HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2582 of 2022

Usha Saluja ....COMPLAINANT

VERSUS

1. CMD Buildtech Pvt. Ltd.

2. M/s Pardesi Developers Pvt. Ltd. .....RESPONDENTS

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

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Date of Hearing: 05.08.2024

Hearing: 1st (Reopen)

Present: - Adv. Rahul Bhardwaj, Counsel for complainant.

Adv. Sushant Dahiya, Counsel for respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Learned counsel for the complainant, i.e., Usha Saluja filed an application on 15.07.2024 praying for the rectification of the disposal order dated 27.05.2024 passed in complaint no. 2582 of 2022 titled as *"Usha Saluja vs. M/s Pardesi Developers Pvt. Ltd."*, under section 39 of Real Estate

(Regulation and Development) Act, 2016. Vide impugned order dated 27.05.2024, Respondent No.2 was directed as under:-

i. *Respondent no.2 is directed to handover the possession of unit no. F-1003, or any alternate flat of similar size and similarly situated to the complainant.*
ii. *Respondent no. 2 is directed to pay upfront delay interest of ₹17,61,267/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹15,00,000/- monthly interest of ₹13,823/- shall be payable by the respondent no. 2 to the complainant up to the date of actual handing over of the possession.*
iii. *Complainant will remain liable to pay balance consideration amount to the respondent no. 2 at the time of offer of possession to her.*
iv. *The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.85% which is the same rate of interest which the promoter shall be liable to pay to the allottees.*

2. Complainant in the present application has taken the following grounds for rectification of the impugned order dated 27.05.2024:-

A. That Hon'ble Authority has inadvertently directed the complainant to pay the outstanding dues as per the unsigned builder buyer agreement which this Hon'ble Tribunal took on record on 20.09.2023, wherein this Hon'ble Tribunal appreciated the arguments made by the complainant.

B. Hon'ble Authority has failed to appreciate that there was no builder buyer agreement that was signed and a complete payment was already made by the complainant through the

allotment letter dated 06.01.2011. Further, Hon'ble Supreme Court vide catena of cases has established that an unsigned agreement is not a legally enforceable document outlining the rights and responsibilities of parties.

C. Hon'ble Authority has not appreciated the arguments advanced by the Complainant which this Hon'ble Authority appreciated was in line and length of the jurisprudence laid in Pioneer Urban Land and Infrastructure v Union of India [2019 SCC OnLine SC 1005]; wherein the Hon'ble Supreme Court of India held that the non-handing of the possession cannot be indefinite and has to be given in a reasonable time period.

D. Hon'ble Authority failed to appreciate the fact that respondent no. 2 never relied upon the unsigned builder buyer agreement as the same can be seen from the documents annexed by the Respondent No. 2 in its reply. It would not be out of place to state that the respondent no. 2 only repeated and reiterated the contents of what the complainant argued before this Hon'bie Authority.

E. That this Hon'ble Authority has not appreciated its own order wherein respondent was directed to show the proof with regard to the said amount of ₹47,43,375/- which this

Hon'ble Authority has inadvertently mentioned in the final order dated 27.05.2024. It is pertinent to note that the respondent no. 2 has failed to provide any details of the said amount as was demanded by the complainant.

F. Hon'ble Authority has committed an error by not appreciating that the respondent despite the acknowledgment of all these facts never raised any demand letters and never cancelled the unit of the complainant. This Hon'ble Authority was very much convinced by the fact that there was no dispute with respect to any further payment subject to any further payment which was mentioned in the allotment letter dated 06.01.2011.

G. That the complainant has not filed any other application/ appeal challenging the final judgment dated 27.05.2024 passed by this Hon'ble Authority before any other court or forum.

3. Today, Advocate Rahul Bhardwaj appeared on behalf of the complainant argued that, under Section 39 of the Act, this Authority has the power to rectify orders when a technical issue arises in the judgment, which pertains to changes in facts and circumstances. He stated that Authority has failed to appreciate the fact that Builder Buyer Agreement which Authority has considered legal and valid in disposal order dated 27.05.2024 is an

arbitrary document which is not signed by both the parties. Moreover, complete payment was already made by the complainant through the allotment letter dated 06.01.2011. He requested the Authority to rectify the order dated 27.05.2024 as it involves change of facts and circumstances.

