹25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant...."*

***D.*** The respondent was required to complete the project within four years of the grant of environmental clearance. The terms of Clause 1(iv) of the Policy reads as *"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of the project" for the purpose of this policy..."*

**E.** That the State Environment Impact Assessment Authority, Haryana, granted environmental clearance to the respondent in its 126th meeting held on 11.12.2020. Therefore, the project commencement date for all purposes is 11.12.2020, and respondent is required to complete the same within four years. The respondent is well within the validity period of the terms of the policy along with the zero period granted by the government of Haryana post first wave of COVID 19 and the special extension of 9 months as force majeure event presented by this Hon'ble Authority.

**F.** That the complainant filed the complaint to seek refund of the booking amount or seek an order in nature of direction to accept the balance outstanding dues of 10,62,920/-as

such, it is not the case where the developer has delayed in handing over of possession. As per her registration certificate, the possession date is 09.09.2024.

**G.** The complainant himself admitted and did not dispute that he had failed to make payment as per policy and that his allotment has been cancelled due to his committing defaults on payment of instalments and it is not the case that the complainant is seeking return of the amount and the compensation the case of the complainant admittedly not being covered under any ground in Section 18 of the Real Estate (Regulation and Development) Act, 2016.

**H.** Therefore, present case is not covered and governed under Section 18 of RERA Act and thus the Hon'ble Authority cannot impose on the respondent any interest under Rule 15 of the HRERA Rules, 2017, whereas the respondent is liable to be allowed to conduct deductions from the amount deposited by the complainant under clause 5(iii)(i) of the Affordable Housing Policy, 2013 and amendment dated 05.07.2019 read with Rule 15 of the HRERA Rules, 2017 on account of interest payable by the allottee.

I. That the case of the complainant is devoid of any merits and the complaint being not maintainable under RERA Act, 2016 the complaint should be dismissed and the complainant should not be entitled to any relief other that in terms of Affordable Housing Policy and thus complainant is not entitled to any refund in terms of para 19 of order dated 28.03.2023.

2. Today, Adv. Vikas Sharma, proxy counsel for Adv. NK Sharma, appeared on behalf of respondent i.e., Shilpa Jain and stated that the said application is devoid of any merits and may be dismissed on the ground that there cannot be any substantial changes in the rectification complaint. He argued that under section 39 of the Act this Authority have power of rectification of the orders only when mistake is apparent on the face of record and not otherwise. He submitted that the issues have been dealt with by the Authority in detail and no review is needed.

3. Authority is of the view that order dated 28.03.2023, was passed by the Authority after duly taking into consideration the facts and documents placed on record by both the parties. Authority observes that all the issues raised by the complainant (Jotindra Steel and Tubes Limited) have been dealt by the Authority in detail. There is no issue left undisputed. Authority passed a very detailed order which enumerates reasoning for all the issues

raised by the complainant (Jotindra Steel and Tubes Limited). Authority has decided the matter on the basis of evidence adduced. There is no scope left to be covered for the clarification.

4. Authority observes that vide order dated 28.03.2023, in Complaint no. 858 of 2022, complainant applied for the allotment of an apartment under Affordable Group Housing Policy, 2013 in the project of respondent, i.e., "Shree Homes", by Sarvome, situated at Village Mewla Maharajapur, Sector-45, Faridabad vide application no. 6662. Thereafter, vide allotment letter dated 11.07.2020, Flat no. 1702, Tower 11 was allotted to the allottee. Builder buyer agreement was executed between the parties on 23.04.2021. Complainant made payment of ₹3,99,000/- till 20.08.2020 by way of cheque against the unit in question. Complainant was inclined to buy her first home and benefit from "Pradhanmantri Awas Yojana (PMAY) under which she may be entitled to receive reimbursement upto 6.5% of the interest on Home loan. Complainant was invited to promoter office on 20.07.2020 to submit application and documents for availing home loan through GIC Housing Finance. However, the loan could not be disbursed in the absence of BBA between promoter and complainant. Promoter ensured that since the delay was on the part of promoter, so complainant will not be charged any interest on the due payments and complainant will not to be charged any interest on the due payments and

