



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2717 OF 2019

Indu Jain

....COMPLAINANTS

VERSUS

BPTP Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 29.03.2022

Hearing: 5th

Present: Shri Rajan Kumar, Counsel for the complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Counsels for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainant has sought relief of refund of the amount paid by him to respondents along with 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 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 original allottee Mr. S.C Jain booked an apartment in respondent's project named 'Park Arena', Faridabad, on 06.09.2010 by paying an amount of Rs. 3,59,625/-. An allotment letter for flat bearing no. C-301, 3rd floor, Tower C with 1382 sq.ft. area was issued by respondents in his favour on 19.11.2011. Builder Buyer Agreement (BBA) was executed on 28.09.2011. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which comes to 28.03.2015. It is alleged that original allottee had paid an amount of Rs. 39,49,761.5/- against basic sale price of Rs. 38,00,500 /-.

6. In support of the contention that complainants have paid an amount of Rs. 39,49,761.5/- the complainant has annexed receipts of payments issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged in his complaint.

7. Further facts of the case are that the respondent sent a letter dated 21.11.2013 (annexed as annexure C-21) to the complaint thereby changing the allotted unit of the original allottee from C-301, 3rd floor, Tower C to A-1004,

Tower A. Addendum to agreement was executed between original allottee Mr. S.C Jain and respondent on 11.06.2014 evidencing that the said change of unit was acceptable to the original allottee.

After the death of the original allottee Mr. S.C Jain on 02.09.2016, complainant Ms. Indu Jain stepped into the shoes of the allottee vide a name substitution letter dated 14.03.2018 issued by respondent in favour of complainant Ms. Indu Jain.

8. 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.

9. 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 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.

- ii) Govt. Authorities have failed to develop 24-meter road till date which has hampered and slowed down the project Park Arena.
- iii) Hon'ble Delhi High Court had issued an interim stay on 09.11.2012 and respondent was directed to put the money receivable in an escrow account till 2015. Complainants have defaulted in making payments.
- iv) Delay in completion of the project occasioned due to force majeure conditions. Completion of project has been affected due to reasons beyond control of the respondent. Civil structure of this project was erected on the basis of 650 planned units however later on due to withdrawal of 300 booking all the customers were relocated to 4 towers. Respondent is now focusing on the consolidation of 2 towers whose structure is complete. Respondent is ready and willing to offer alternate units in a ready to move in unit in another project.

10. 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.

11. Respondents on the other hand argues that they are in the process of consolidation in two towers. Further they are also ready to make an offer for allotment of an alternate unit in one of the other projects of the respondents.

12. 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. 39,49,761.5/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts of payments annexed in complaint issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.
- iii) Respondents admits that construction of the project has not been completed. Further, no specific time period has been committed for



its completion. The respondents further are ready to offer an alternate unit to the complainant.

- iv) 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.
- 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.
- vi) 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.

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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.

- vii) 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.

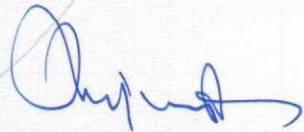
- viii) The complainants being entitled to refund of the entire amount paid by them; Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order.




The complainants against the admitted payment have attached receipts of Rs. 39,49,761.5/- in his complaint. Interest is being calculated on the amount of Rs. 39,49,761.5/- from the date of payment till the date of order.

- ix) 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. 38,38,758/-.
- x) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 39,49,761.5/- plus interest amount of Rs. 38,38,758/- 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.


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RAJAN GUPTA
(CHAIRMAN)


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DILBAG SINGH SIHAG
(MEMBER)