4. Authority is of the view that order dated 27.05.2024, 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 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. Authority has decided the matter on the basis of evidence adduced. There is no scope left to be covered for the clarification.

5. Authority vide its disposal order dated 27.05.2024 passed in complaint no. 2582 of 2022, observes as under:-

> *" Complainant in this case had initially booked a flat no. F-1002, Marina Tower measuring 2275 sq. ft. in the project of the respondent no. 1 vide allotment letter dated 06.01.2011 by paying an amount of ₹15,00,000/-. Later on, complainant entered into collaboration with another promoter, i.e, respondent no. 2 namely, "M/s Pardesi Developers Pvt. Ltd." Further, as per complainant the total sale consideration for the booked unit is 15,00,000/- and full and final payment has already been made by the complainant against the booked unit. . However, respondent no.2 in his reply has averred that total sale price of the unit is ₹47,43,375/-. With regard to the said issue, Authority observes that, complainant has annexed a copy of flat buyer agreement in her complaint book on page no. 19 as "Annexure C-2". However said agreement is only*

signed by the promoter, i.e., respondent no. 1 and allottee has not signed the same. But complainant is relying upon the said flat buyer agreement for ascertaining the deemed date of possession. Even respondent no. 2 in his reply has also mentioned about the said flat buyer agreement, so even respondent no. 2 is not denying the execution of the agreement. Therefore, Authority deems appropriate to ascertain total sale price of the unit from the flat buyer agreement. From clause 1 at page no. 22 of flat buyer agreement, it is clear that the total sale price of the booked unit is ₹47,43,375/-. Therefore, complainant has paid total amount of ₹15,00,000/- against the total sale price of ₹47,43,375/-.

6. On careful perusal of file, Authority is of the view that complainant in his pleadings has specifically mentioned that *"as per clause 12 of the flat buyer agreement executed with the complainant, the respondent was obligated to handover the said unit within 30 months of signing the flat buyer agreement subject to any force-majeure conditions or the complainant paying the entire consideration to the respondent. However, it is pertinent to mention here that complainant has paid the entire consideration to the respondent in 2011 and till date the respondent has not offered the possession to the complainant.....that even after receiving the entire consideration amount from the complainant the respondent has failed to handover the possession to the complainant. As per calculation in the terms of clause 12 the respondent was obligated to handover the unit on 04.07.2013"* It clearly indicates that complainant is relying on the agreement for ascertaining the deemed date of possession. On the other hand, complainant is denying the said agreement for

calculations of the Total Sale Consideration. The complainant's position presents a contradiction regarding the reliance on the provisions of the agreement, as on one hand, complainant is relying on the agreement to ascertain the deemed date of possession under the Real Estate (Regulation and Development) Act, 2016 (RERA). This implies that the complainant considers the agreement, or at least parts of it, to be valid and enforceable for determining the developer's obligations regarding the handover of possession, and on the other hand, complainant argues that the said agreement is not signed by the parties, therefore it is not a binding legal document.

7. Additionally, the complainant disputes the sale consideration amount of ₹47,43,375/- stated in the agreement, claiming instead that the actual sale consideration is ₹15,00,000/- as mentioned in the allotment letter. The complainant further contends that the full and final payment has been made according to this figure. This contradictory stance raises a fundamental legal issue: a party cannot simultaneously claim the benefits of an agreement while repudiating its validity or certain provisions. If the complainant does not recognize the agreement as a valid document due to it being unsigned, it would logically follow that all provisions of the agreement, including those related to the deemed date of possession, should not be relied upon. This is a clear attempt to manipulate the provisions of the agreement to suit their convenience, which is legally and

morally unacceptable. Conversely, if the complainant wishes to rely on the agreement to establish the deemed date of possession, it would imply acceptance of the agreement's validity and binding nature in its entirety, including the terms related to sale consideration. This conclusion is based on the principle of "approbate and reprobate," which prevents a party from accepting the benefits of a contract while simultaneously rejecting its burdens. Authority has placed his reliance on the judgment of Supreme Court of India, in the case of "***Bharti Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd., (1996) 4 SCC 704***," wherein it is observed that a party who derives benefits under an agreement cannot later repudiate the contract on grounds of its invalidity. The Authority directs that the complainant must adhere to all the terms and conditions of the agreement as the complainant cannot have it both ways.

