



Complaint no. 1122 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1122 OF 2019

1. James Mathew

2. Daisy James

....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: 15<sup>TH</sup>**

**Present:** - Mr. Jitendra Vashisht, Counsel for complainant (through video conferencing)  
Mr. Hemant Saini, Counsel for the respondent.

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

1. Today is 15<sup>th</sup> hearing of this case. This case was heard at length on 07.11.2019 and 01.12.2020 wherein it has been already concluded by the Authority that respondent has abandoned the project in which complainant had booked flat/apartment, therefore it is a fit case for refund of paid amount. However, several opportunities were granted to both parties to settle the matter by offering alternative unit located at ground floor in project-Park Elite Floors. Today, ld. counsel for complainant stated that alternative unit being offered by respondent is not acceptable to the complainant and there is no scope of

amicable settlement. Accordingly, this case is being proceeded with on its merits. Relevant part of orders dated 07.11.2019 and 01.12.2020 is reproduced below respectively:-

Order dated 07.11.2019

*“The complainant was allotted a plot in respondent’s project named “Park-81, Parklands, Faridabad and he had already paid a sum of Rs. 13,40,330/- till date against the basic sale price of Rs. 31,77,217/-. Although the possession in terms of the agreement entered between the parties was to be offered by March, 2015 but the respondent had not handed over the possession till date. The complainant was rather informed by the respondent on 01.07.2015 that he had abandoned the project and as a result, he offered another flat/apartment to the complainant but its possession too was not offered to him due to some issues between the parties regarding payment of discount money to the complainant. So, the complainant filed the present complaint for grant of possession or in the alternative for refund of already paid amount along with interest.*

2. *It is an in disputable fact that the respondent has abandoned the project in which complainant had booked flat/apartment. So, the Authority finds it to be a fit case for grant of refund. However, the complainant has shown willingness to accept an alternative offer provided that he is accommodated in either of the three projects of the respondent, namely, Park-81, Park Elite Floors and Park Elite Premium. Respondent is ready to offer alternative apartment to the complainant in the above said projects. So, the Authority directs the respondent to offer one apartment in each of the above referred projects before the next date in order to enable the complainant to decide whether or not the same is acceptable to him.*



3. Case is accordingly adjourned to 19.11.2019.”

Order dated 01.12.2020

1. Complainant herein is seeking possession of unit no. E-16 situated in respondent project-Park elite Floors, sector-85, Faridabad or in alternate refund of paid amount of Rs 13,40,330/-. The Authority on the last date of hearing directed the complainant to visit the office of respondent on 21.10.2020 for inspection of alternative unit (any unit located on ground floor in project-Park Elite Floors) which was supposed to be offered by the respondent as his counsel undertook to do the same.

2. It has been observed that this Authority vide its order dated 07.11.2019 has already concluded that the respondent has abandoned the project in which the complainant had booked flat/apartment. So, present case is fit for grant of refund. But on willingness of complainant, 3 - 4 opportunities have been already granted to parties to explore out the possibility of settlement in above stated terms but nothing concrete/ productive has been placed on record.

3. The fact remains that the respondent has not shown any alternative unit to complainant in compliance of previous order. However, now on joint request of counsels appearing on behalf both parties the case is adjourned to 21.01.2021 granting last opportunity to respondent to settle the matter by offering alternative unit located at ground floor in project-Park Elite Floors.”

2. Authority had not been hearing the matters in which relief of refund was sought/involved 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.

3. 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.
4. 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.

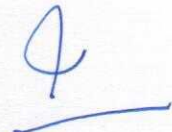
Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and 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."

5. Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.



