



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 979 OF 2018

Krishan Swaroop

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 17.03.2022

Hearing: 11th

Present: Shri Ashish Chaudhary, Ld. counsel for the complainant through VC.
Shri Hemant Saini and Shri Himanshu Monga, Ld. counsel for the
Respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that complainants have sought relief of refund of the amount paid by him to the respondents along with applicable interest. Initially Authority had not been hearing the matters in which relief of refund was sought on the ground that there was dispute over jurisdiction to deal with such matters which was subjudice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now position of law stands 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 also passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below for ready reference:

“ 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

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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. While initiating his pleadings Ld. counsel for the complainant submitted that case of the complainant is that he had booked an apartment in respondent's project named 'Park Arena', sector-80, Faridabad, on 14.09.2010 by paying an amount of Rs. 4,10,300/-. An allotment letter for Flat No. H-302, 3rd floor measuring 1622 sq. ft. was issued by the respondents in favour of complainant on 28.11.2010. Builder Buyer Agreement (BBA) was executed on 13.04.2011. In terms of clause 3.1 of the BBA, possession was also supposed to be delivered within 36+6 months, which comes to 13.10.2014. Complainants alleges that they have so far paid an amount of Rs. 44,33,637/- against basic sale price of Rs.44,60,500/-.

6. In support of his contention regarding payment of an amount of Rs. 44,03,366.15/- the complainant refers to page 141 of the complaint which is a statement of account dated 09.07.2018 issued by the respondents in which receipt of said amount has been duly acknowledged by the respondent from the complainant. For remaining amount of Rs. 30,270.85/- no proof of payment has been submitted by the complainant.

7. Complainant further alleges that project is still not complete. In fact, it is far from completion. Complainant has prayed for refund of the amount paid by him along with permissible interest on account of inordinate delay in completion of project and no hope of completion in near future.

8. Respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by the complainant. Averments made by the respondents in their reply are summarized 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 units in another project.

(v) Complainant has made defaults in making payments. Total sales consideration was Rs. 48,17,411/-

9. Both parties have argued their case at length. Complainant reiterates his pleading as recorded in para 7 of this order. 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 him along with interest as applicable under the Rules.

10. Respondents on the other hand argues that they are in the process of consolidation of all bookings in two towers. 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 forth by both sides while passing following orders: -

- 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) Complainant in his complaint has stated that an amount of Rs. 44,33,637/- has been paid by him. However as per receipts submitted by him, an amount of Rs. 44,03,366.15/- got verified. Payment of amount of Rs. 44,03,366.15/- is further adequately proved from the statement of accounts dated 09.07.2018 issued by the respondents to the complainant. Said statement is annexed at page 141 with the complaint.
- iii) Respondents admits that construction of the project has not been completed. Further, no specific time period has been committed for

its completion. Respondents further have offered an alternate unit to the complainant. Complainant has not accepted said offer.

- iv) Declared policy of this Authority in all such cases where projects are not complete nor likely to be completed within foreseeable future and extraordinary delay of more than 5 years or so has already been proved. Complainants would be entitled to relief of refund as he cannot be forced to wait for completion of project for endless period of time. Further, complainant cannot be forced to accept alternate unit against his 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 as 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, RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however has been 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 of merits.

vii) In the instant case, however, relief of refund has been sought. Refund in this case is admissible as 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) Therefore, Complainants being entitled to refund of the entire amount paid by them; Authority orders refund of the said amount



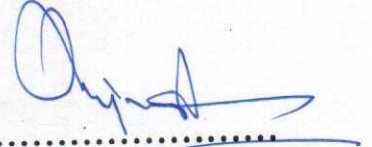
along with interest from the date of receipt of payment till date of this order. Complainants have attached receipts of Rs. 44,03,366.15/- against the admitted payment in his complaint. Since complainants are entitled to refund of the amount w.e.f. the date of their payments, an e-mail dated 08.04.2022 was written to the complainants to submit receipts of balance payments so as to verify the date with such payments and enable the Authority to calculate the payable interest thereon. Complainant has not submitted the receipts of the remaining amount. So, the interest is being calculated on an amount of Rs. 44,03,366.15/- for which receipts have been submitted by the complainant 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 (17.03.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.30% payable by the respondents to the complainants works out to Rs. 41,09,844/-.
- x) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 44,03,366.15/- plus interest amount of Rs. 41,09,844/- 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]

