



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

COMPLAINT NO. 707 OF 2020

Monika Mittal w/o Shri Yogesh Mittal r/o H.no.1264, Sector-21, Panchkula

....COMPLAINANT(S)

VERSUS

M/s Samar Estates Pvt. Ltd. registered office at H. no.87, Sector 7, Panchkula,
Haryana-134109

...RESPONDENT(S)

Date of Hearing: 23.02.2021

Hearing: 8th

Present: - Mr. Vishal Madaan, Counsel for Complainant
Ms. Tarun Gupta, Counsel for respondent
through VC

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ORDER (DR. SARITA GUPTA-ADJUDICATING OFFICER)

Present complaint has been filed by the complainant to review order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Id. Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula vide which relief of refund has been declined to the complainant directing him to pay all outstanding dues. Respondent has been directed to deliver possession of the flat to the complainant by 30.09.2019 after completing the construction. It has further been observed that outstanding amount is not paid by the complainant, the respondent would be at liberty to cancel the allotment and forfeit a part of already paid amount.

2. In brief, the case of the complainant is that on 18.05.2011, original allottee Smt. Alka Jain, had booked a flat bearing no. E-901 measuring 1725 sq. ft. in the project of the respondent namely Ess Vee Apartments, Sector 20, Panchkula. Smt. Alka Jain had paid an amount of ₹7,15,000/- against the total sale consideration of ₹71,50,000/-. Thereafter, complainant, Ms. Monika Mittal had purchased the flat from the original allottee on 10.01.2013. Flat buyer agreement was executed on the same date i.e. 10.01.2013. Complainant had paid an amount of ₹25,74,708/- till January 2013. Possession of the flat was to handed over by 30.06.2014 but respondent has failed to complete the project. The complainant had filed Complaint no.

1167 of 2019 before this Court seeking relief of refund. Vide order dated 28.06.2019, relief of refund was declined and it was ordered that complainant would take over possession of the flat after paying all outstanding dues as the respondent was willing to complete construction of the project by 30.09.2019. Now, the complainant is seeking review of order dated 28.06.2019 on the ground that vide order dated 09.10.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, in Complaint no. 865 of 2019 titled as Mamta Gupta versus Samar Estates Pvt Ltd. along with 31 other complaints, refund has been granted to similarly situated allottees of the same project.

2. Respondent has filed written statement taking preliminary objections that the present complaint is not maintainable as review is not an inherent power, the complainant has failed to point out provisions of the RERA Act, 2016 whereby power of review has been conferred upon this Court, the order can be reviewed if there is a mistake or an error apparent on the face of record. On merits, the respondent has submitted that period of completion of the flat within three years from the date of start of construction was subject to timely payments by the allottees. But the complainant has failed to pay instalments on time. Therefore, possession was not handed over to the complainant. These grounds have already been considered by the Court while

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passing order dated 28.06.2019. The respondent has prayed for dismissal of the complaint.

3. Arguments raised by both ld. counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

4. At the outset, it has been argued by learned counsel for complainant that original allottee Smt. Alka Jain had booked flat no. E901 measuring 1725 sq. ft. on the basic sale price of ₹71,50,000/- on 18.05.2011 in Group Housing Scheme namely Ess Vee Apartments, Sector -20, Panchkula. She had paid booking amount of ₹7,15,000/- against receipt. She made further payment of ₹10,72,500/- on 15.06.2011 and ₹7,87,208/- on 07.01.2013. The complainant Smt. Monika Mittal had purchased said flat from original allottee Smt. Alka Jain and got transferred the sale in her favour on 10.01.2013. Apartment buyer agreement was executed on the same date i.e. 10.01.2013. The tentative date of completion of booked apartment was 30.06.2014. The complainant and original allottee had paid total of ₹25,74,708/-. Since the project was not completed and possession was not handed over to the complainant, he was constrained to file Complaint no. 1167/2019 on 15.05.2019 before Adjudicating Officer. Vide order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, the relief of refund was declined and the complainant was directed to pay outstanding amount so that

