



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2716 OF 2019

....COMPLAINANT(S)

Anurag Jain

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.03.2022

Hearing: 4th

Present: - Mr. Vaibhav Luthra, Counsel for the complainant through VC.
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainant has 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 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 be 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 he had booked an apartment in respondent's project named 'Park Elite Floors', sector-80, Faridabad, on 11.06.2009 by paying an amount of Rs. 3 lacs. An allotment letter for Unit No. PE-141-FF with 1418 sq.ft. area was issued by respondents in favour of complainant on 06.10.2011. Builder Buyer Agreement (BBA) was executed on 05.04.2013. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 05.10.2015. Complainant alleges that they have paid an amount of Rs.27,47,981/- against basic sale price of Rs.27,79,095/-

6. In support of the contention that complainant has paid an amount of Rs. 27,47,981, the complainant refer to Annexures C-1, C-3, C-4, C-6, C-7, C-8, C-9, C-11 and C-14 which are receipts of the paid amount issued by the respondent.

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 in completion of project and even now there is no hope of the 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 reminders dated 30.03.2017,12.05.2017 and 12.10.2017 having been issued.
- iv) Completion of the project has been delayed on account of certain force majeure conditions.
- v) Regarding issue of delay interest it has been submitted that an undertaking had been signed by complainant on 17.02.2012 , copy of which is annexed as Annexure R-7 of reply wherein it has been written that complainant shall not hold liable respondent company for any delay in offer of possession, if that delay is due to any act on account of changes, modifications, revisions in the tentative layout/building plan during construction of the unit.

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 an 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. 27,47,981/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainant. Said receipts are annexed as Annexures C-1, C-3, C-4, C-6, C-7, C-8, C-9, C-11 and C-14 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) 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 accounts.
- v) 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. Undertaking referred by the respondent in respect of delay interest is also not relevant to decide this case for the foregoing reasons. It is pertinent to mention here that argument pertaining to undertaking has already been rejected by the Authority vide its order dated 27.10.2020 and same shall be read as part of this order.

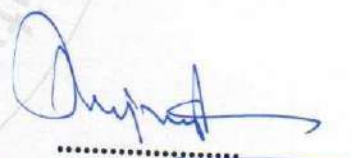
- vi) The complainant being entitled to refund of the entire amount of Rs. 27,47,981/- paid by him, Authority orders the refund of the said amount along with interest from the date of receipt of payment till



date of this order. The complainant against the admitted payment has attached receipts of full paid amount and copies of said receipts are annexed as Annexures C-1, C-3, C-4, C-6, C-7, C-8, C-9, C-11 and C-14 with the complaint. Accordingly, the calculations have been got made from the Accounts Department of the Authority.

- vii) The total interest for the period ranging from receipt of payments to date of this final order (29.03.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.30% payable by the respondents to the complainants works out to Rs 24,09,105/-.
- viii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 27,47,981/- plus interest amount of Rs. Rs 24,09,105/- to the complainant, within a period of 90 days 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.

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RAJAN GUPTA
[CHAIRMAN]


DILBAG SINGH SIHAG
[MEMBER]



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COMPLAINT NO. 2716 OF 2019

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....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 27.10.2020

Hearing: 2nd

Present: Shri Vaibhav Luthra, Counsel for the complainant.

Shri Hemant Saini, Counsel for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Complainant's case is that he was allotted unit no. PE-141-FF on first floor admeasuring the super built up area of 1418 sq. ft. in the project "Park Elite Floors" on 06.10.2011. The floor buyer agreement was executed between the parties on 05.04.2013. As per the said agreement, the deemed date of offer of possession was within 24 months + 6 months grace period

from the date of execution of FBA which works out to 05.10.2015. The complainant had already paid Rs. 27,47,981/- against the basic sales price of Rs. 26,51,295/-. The complainant submits that the respondent kept suspending and stopping the construction on specious pretexts thereby delaying the construction and they are not in the position to handover the possession anytime in near future. It is further submitted by the complainant that respondent has not even applied for occupation certificate till date. There has already been a delay of approx. 5 years in delivery of possession.

