



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2664 of 2023

Jotindra Steel and Tubes Limited

....COMPLAINANT

VERSUS

Rajvansh Gusain

.....RESPONDENT

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

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 03.05.2023 passed in complaint no. 1829 of 2022 titled as "*Rajvansh Gusain vs. Jotindra Steel and Tubes Limited*", under

section 39 of Real Estate (Regulation and Development) Act, 2016. Vide order dated 03.05.2023, both the parties were directed as follows:

- i. *Quash the illegal cancellation of the unit made by the respondent*
- ii. *To execute the builder buyer agreement with a payment plan within 2 weeks from the date of uploading of the order.*
- iii. *Complainant is also directed to make all necessary payments as per the payment plan.*

2. 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 was 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 allottee 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. That the Hon'ble Authority has erred to hold that the respondent has admitted his continuing default of the payment as per schedule provided by the Haryana Affordable Housing Policy, 2013 and which has been reiterated in the application form and the builder buyer agreement which has been executed at the instance of the respondent but has not been returned for registration by the complainant and deliberately concealed by him.
- E. That the Authority has not held that that the respondent has updated his communication details/emails with the appellant in September 2020 and November 2021 without any evidence. Whereas the complainant has admittedly updated his communication details/emails with the appellant only on 14.05.2022.
- F. The Hon'ble Authority has failed to appreciate the fact that the demand letters dated 23.08.2020, 23.12.2020, and 10.06.2021 were duly served to the respondent at his physical address as well as the email address provided by him which he has admittedly defaulted. That the respondent has also been served with the demand letters dated



11.12.2021, 18.04.2022 and 06.05.2022 at his physical address and the Authority has arbitrarily observed that the respondent was not served on his email. The Authority has wrongly observed that the appellant was aware of such update prior to serving the demand letters to the respondent which he has admittedly failed to comply with.

G. That the Hon'ble Authority has failed to appreciate that the complainant has admitted that he has been served with the demand letters dated 11.12.2021, 18.04.2022 and 06.05.2022 vide email dated 16.05.2022 and 17.05.2022 respectively to his updated email as updated on 14.05.2022.

H. That the Hon'ble Authority has erred to observe that the complainant has not produced any document/evidence to prove that the builder buyer agreement has not been executed and/or registered at the behest of the respondent. The complainant has not disputed the fact that he has been returned the money for the registration of the BBA since he has failed to appear to register the BBA himself after the registrations were permitted by the Sub-Registrar, Badhkal, Faridabad.

I. That the the Hon'ble Authority has observed the orders passed by this Hon'ble Authority itself on false and



frivolous allegations made against the respondent by Kotak Mahindra Bank Limited. The non-registration of the BBA is only due to this reason.

J. The Hon'ble Authority has erred to observe that the respondent has provided all the necessary documents and records to allottees who require loan facility for making payment of the consideration of the flat. That the Authority has failed to consider the emails dated 18.04.2022 sent to the complainant and have been resent to the Complainant on 16.05.2022 by which the respondent has already informed the complainant about the loan formalities in case he intended to avail loan to pay the dues which are subject to his credit/CIBIL score and was also explained that the Respondent is not a banking Company/BFC, and can only facilitate the Complainant to obtain a loan in the case they wished to apply for loan as many nationalised banks were funding the project and other Allottees were also granted loan facilities. The Hon'ble Authority has erred to observe that the Complainant has failed to produce any document/evidence to show that he has applied or even inquired for the grant of any loan facility and thus the entire facet of allegations are a farce and afterthought.



K. Thus since the case of the complainant and the pleading therein are devoid of any merits and the complaint being not maintainable under the Real Estate (Regulations and Development) Act, 2016 since the Complainant has failed to show or establish prima facie any violation of the provisions of the Act by the respondent, the complaint should be dismissed and the complainant should not be entitled to any refund/compensation other than in terms of the Affordable Housing Policy and thus the Complainant is not entitled to any compensation/refund in terms of para 19 of the order dated 28.03.2023.