complainant will surely receive her due benefit of PMAY. Promoter received environmental clearance on 02.02.2021. However he concealed the fact that he was not authorised to allot the said flat to the complainant and charge any money from complainant as per clause 7(ii) of the Affordable Housing Policy, 2013. Thereafter, complainant reached the promoter for refund of deposited money to which promoter threatened to deduct major portion of penalties and interest. Even the scheme of PMAY was withdrawn by government on 31.03.2021. Further, on 23.04.2021, promoter entered into agreement with complainant after paying fees of ₹4600/- but despite several requests to respondent promoter, copy of agreement was not provided to complainant. On 11.12.2021, complainant received email to deposit further amount of ₹1,33,000/- along with interest of ₹85,592/- for which complainant was not liable to pay. Later, complainant came to know that promoter has been declared NPA account holder by Kotak Mahindra Bank, SIDBI and State Bank of India. Therefore, none of financial institutions was neither financing his project nor providing financing ability to any of their customer who has booked any unit in his project. An email dated 04.03.2022 has been received from the promoter cancelling the allotment of unit and with direction to collect amount deposited by complainant after deductions along with penalty interest. Complainant approached the respondent seeking clarification for

cancellation but promoter failed to provide any satisfactory response. Therefore, complainant prayed for refund of his paid amount along with interest.

5. Authority in its order dated 28.03.2023 observed that payment was made to the respondent against the unit in question. But possession was not given to the complainant within the prescribed period. Therefore, complainant cannot be asked to wait indefinitely for possession. Thus, complainant was rightly entitled to refund of the amount along with interest and inordinate delay caused in the construction of the project would totally justify the prayer for refund of money paid by complainant. Moreover, Authority has relied on the judgment of Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*** " in Civil Appeal no. 6745-6749 of 2021 wherein it is highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> "25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the*

*allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*"

6. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as seeking refund of the paid amount along with interest on account of delayed delivery of possession. When the complainant wishes to withdraw from the project of the respondent; Authority finds it to be fit case for allowing refund in favour of complainant.

7. Now after final decision/ judgment, complainant (Jotindra Steel and Tubes Limited) cannot be allowed to make such pleadings which are already decided on merits. Further, relief sought by the complainant (Jotindra Steel and Tubes Limited) is in nature of the review application and if the relief is allowed the same shall result in change of the operative/ substantive part of the judgment of the Authority. Furthermore, Authority under section 39 of the RERA Act, 2016 is mandated to rectify only clerical mistakes apparent on the face of record. The RERA Act, 2016 does not entrust the power of review of the order on the Authority.

8. Moreover, with regard to the ground that complainant in the complaint no. 858 of 2022 should get relief not as per RERA Act, rather as per provisions

of Affordable Housing Policy, Authority is of the view that RERA is a central act and provides a regulatory framework for the real estate sector, aiming to protect home buyers and boost real estate investments. Typically, central legislation like RERA would prevail over state-specific policies or schemes, including those related to affordable housing, unless there is a specific provision in the state policy that has been sanctioned or is harmonious with the central act. Additionally, the Authority has deducted ₹25,000 from the total refund amount, i.e., ₹5,21,191/- minus ₹25000 which comes out to be ₹4,96,191/-, in accordance with Clause 5(iii)(i) of the Affordable Housing Policy wherein it is specifically mentioned that "*If the allotee still defaults in making payment, the list of such defaulters may be published in one regional Hindi news paper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice,* ***failing which allotment may be cancelled.*** *In such cases also an amount of ₹25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant....*". Therefore, it is concluded that the Authority's decision was made in accordance with the "principle of equity". This ensures that the decision of the Authority vide order dated 28.03.2023 was fair and just, considering the circumstances and the applicable policies, specifically Clause 5(iii)(i) of the Affordable Housing Policy. By deducting ₹25,000

from the total refund amount, the Authority aimed to balance the interests of all parties involved, maintaining fairness in the resolution.

9. 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.

10. For the above stated reasons, the present application for rectification of the final order dated 28.03.2023 deserves to be rejected and the same is **hereby dismissed.**

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

**CHANDER SHEKHAR**
**[MEMBER]**

**NADIM AKHTAR**
**[MEMBER]**