He prays for refund of the amount paid by him along with interest @ 18% p.a. In addition, the complainant has demanded delay compensation @ SBI MCLR + 2 % on the total amount paid. He has demanded an amount of Rs.5,00,000/- for mental agony and Rs.10,00,000/- on account of litigation cost. He has also demanded that any penalty imposed on delayed payment for duration of litigation be waived off. He has also demanded that the compensation be not liable for any taxes including personal income tax.

2. Learned counsel for the complainant argued in the court today that the Hon'ble Supreme Court in Civil Appeal No. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan has decided in para 9 that if the builder fails to fulfil his contractual obligation of



obtaining Occupation and offering flat to the purchaser within the time stipulated in the agreement, the purchaser cannot be compelled to take possession of the flat and he is entitled to the relief of refund.

3. Learned Counsel for the respondent orally submits in the court today that the structure of the project is complete and the unit of the complainant shall be completed within five months. He argued that as per an undertaking annexed at page 54 of the reply, the complainant has undertaken not to hold the respondent responsible for any delay in offering possession.

The respondents have also raised preliminary objection that the unit in question is an independent floor being constructed over plot admeasuring 140.28 sq. meters and as per Section 3(2)(a) of the RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 square meters. The respondent has argued that since area of the plot over which floors have been built is less than 500 square meters, therefore provisions of the Act will not apply on them. Accordingly, this complaint is not maintainable.

Further, they have contended that the complainants cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. According to the respondents only the provisions of agreement shall be binding upon the parties to such an agreement. Further, under the agreement



there is a provision for making a reference to the arbitrator in the event of a dispute. For this reason, also the jurisdiction of this Authority cannot be invoked. Certain other technical objections have been raised by the respondents in their reply.

Learned counsel for the respondents further argued that the construction of this project is in full swing and the possession shall be offered shortly but no statement with respect to occupation certificate has been made. Admittedly, however the unit of the complainant has not yet been completed. It is also stated by the respondent that out of the sum of Rs. 30,74,833/- as alleged to be paid by the complainant, an amount of Rs. 27,47,981/- had actually been received by the respondent and a huge sum was allowed as timely payment discount.

4. The Authority has considered the rival contentions. It observes and orders as follows:

- (i) Admittedly the project is not complete. No application for grant of occupation certificate has been filed. Despite being an ongoing project, the respondents have failed to get the project registered as per Section 3 of the Act, the promoters of all ongoing projects are obliged to file an application for registration within a period of 3 months of coming into force of



the Act. The Act came into force on 01.05.2017. Admittedly, the respondents have not filed the application for registration of the project till now. Having not filed the application, it is important to observe, that even now respondents are not declaring the date for completion of the project. There is complete uncertainty about the date by which the project will be completed. Respondents have even failed to declare the details of current stage of construction.

(ii) Admittedly, the builder-buyer agreement was executed between the parties on 05.04.2013 and the date of offering possession was within 30 months including the grace period which comes to October, 2015. Now we are sitting in October, 2020 i.e. due date of possession lapsed 5 years ago. Even now the respondents have not made any statement with regard to the stage of construction of the project nor they have disclosed the date by which they will complete the project and apply for grant of occupation certificate. Information of this project could not be obtained even from the project section for the want of furnishing details of the project.



(iii) As per the provisions of Section 18 of the Act, if a promoter fails to complete a project or is unable to give possession of the apartment, plot or building, the allottee shall be entitled to either withdraw from the project or demand return of the amount paid by him along with interest at such rate as may be prescribed. This Authority has been constituted to protect the interest of the allottees as well as to safeguard the overall interest of the project which includes non-complainant allottees. For this reason, this Authority has been consistently taking a view that the projects which are under construction and are being completed with some delay, or which are likely to be completed within a foreseeable time frame as declared in the registration certificate, in all such cases the prayer of the allottees for refund will not be accepted. Instead the allottees are being asked to continue in the project, however for the period of delay they are being awarded delay interest as provided in Rule 15 of the HRERA Rules, 2017.