6. In brief, complainant's case is that they were allotted unit no. CL-06-02-SF having area of 1402 sq ft in respondent's project-Park 81, situated at sector-81, Faridabad vide allotment letter dated 16.03.2010, following which builder buyer agreement dated 29.09.2011 was executed between the parties and in terms of clause 5.1 of it, possession was supposed to be delivered upto 29.03.2015 (36+6 months). An amount of Rs 13,40,330/- has already been paid against basic sale price of Rs 31,77,217/-. It has been alleged that respondent instead of handing over of possession within stipulated time had rather informed them vide letter dated 01.07.2015 that due to some third party issues on the licensed land, the project in which complainant's unit is located has been abandoned by the developer. However, on their request, respondent had given them option of alternate unit bearing no. E-16-22-GF having area of 303 sq yards in its project-Park Elite floors which was confirmed by them and consent letter for same was signed on 27.07.2015 which is annexed as Annexure C-6. For the said unit, a settlement deed was supposed to be signed between the parties but due to issue of timely payment discount of Rs 40,038/- it could not be executed despite repeated requests made by allottees. Thereafter, complainants had sent a legal notice dated 28.01.2019 for execution of alleged settlement deed and for possession of unit, but in vain. Feeling aggrieved present complaint has been filed by complainants seeking direction to the respondent to deliver possession of unit no. E-16-22-GF alongwith delay



interest or in alternate, refund of paid amount Rs 13,40,330/- alongwith interest.

7. In support of the contention that complainants have paid an amount of Rs. 13,40,330/- receipts of total paid amount are annexed as Annexure C-3 of the complaint.

2. Respondents in their reply have admitted allotment of booked unit in favour of the complainant. They have also admitted that said Floor Buyer Agreement had been executed. The respondents have not denied the payments made by the complainant. The respondents however submit 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 agreed that option of alternate units was given to complainants due to some alleged third party issues on the licensed land. Regarding signing of settlement deed for alternate unit no. E-16-22-GF it has been submitted that settlement deed was never returned by the complainants after their signature to respondent.



- iv) Respondent has referred to emails dated 18.01.2018 and 22.01.2018 which were sent to complainant for giving back the signed copy of settlement deed. Copy of said emails are placed on record as Annexure R-9.
- v) Additional discount in form of timely payment discount amounting to Rs 41,038.49/- was provided to complainants.

8. Both parties have argued their case at length. Complainants reiterates that project in which original unit was allotted has been abandoned by the respondent and alternative units being shown by respondent are not liked by them. So, they prayed to decided their case on merit.

9. Respondents on the other hand argues his client is still interested in out of court settlement by offering new unit if complainants are ready to pay balance amount. But complainants refused his proposal stating that they have already waited for more than 7 years.

10. 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. 13,40,333/- 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. Copies of receipts are annexed as Annexure C-3 with the complaint.
- iii) 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.

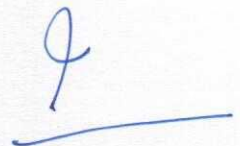
In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the 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.

- iv) Respondents admits that project in which complainant's original unit was allotted was abandoned by them in year 2015 due to some alleged third party dispute on the licensed land. Thereafter second unit bearing no. E-16 was booked for the complainants but a proper settlement deed for same could not get executed. Complainants had approached this Court for possession of unit no. E-16 or for refund of the paid amount, as per verbal submission of respondent unit no. E-16 is not available with respondent for allotment as it has already been allotted to some other person. Thereafter, numerous opportunities have been availed by both parties for out of Court settlement for allotment of an alternate unit. Out of the options given by respondent, complainant is not willing to accept any of the offered unit because of size or location



problems which in essence means no settlement could be arrived at between the parties even after availing 7-8 opportunities. Therefore, it is concluded that there is no identifiable property of which possession/allotment can be handed over to the complainants. In the circumstances, when respondent could not offer any acceptable alternate unit to complainant, nor any mutual settlement could be arrived at between parties, Authority is of view that this matter is a fit case for allowing refund of paid amount alongwith interest.


- v) Therefore, the complainants being entitled to refund of the entire amount of Rs. 13,40,330/- 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 submitted the receipts of the total paid amount. Accordingly, the calculations have been got made from the Accounts Department of the Authority.
- vi) 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. 14,41,628/-.
- vii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 13,40,330/- plus interest amount of Rs.

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14,41,628/- 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.

  
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RAJAN GUPTA  
[CHAIRMAN]

  
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DILBAG SINGH SIHAG  
[MEMBER]

