



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 682 OF 2021

M/s Parsvnath Developers Ltd.

....COMPLAINANT(S)

VERSUS

SNG Investments

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag**

**Chairman  
Member  
Member**

**Date of Hearing:** 31.08.2021

**Hearing:**

3<sup>rd</sup>

**Present: -**

Ms. Isha, proxy counsel for the complainant through video conference

Mr. Kunal Thapa, counsel for the respondent through video conference

### **ORDER (RAJAN GUPTA - CHAIRMAN)**

1. Present complaint has been filed for recalling order dated 14.11.2018 passed in complaint no. 552 of 2018 whereby the complainant was directed to refund the respondent the amount deposited by him along with

interest as prescribed under Rule 15 of HRERA Rules. It was also mentioned that if complainant fails to make the payment within 90 days, he shall be liable to pay penal interest @18% p.a. on the unpaid amount.

2. This matter was heard on 06.07.2021 when learned counsel for the complainant had argued that Authority does not have jurisdiction to pass an order of refund and referred to certain judgments, the copies of which he was directed to file in the office of the Authority but same have not been filed. Operative part of said order is reproduced below for ready reference:

“2. Learned counsel for the complainant stated that in furtherance of the above said order passed by the Authority, respondent filed an execution petition bearing no. 2196 of 2019. He argued that said order was passed by the Authority without jurisdiction and beyond the powers conferred upon it by RERA Act. He further argued that independent of the orders passed by the Authority, the complainant has already refunded the entire amount to the respondent along with interest as per Rule 15 of HRERA Rules and therefore, complainant is not liable to pay interest other than the prescribed rate of interest. He also referred to three Supreme Court judgments in this regard but copy of the same were not provided. He is directed to file the copies of the said judgments with the Authority and send its copy to the respondent in advance.”

3. Complainant in his complaint has contended that refund order dated 14.11.2018 passed by Authority is without jurisdiction and has placed reliance upon judgment of Hon'ble Real Estate Appellate Tribunal, Haryana, Chandigarh in appeal no. 06 of 2019 titled as *Sameer Mahawar vs. MG Housing Pvt. Ltd.* quoting Para 48 (iii) that if compensation is provided as a part of multiple reliefs along with refund/return of investment with interest,

the complaints have to be placed before the Adjudicating Officer. It has been contended that since in complaint case no. 552 of 2018 respondent had claimed relief of refund along with compensation, said complaint was to be dealt by Adjudicating Officer, rather Authority had accepted such complaint and passed order of refund without jurisdiction.

4. Complainant has also referred to judgments of Hon'ble Supreme Court in *Kiran Singh and others vs. Chaman Paswan and others* (1995) 1 SCR 117, *Dhurandhar Prasad Singh vs. Jai Prakash University and others* (2001) 6 SCC 534, *Sarwan Kumar and another vs. Madan Lal Aggarwal* (2003) 4 SCC 147 to support his contention that decree passed by a court having no jurisdiction is nullity. It has also been contended by complainant that Authority had awarded dual rate of interest in its order dated 14.11.2018 which is not only without jurisdiction but beyond the scope of RERA Act, 2016 and has referred to judgment of Hon'ble Supreme Court in *Vedanta vs. Shenzhen Shandong Nuclear Power Construction Co. Ltd.* in which award of dual rate of interest has been held to be invalid direction in law.

5. Respondent has filed reply on 26.07.2021 wherein it has been contended that present complaint is barred by doctrine and principles of res judicata. The matter has already been adjudicated by Authority on 14.11.2018 which has attained finality on 13.01.2019 and same was not challenged by complainant in any manner. Neither any appeal was filed under Section 44 of the Act nor any review was filed. Thus, the complainant had accepted the

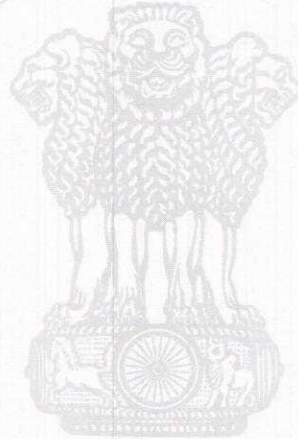
judgment of Authority. It has been further contended that if the case of the complainant is that the entire order dated 14.11.2018 is null and void, then there was no need for complainant to make compliance of said order which he has been doing by making part payments. Reliance has been made by the respondent on Para 53 of judgment of Hon'ble Real Estate Appellate Tribunal, Haryana, Chandigarh in appeal no. 06 of 2019 titled as *Sameer Mahawar vs. MG Housing Pvt. Ltd.* stating that said judgment will not apply to orders, directions and decisions which has already attained finality. It has also been contended that complainant is indirectly seeking review of order dated 14.11.2018 passed by this Authority which he could have filed within 45 days of passing of order but having not done so, complainant can't now be allowed to seek its recall after lapse of more than 2.5 years. Further, there is no ground for recalling order dated 14.11.2018 neither Authority has power to recall the same.

6. Today, proxy counsel for the complainant has sought adjournment for the reason that arguing counsel is not available.

7. The Authority has gone through the pleadings of both the parties and documents on record and observes that the complainant is seeking recall of order dated 14.11.2018 after lapse of long time of more than 2.5 years. Such a complaint/application is not maintainable. Authority is of the considered view that it can't recall/review its orders which have already attained finality and in which substantive relief awarded is sought to be modified. No error of

facts apparent on the face of record has been alleged to justify review of the orders. If the complainant was aggrieved by the order of the Authority, he could have preferred an appeal against the same within the period of limitation prescribed. Having failed to do so, it gives rise to a presumption that complainant had accepted the same and now can't be allowed to reopen the already adjudicated matters. Therefore, present complaint deserves to be dismissed.

8. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



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RAJAN GUPTA  
[CHAIRMAN]

.....  
ANIL KUMAR PANWAR  
[MEMBER]

.....  
DILBAG SINGH SIHAG  
[MEMBER]