



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in
COMPLAINT NO. 239 of 2021

1. Pushpa Mehrotra
2. Narain Mehrotra
3. Amit Mehrotra

...COMPLAINANT(S)

VERSUS

1. M/s BPTP Ltd
2. New Age Town Planners Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 09.03.2022

Hearing: 5th

Present: - Ms. Srishti Girdhar, Counsel for the complainant.
Mr. Hemant Saini, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainants have sought relief of refund of the amount paid by them to respondents alongwith applicable interest. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its

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jurisdiction to deal with such matters was subjudice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. vide order dated 13. 01.2022.

3. Consequent upon above judgement passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

“ 4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.

Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others

etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly.”

4. Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.
5. Case of the complainant is that they had booked an apartment in respondent's project named 'Park Elite Floors II', sector-75, Faridabad, on 09.04.2014 by paying an amount of Rs. 4 lacs. An allotment letter for Unit No. E-40-38-GF with 1047 sq.ft. area was issued by respondents in favour of complainant on 18.04.2014. Builder Buyer Agreement (BBA) was executed on 08.08.2014. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 12 months, which comes to 08.08.2015. Complainants alleges that they have so far paid an amount of Rs.17,90,114.65/- against basic sale price of Rs.41,75,798/-
6. In support of the contention that complainants have paid an amount of Rs. 17,90,114.65/- the complainant refer to page 44 of the complaint which is a statement of account dated 05.05.2016 issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.
7. The complainant further alleges that project is still not complete. In fact, it is far from completion and there is no sight of its completion in foreseeable future. Complainant has prayed for refund of the amount paid by him along with interest



for the reason that respondents have already inordinately delayed completion of project and even now there is no hope of completion in near future.

8. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by the respondents in their reply are summarised as follows:-

- i) That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.
- ii) That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
- iii) Respondents have broadly referred to certain payment reminder dated 09.07.2014 having been issued.
- iv) Completion of the project has been delayed on account of certain force majeure conditions.
- v) Respondents have even alleged that Builder Buyer Agreement was executed on 05.04.2018 as opposed to 08.08.2014 alleged by the complainant. In other words they are denying the facts stated by the complainants in regard to execution of Builder Buyer Agreement.



9. Both parties have argued their case at length. Complainant reiterates that project is nowhere near completion and there is no hope of its completion in near future, therefore, they do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them along with interest as applicable under the Rules.

10. Respondents on the other hand argues that construction is going on in full swing and an offer of possession will be made soon after completion of the project. Further they have also made an offer for allotment of an alternate unit in one of the other projects of the respondents.

11. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes and order as follows:-

- i) Respondents first of all have challenged the jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with and forgoing para No.s 2 and 3 of this order. Accordingly, this objection of the respondents is no longer sustainable.
- ii) There is no denial to the fact of Rs. 17,90,114.65/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the statement of accounts dated 05.05.2016 issued by the respondents to the complainant. The said statement is annexed as Annexure C-3 with the complaint.



- iii) Respondents admits that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion. The respondents further have offered an alternate unit to the complainant.

Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date of offer of possession, is that the complainants would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time. Further, complainants cannot be forced to accept alternate unit against their wishes. Alternate unit can be offered only with the consent of the allottee.

- iv) Respondents in this case, in their written submissions are asserting blatantly incorrect facts. In para No. 3 of para-wise reply, respondents have alleged that FBA was executed on 05.04.2018, whereas, the fact is that as per Annexure C-2, page 16 to 43, the said BBA was executed on 08.08.2014. Respondents have not even bothered to check the facts of the matter being submitted by them before the Authority.

- v) Arguments in respect of force majeure conditions also cannot be accepted and no such conditions have been shown to be applicable.



Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now has been shown to have happened. Respondents are defaulting on multiple counts. So much so they have also failed to get their project registered with this Authority as mandated by Section-3 of the RERA Act. The Authority directs the Registry to send a copy of this order to the Project Section for issuing show cause notice to the respondents for failing to get registered their, admittedly, an on-going project.

- vi) The complainants have impleaded M/s New Age Town Planner Ltd. as respondent No.2. The complainants have not cited any reason for impleading them as respondent No.2. The Builder Buyer Agreement is with respondent No.1 and respondent no. 1 only is the Licensee of the project. The complainants appear to have impleaded respondents No.2 by mistake. No order, therefore, is being passed against respondent no. 2. Accordingly, the respondent No.2 will have no liability towards complainant in terms of this order.
- vii) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated



by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other in regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.



Subject to the above, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

In the instant case, however, relief of refund has been sought. The refund in this case is admissible because respondents have neither completed the project nor have given any time frame within which it will be completed. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. Provisions of agreement will not come into play when the contract is breached. The general law of the land will regulate such situation and not provision of the agreement.

- viii) The complainants being entitled to refund of the entire amount of Rs. 17,90,114.65/- paid by them, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainants against the admitted payment have attached statement of accounts of Rs. 17,90,114.65/-



as Annexure C-3 and in written statement of reply receipts of Rs. 9,45,715/- are annexed. Since the complainants are entitled to refund of the amount w.e.f. the date of their payments, an e-mail dated 05.04.2022 was written to the complainants to submit the receipts of balance payments so as to verify the date with such payments were made to enable the Authority to calculate the payable interest thereon. The complainants have submitted the receipts of the amounts of Rs. 17,85,713/-. However, total paid amount is Rs. 17,90,114.65/- as per statement of accounts dated 05.05.2016. So, the amount of 4401.65/- of which the receipts have not been submitted, the interest is being calculated from the date of issuance of the statement of accounts dated 05.05.2016. Accordingly, the calculations have been got made from the Accounts Department of the Authority.

- ix) The total interest for the period ranging from receipt of payments to date of this final order (09.03.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.30% payable by the respondents to the complainants works out to Rs. 12,87,036/-.
- x) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 17,90,114.65/- plus interest amount of Rs. 12,87,036/- to the complainant, within a period of 90 days of



uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

12. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

