



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**COMPLAINT NO. 334 of 2021**

Anita Pandey

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 09.03.2022**

**Hearing-5<sup>th</sup>**

**Present: - Mr. Raghvendra, Counsel for the complainant through VC  
Mr. Hemant Saini, Counsel for the respondent**

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

In this case, complainant has sought relief of refund of the amount paid by her 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 his husband Sh. Surendra Nath Pandey had booked a unit in respondent's project 'Park Elite Floors' situated in Faridabad on



05.06.2009 by paying Rs 2.5 lakhs. Allotment letter for unit no. B-21-21-SF having area of 1203 sq ft was issued to him on 24.12.2009 and builder buyer agreement was executed between the parties on 27.08.2010. In terms of clause 4.1 of it, the possession was supposed to be delivered by 27.02.2013 (24+6 months). An amount of Rs 10,89,561.79/- has already been paid against basic sale price of Rs 22,37,003/-, however, neither any receipt nor statement of account has been placed on record in support of it (Paid amount is proved from the offer of possession attached with reply of respondent). Possession of the unit was offered to him on 12.05.2017 alongwith further demand of Rs 30,18,659/-. Said offer was not supported with occupation certificate. Complainant claimed that said offer of possession was not accepted due to unjustified demands and non-completion of unit. Feeling aggrieved, this complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit alongwith delay interest or refund of paid amount with interest.

6. Further it has been submitted that unfortunately complainant's husband (allotee of respondent) died in year 2021 and therefore being the legal heir of the allotee the present owner of the flat is the complainant and present complaint has been filed by her for relief of refund with interest.

7. 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) Completion of the project has been delayed on account of certain force majeure conditions.
- iv) Further it has been alleged that complainant has not approached this Authority with clean hands. He has not disclosed the fact that allotment of unit was initially terminated on 24.05.2013 due to fault of complainant as he had not made payment raised on account of casting of first floor slab. But, upon request of complainant, respondent restored the unit in name of complainant relying upon the assurance that future demands of the instalment will be paid timely. Thereafter, possession of unit after completing construction work and receipt of Occupation Certificate was offered to complainant on 12.05.2017 alongwith demand of Rs 30,18,659.82/. It is the complainant who has not come forward to take possession after making payment of due amount. Due to non-payment of



amount called alongwith offer of possession, allotment of unit was terminated on 12.07.2018.

8. Both parties have argued their case at length. Ld. counsel for complainant has clarified that his client is interested in having 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 of today unit is still not complete. He has further stated that site visit was made by his client after receiving offer of possession wherein it was found that construction of the said unit has not completed and it is not ready for possession. So, offer letter issued by respondent is merely a paper possession and holds no validity in eyes of law. Further it has been argued that allotment of unit has already been terminated by respondent but paid amount has not been refunded till date. Accordingly, he presses for refund of the amount paid by them along with interest as applicable under the Rules.

9. On the other hand, ld. counsel for respondent argued that it is complainant who is at fault by not accepting the possession of unit after making payment of due amount of Rs 30,18,659.82/-. As of today, unit stands terminated on 12.07.2018 and complainant has not prayed for quashing of termination letter in his petition. Moreover, after termination of allotment, no relation of allottee and promoter exists between the parties and as such this Authority does not have jurisdiction to deal with this complaint.



10. 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. 10,89,561.79/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the offer of possession dated 12.05.2017 issued by the respondents to the complainant. The said offer is annexed as Annexure R-10 with the written statement of respondent.
- iii) 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.
- iv) 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.

- v) Factual position reveals that initially allotment of unit was terminated by respondent on 24.05.2013 due to non-payment of amount raised on account of casting of first floor slab by the complainant. But on request of complainant/allottee, allotment of unit was restored in favour of complainant. In terms of BBA dated 27.08.2010 possession was supposed to be delivered upto 27.02.2013 but respondent after delay of 4 years had offered possession on 12.05.2017 alongwith demand of Rs 30,18,659/-. Said demand was not honored by complainant for the reason that unit was not complete. Due to non-payment of amount called alongwith offer of possession, allotment of unit was again terminated on 12.07.2018. Copy of said offer of possession and termination letter has been annexed as Annexure R-10 (colly) of reply. On perusal of termination letter it has been found that respondent has reserved his right to forfeit the earnest money which is defined in clause 'h.' of BBA as 25% of the basic sale price of the total super built up area of the floor. In furtherance of termination of allotment, the respondent was under obligation to return remaining amount after deduction of



earnest money which has not been done till date and as such there is no reasonable justification provided by respondent for withholding the amount of complainant from last 3 years.

- vi) Further it is observed that that complainant has not prayed for quashing of termination letter and as such it is not required because complainant is not seeking possession rather she is interested in refund of paid amount which she otherwise deserves after termination of allotment. Fact remains that no amount was refunded/returned by respondent after termination in year 2018 which implies that respondent has been illegally withholding the amount of complainant till date.
- vii) On the other side, complainant had booked unit in respondent's project under construction linked plan and had paid only Rs 10,89,561.79/- against basic sale price of Rs 22.37 lacs. Last payment amounting to Rs 2,78,811.24/- was made by complainants on 26.08.2010 which implies that complainant has not paid any amount from last 7 years. But respondent after completing the unit had still offered the possession of unit on 12.05.2017 with demand of Rs 30,18,659/-. Complainant has not honored said demand and has not provided any reasonable justification for not honoring said demand. Similarly, respondent has not also provided any reasonable



justification for withholding of amount of complainant from last 3 years after termination of allotment after deducting earnest money.

As per clause h of builder buyer agreement earnest money is 25 % of the Basic Sale Price. But 25% earnest money is too high and Authority would consider it unconscionable and unreasonable.

RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. Therefore, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant.

Since both parties are at fault and contributory to the frustrated contract, the Authority in order to maintain equity between the parties decides to dispose of this case with direction to respondent to refund the paid amount after deduction of earnest money to tune of 10% of Basic sale price. Basic sale price is Rs 22,37,003/- and 10% of it works out to 2,23,700/-.

- viii) In furtherance of aforementioned observations, the complainant being entitled to refund of the amount of Rs. 8,65,861.79/- (total paid amount Rs 10,89,561.79 – earnest money Rs 2,23,700), Authority orders the refund of the said amount alongwith interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from receipt of payments till date of this order. The complainant against the



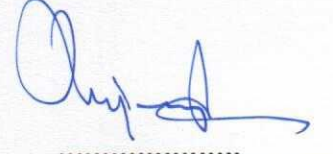
admitted payment has not attached any proof in complaint file. Since the complainant is entitled to refund of the amount w.e.f. the date of their payments, an e-mail dated 08.04.2022 was written to the complainant to submit the receipts of paid amount so as to verify the date with such payments were made to enable the Authority to calculate the payable interest thereon. The complainant has submitted the receipts of the amount of Rs. 8,38,062.79/-. However, total paid amount is Rs. 10,89,561.79/- as per offer of possession dated 12.05.2017. So, the amount of Rs 2,51,499/- of which the receipts have not been submitted, will be deemed to have paid on 12.05.2017 for the purpose of calculation of interest and after deduction of earnest money of Rs 2,23,700/- from said amount of Rs 2,51,499/-, interest is being calculated on amount of Rs 27,799/- w.ef. 12.05.2017. 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. 9,51,886/-.
- x) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 8,65,861.79/- plus interest amount of Rs.

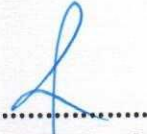


9,51,886/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

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



.....  
RAJAN GUPTA  
[CHAIRMAN]



.....  
DILBAG SINGH SIHAG  
[MEMBER]