(iv) In this case, however, the promoters are not coming forward at all with any information in regard to the stage of completion of the project or the likely date within which the



project will be completed. The complainants have parted with a huge sum of nearly Rs. 28,00,000/- for the last 7-8 years. There is no certainty about handing over of possession to them. The allottees now cannot be made to wait endlessly for possession of their apartments. Their purpose of booking the apartment already stands frustrated. In such circumstances, provisions of Section 18 of the RERA Act must come to their rescue. Accordingly, they deserve to be refunded the entire amount paid by them along with interest @ provided for in Rule-15 of the RERA Rules, 2017.

(v) In regard to the compensation demanded by the allottees on various accounts, as ruled by Hon'ble Punjab & Haryana High Court in bunch of Civil Writ Petitions with writ petition No. 38144 of 2018 titled as Experion Developers Pvt. Ltd. vs State of Haryana and others as lead case, the same can be demanded only from the Adjudicating Officer. Therefore, complainant will be entitled to seek remedy of compensation from the Adjudicating Officer. if complainant so desires, he may make a statement before this Authority on the next date on the



basis of which a reference shall be made to the Adjudicating Officer for determining the quantum of compensation.

(vi) As regards certain technical objections raised by the respondent in regard to jurisdiction of this Authority, the same are summarily rejected. Admittedly this is an ongoing project. The provision of the Act clearly extends to all the ongoing projects. All mutual liabilities between the parties are being determined by this Authority in accordance with the provisions of the agreement. Admittedly in this case there is a clear breach of agreement by the respondents by inordinately delaying the completion of the project. In the event of breach of contract the law of the land is that the parties to the contract deserve to be restituted to their original position. Return of the amount in the event of breach of contract is basic right of the parties to the contract. Further, return of the amount along with the cost of the funds (interest) is also a basic principle regulating the relationships between the contracting parties.

(vii) Regarding the arguments of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floors being constructed on the plots



measuring 500 Sq. Mtrs., it is observed that the respondent is developing a larger colony over the several acres of land. One portion of the project is floors built on small size plots, 3 to 4 flats are being constructed on each plot and the same are being sold to different individuals. The registerability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers in respect of which development plans have been approved by the Town and Country Planning Department. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that since the plot does not exceeds 500 Sq. Mtrs, the jurisdiction of this Authority is untenable. Their responsibility to get the project registered has to be determined in reference to the larger licensed project and not in reference to individual plot located in the larger project.

(viii) Regarding the arguments of the respondents that complaints are not maintainable for the reason that the agreements in question were executed prior to coming into force of the RERA Act, the Authority had dealt with this matter in detail in Para No. 10 (ii) of the complaint No. 113 of 2018 of



Madhu Sareen Versus BPTP Ltd. This objection is also overruled for the reasons given therein.

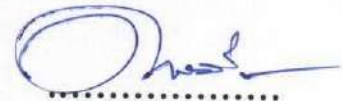
(ix) The argument of the respondent with respect to undertaking cannot be accepted as the complainant cannot waive off the rights granted to him by law.

5. In the light of the foregoing this Authority proposes to order refund of the entire amount paid by the complainant along with reasonable interest as provided under Rule 15 of the RERA Rules. The complainant shall submit his calculation of interest payable to him by the respondent for the period from the date of payment of the amounts up to 3.12.2020 i.e. the date when this order may be finalised @ SBI MCLR+ 2%. He is directed to send a copy of such calculations to the respondents to enable them to file their objections if any. The Authority will pass final orders in the matter along with the amounts to be returned to the complainants on the next date.

6. Adjourned to 3.12.2020.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]