3. Today, Adv. Vikas Sharma, proxy counsel for Adv. NK Sharma, appeared on behalf of respondent i.e., Rajvansh Gusain 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 has 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.
4. Authority is of the view that order dated 03.05.2023, 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.

5. Authority observes that vide order dated 03.05.2023, in Complaint no. 1829 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 in, Sector-45, Faridabad, Haryana. Complainant paid an amount of ₹6,64,883/- as demanded by the respondent. Thereafter, allotment letter dated 04.09.2020 was issued to the complainant and he was allotted a unit bearing no. 1401 in tower 11 against application number 7093 which was subject to the payment of ₹3,97,423/-. Complainant alleges that despite accepting 25% of the cost of the unit, respondent till date has not executed builder buyer agreement. In pursuance of the same, complainant had written various emails to the respondent from 16.08.2021 to 15.05.2022 to execute the builder buyer agreement as the complainant was unable to obtain loan from the bank without builder buyer agreement. It was further contented by the complainant that respondent has wrongly cancelled the unit by sending him an email on 26.05.2022.



6. On the other hand, respondent's contention is that he had issued various reminders to the complainant for payment of demands. Respondent has further averred that upon failure of payment against the demands raised, his unit was cancelled by the respondent on 26.05.2022 after following the due process for cancellation as provided under affordable housing policy, 2013. i.e., by publishing a public notice in the newspaper "The Pioneer" dated 05.05.2022.
7. Authority in its order dated 03.05.2023 observed that respondent despite receiving more than 10% of the basic sale price as per RERA, Act 2016 and 25% of the basic sale price as per Affordable Housing Policy, 2013 failed in his obligation to execute the builder buyer agreement. The Authority observed in its order that complainant has also paid the registration fee of ₹8600/- to get the BBA executed, however, the respondent did not get the builder buyer agreement and instead returned the registration amount. Therefore, the intention of complainant to fulfil his part of contract cannot be suspected. Furthermore, the application form signed between the parties is not an agreement rather it is application to enter into an agreement. Therefore, application form cannot be equated with agreement for sale in particular. It was further observed that the demand letters dated 11.12.2021, 18.04.202 and 06.05.2022 that the respondent has mentioned was never received by the complainant as it was sent to the old email id of the complainant but not the updated one. Rather,



complainant only received the cancellation letter dated 26.05.2022 on the updated email. Therefore, the plea taken by the respondent that several demand letters were sent to the complainant cannot be sustained.

8. Furthermore, Authority is of the view that respondent has clearly violated Section 13(1) of RERA, Act 2016 which explicitly mandates that a promoter (developer or builder) cannot accept a sum more than 10% of the cost of the apartment, plot, or building as an advance payment or an application fee from the homebuyer without first entering into a Builder-Buyer Agreement. The promoter is legally obligated to execute the BBA with the buyer before demanding or accepting any amount exceeding 10% of the sale price. The agreement must be registered and must outline all terms and conditions, including the schedule for payments, construction, and possession. Moreover respondent's plea that *"the cancellation of allotment is not on the basis of non registration of the builder buyer agreement, but it is only on the basis of non payment of demand, payment reminders and through publication in the newspaper, as per Haryana Affordable Housing policy cannot be sustained as builder was not in a position to take remaining pending payment from the complainant against the unit in question as promoter failed to execute the BBA on time."* Further, if the promoter fails to execute the BBA after receiving more than 10% of the sale price, buyer may seek remedies from the Authority such as refund of the amount paid, interest on the amount,



compensation, or specific performance such as execution of the agreement. Moreover, if the buyer has made the necessary payments and is ready to comply with their obligations under the agreement, the buyer's intention to fulfill the contract is presumed in good faith. The failure to execute the BBA by the builder cannot be held against the buyer. Further, respondent in his application has only alleged that it was default of complainant that the builder buyer agreement was not registered. However, mere allegation is not sufficient, documentary evidence has to be placed on record by the promoter to prove said fact.


9. 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.
10. With regard to the ground that complainant in the complaint no. 1829 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.

11. 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.
12. For the above stated reasons, the present application for rectification of the final order dated 03.05.2023 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]