possession could be handed over by the respondent to the complainant up to 30.09.2019 failing which the respondent would be at liberty to cancel the allotment. A number of allottees had filed complaints bearing nos. 865, 432, 562, 807, 816, 891, 892, 938, 985, 1016, 1018, 1019, 1030, 1047, 1058, 1537, 1093, 1099, 1102, 1119, 1251, 1328, 1395, 2176/2019, 995, 1051, 635, 636, 637,638, 639, 640/2018 before Hon'ble Haryana Real Estate Regulatory Authority Panchkula. Vide order dated 09.10.2019 passed by Hon'ble Authority, it was observed that the promoter does not have any liquidity to discharge any of the obligations besides funds needed for completion of the project. It was unlikely that the respondent/promoter would be able to complete the project. As per provisions of Section 18 of the RERA Act, respondent was directed to refund the money paid by the complainant along with interest at the rate prescribed in Rule 15 of HRERA Rules 2017.

5. It has next been argued by learned counsel for complainant that prior to filing of complaint by the present complainant, few other allottees had also Complaint no. 213 of 2019 titled as Sunita Gupta and Kanta Gupta Versus Samar Estates Pvt Ltd and Complaint no. 214 of 2019 titled as Saurabh Bhatt and Rashmi Bhatt Versus Samar Estates Pvt Ltd seeking relief of refund which was allowed vide order dated 13.03.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. When Complaint no. 1167 of 2019 was filed by the present complainant, the then Adjudicating Officer instead of

granting refund, directed the complainant to take possession of the flat after depositing all outstanding dues. It has been argued that if project could not be completed by respondent in previously instituted complaints, how the complainant has been directed to take possession in the project of the respondent and on what ground relief of refund has been declined to the complainant. Learned counsel for complainant has placed on record copy of order dated 13.03.2019 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula in Complaint no. 213 of 2019 titled as Sunita Gupta and Kanta Gupta Versus Samar Estates Pvt Ltd and Complaint no. 214 of 2019 titled as Saurabh Bhatt and Rashmi Bhatt Versus Samar Estates Pvt Ltd. Learned counsel for complainant has prayed for review of order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer and grant similar relief of refund to complainant.

6. To rebut the arguments of leaned counsel for complainant, it has been argued by learned counsel for the respondent that no ground to review order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer is made out as unless the statue permits review or quasi-judicial order, the power to review is not an inherent power. The complainant has not pointed out as to under what provisions of RERA Act 2016, review petition has been filed. The grounds which have been taken by complainant for review have already been considered by learned Adjudicating Officer while passing order dated 28.06.2019. If it is erroneous decision, it can be

corrected by the Higher Forum. If there is error apparent on the face of record, it can be corrected by review. Review proceedings are not by way of appeal. Only remedy with the complainant was to file appeal against order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula. Order dated 09.10.2019 passed by Hon'ble Authority was challenged by the respondent before Hon'ble High Court by way of CWP no.4692 of 2020 and proceedings were ordered to be stayed. Now the said petition has been withdrawn with a liberty to approach Hon'ble Authority. Order dated 09.10.2019 passed by Hon'ble Authority has not gained finality. The counsel for respondent has prayed for dismissal of the complaint.

7. It is not disputed that in previously instituted Complaint nos. 213 and 214 of 2019 which were decided on 13.03.2019, Hon'ble Authority has passed order of refund in favour of complainants in the same project. The present complainant Monika Mittal had filed Complaint no. 1167 of 2019 before Haryana Real Estate Regulatory Authority, Panchkula which was disposed of vide order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer. In other complaints also, bearing no. 865 of 2019 titled as Mamta Gupta Versus Samar Estate Pvt Ltd along with other complaints, Hon'ble Authority has granted relief of refund to allottees of the same project. At this stage, instead of going into merits of the case in similarly situated allottees, the question has arisen as to whether Adjudicating Officer

has power to review his own order. As per regulation 8(c)(x) of The Haryana Real Estate Regulatory Authority, Panchkula, (General) Regulations, 2018 which is reproduced as under:

