



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 685 OF 2021

M/s Parsvnath Developers Ltd.

....COMPLAINANT(S)

VERSUS

Rajiv Sahni

....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. Rohit Mittal, counsel for the respondent through video conference

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

1. Present complaint has been filed for recalling order dated 27.11.2018 passed in complaint no. 557 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 60 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. 2021 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 27.11.2018 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. 557 of 2018 respondent had claimed relief of possession of plot or in alternative 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 27.11.2018 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. Shenzen 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 27.07.2021 wherein it has been contended that the matter has already been adjudicated by Authority on 27.11.2018 which has attained finality. It has been contended that complainant could have preferred an appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh under Section 44 of RERA Act within 60 days of order.

Instead present complaint has been filed on 05.07.2021 challenging order dated 27.11.2018 before this Authority and therefore is liable to be dismissed. It has further been contended that complainant has executed the order dated 27.11.2018 in part and now it does not lie in the mouth of the complainant to challenge the jurisdiction of the Authority at this point after he himself had submitted to the jurisdiction of the Authority and had undertaken to abide by its orders.

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 27.11.2018 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]**