8. Furthermore, the complainant solely relies on a purported "receipt" dated 06.01.2011, annexed as "Annexure C-3" to the complaint, wherein the complainant claims to have made a full and final payment of ₹15,00,000/- to the respondent. However, the respondent has vehemently challenged the authenticity of this "receipt." The respondent has alleged in his reply that *"the respondent has produced a forged and fabricated receipt Annexure C-3 and has attempted to show the receipt for booking amount as a receipt as a receipt for full and final payment receipt for a flat"* Given the respondent's denial of the receipt's authenticity, the burden of proof shifts

to the complainant. The complainant, however, has failed to furnish any additional evidence or documentation to substantiate the claim that a full and final payment was indeed made concerning the unit in question. Moreover, the complainant has not placed on record a copy of a Builder Buyer Agreement (BBA) or any other document pertaining to some other allottee that would corroborate the pricing structure/ total sale consideration asserted by the complainant for unit within the said project. Considering the nature of the proceedings under the Real Estate (Regulation and Development) Act, 2016 which are summary in nature, and governed by the principle of natural justice, Authority observes that complainant cannot be given another opportunity to prove her claim. The absence of corroborative evidence and failure to substantiate the alleged payment undermines the complainant's position, and as such, the plea cannot be sustained without further admissible evidence on record.

9. Furthermore, complainant in his rectification application has stated that *"that the Respondent despite the acknowledgment of all these facts never raised any demand letters and never cancelled the unit of the Complainant."* On the contrary, Authority vide its order dated 27.05.2024 had observed that,

> *"Now, with regard to the relief of complainant wherein she is seeking possession of unit no. F-1002, Authority observes that complainant has made payment of ₹15,00,000/- to the respondent no.1 against the unit no. F-1002. Believing the fact, that she has*

made full and final payment of the unit, complainant didn't pay the balance consideration to the respondent. Consequently, respondent no. 2 cancelled the unit and allotted the same to some other person. This can be inferred firstly, from the an email dated 27.07.2022 at page no. 38 annexed by the respondent in his reply wherein, complainant has written that "the complainant has visited the corporate office, Rohini (of respondent no. 2) on 4th April and 29th April 2022, where you asked to choose another flat as you have already allotted flat no. 1002 in marina Tower to someone else. Mr. Nikhil had offered me flat no. 1003 on the same floor marina Tower and told me to clear pending dues. I have discussed with my family and I am fine with flat no. 1003 that you are offering". Secondly, even counsel for complainant requested the Authority for issuing directions to the respondents for offering possession of same unit or different unit of same area during hearing on 05.12.2023. Moreover, complainant has filed captioned complaint on 28.09.2022 and cancellation of the unit was prior to filing of the complaint. Further, there is no proof on the record that even after paying such a huge amount of ₹15,00,000/- to the respondent, complainant has sent any email/communications to the respondent asking the status of construction of the project. Based on the contractual terms and circumstances presented, the respondent's cancellation of unit F-1102 is upheld as valid. The respondent acted in accordance with the contractual provisions of agreement by cancelling the booking when the balance was not paid within the stipulated timeframe."

10. The Authority is of the view that complainant has taken a contradictory and inconsistent position in this matter, which is perplexing. On one hand, the complainant has explicitly averred that the unit in question was never cancelled by the respondent during the course of events. This assertion would imply that the complainant believes that the original unit remains valid and available for possession, without any dispute over its cancellation status. Yet, in a glaring contradiction, the learned counsel for the

complainant, during the hearing on 05.12.2023, requested this Authority to issue directions to the respondent to offer possession of either the same unit or a different unit of the same area. Such a request is inherently inconsistent with the earlier position that the original unit was never cancelled. If the complainant was indeed certain that their original unit was not cancelled, there would be no logical or legal basis for seeking possession of a different unit. This contradictory stance indicates a lack of clarity and coherence in the complainant's approach and suggests that the complainant is unsure of their own position regarding the facts and the legal standing of their case.

11. Now after final decision/ judgment, complainant cannot be allowed to make such pleadings which are already decided on merits. Further, relief sought by the complainant 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.

12. 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.

13. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present rectification application is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have suffered due to the dominant position of the promoter.

14. For the above stated reasons, the present application for rectification of the final order dated 27.05.2024 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]