8(c)(x) The Authority shall, at all times, have the power, either on an application made by any interested or affected party or suo moto, to review, revoke, revise, modify, amend, alter, or otherwise change any order issued or action taken by the Secretary or any Officer of the Authority, if considered appropriate

the power to review has been given to Hon'ble Authority and the word 'Adjudicating Officer' has not been mentioned. In the end of aforementioned provision also 'any order passed by any officer of the Authority' has been mentioned. Learned counsel for complainant has failed to draw attention of the Court to any Provision or Rule or Regulation vide which power of review has been given to Adjudicating Officer. The remedy available with the complainant was to file appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh against order dated 28.06.2019 passed by Sh. Anil Kumar Panwar, the then Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula. Counsel for respondent has further pointed out that present complaint by way of review has also been filed after delay of 257 days. Though limitation is not issue yet it is observed that review is not maintainable before Adjudicating Officer.

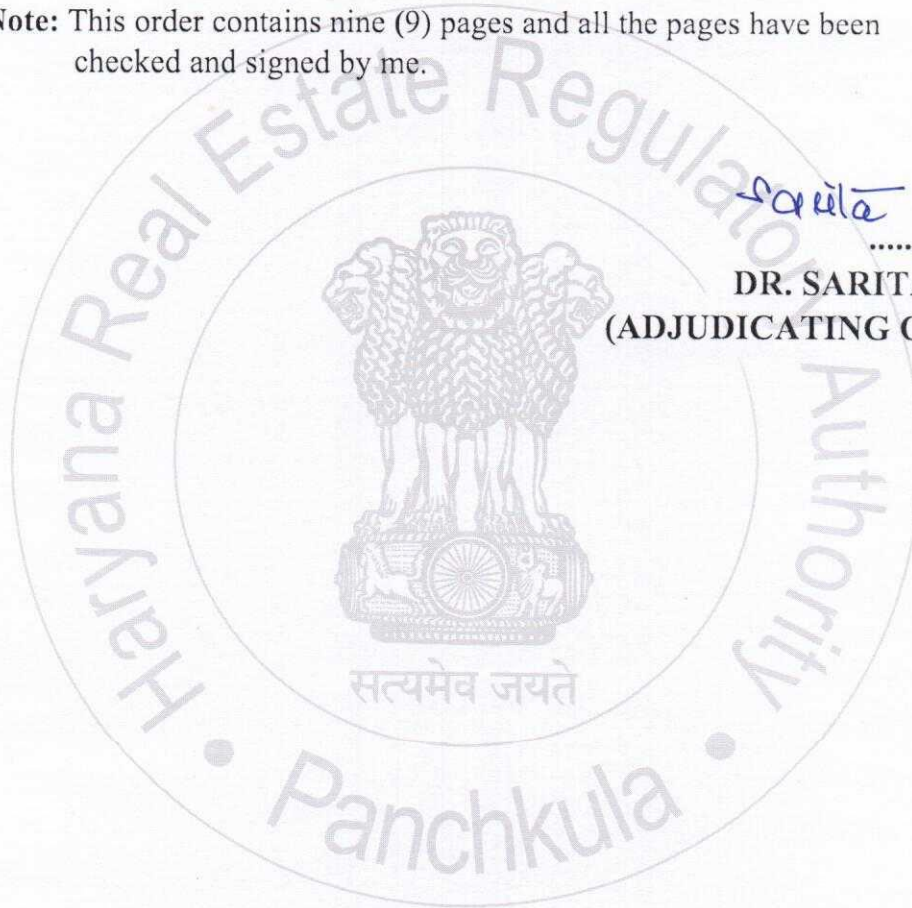
8. Without going into merits of the case, it is hereby observed that review petition is not maintainable and is ordered to be dismissed.

9. In these terms, present complaint is **disposed of**. File be consigned to record room and order be uploaded on the website of the Authority.

23.02.2021

Sarita Gupta
DR. SARITA GUPTA
(ADJUDICATING OFFICER)

Note: This order contains nine (9) pages and all the pages have been checked and signed by me.



Sarita Gupta
DR. SARITA GUPTA
(ADJUDICATING OFFICER)