

| PROCEEDINGS OF THE DAY | | 17 |
|-------------------------------|--------------------------------------------------------------------------------------------------------|-----------|
| Day and Date | Thursday and 13.01.2023 | |
| Complaint No. | CR/2539/2021 Case titled as Neha Kiran Aggarwal & Abhishek Kumar v/s Pareena Infrastructures Pvt. Ltd. | |
| Complainants | Neha Kiran Aggarwal & Abhishek Kumar | |
| Represented through | Shri Arpit Jain, Advocate | |
| Respondent | Pareena Infrastructures Pvt. Ltd. | |
| Respondent Represented | Shri Parshant Sheoran, Advocate | |
| Last date of hearing | Transferred from AO/6.10.2022 | |
| Proceeding Recorded by | Naresh Kumari and HR Mehta | |

Proceedings

The present complaint has been received on 30.06.2021 and the reply on behalf of respondent was received on 03.11.2021.

The file has been received on transfer from adjudicating officer in view of the judgment dated 11.11.2021 passed by the Apex Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. 2021-2022, RCR © 367*, wherein it was held that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of such complaint.

Succinct facts of the case as per complaint and annexures are as under:

| S.N. | Particulars | Details |
|------|----------------------------------|--------------------------------------------|
| 1. | Name and location of the project | "The Elite Residences", sector-99, Gurgaon |
| 2. | Nature of the project | Residential apartment |
| 3. | licensed area | 12.031 acres and 1.289 acres |



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हरियाणा भू-संपदा विनियामक प्राधिकरण | मुरुग्राम
CR/2539/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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| 4. | DTCP license no. | 70 of 2011 dated 22.07.2011 valid up to 21.07.2024 82 of 2012 dated 27.08.2012 valid up to 26.08.2023 |
| 5. | Name of licensee | Shivnandan Buildtech Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Registered vide no. 46 of 2019 issued on 25.09.2019 up to 31.07.2020 |
| 7. | Unit no. | A-508, 8 th floor, Tower A [page no. 119 of complaint] |
| 3. | Unit admeasuring area | 1865 sq. ft. of super area [page no. 119 of complaint] |
| 4. | Provisional allotment letter | 11.07.2013 [as per page no. 30 of complaint] |
| 5. | Date of builder buyer agreement | Not mentioned in complaint |
| 6. | Possession clause (Taken from the similar matter of same project) | <i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</i> Emphasis supplied.... |
| 7. | Date of start of construction | Not Provided |
| 8. | Due date of possession | Can't be ascertain |
| 9. | Total sale consideration | Rs. 1,21,36,090/- |
| 10. | Total amount paid by the complainant | Rs.32,19,826/- [as alleged by the complainant] |
| 11. | Occupation certificate | Not obtained |
| 12. | Demand Letters | 12.10.2015, 16.09.2016 |
| 13. | Reminder Letters | 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 17.12.2014, 09.01.2015, 09.03.2015 and 14.07.2020 (final notice) |
| 14. | Cancellation of booking letter | 07.09.2020 (page 138 of the complaint) |

The complainant has sought following relief:

i. Direct the respondent to refund the entire amount paid by the



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complainant along with prescribed rate of interest from the date of allotment i.e. 08.10.2013 till its actual realization.

The complainant submitted that he booked a flat in the project named as "The Elite Residences". On 11.07.2013 an allotment letter was issued. However, no BBA was executed between the parties.

It is pertinent to mention here that respondent issued various reminders on 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 17.12.2014, 09.01.2015, 09.03.2015 respectively. Thereafter, issued final notice on 14.07.2020. After all the reminders and final notice, the respondent cancelled the allotted unit of the complainant vide letter dated 07.09.2020.

Now the question before the authority is whether this cancellation is valid?

On consideration of documents available on record and submission by both the parties, the authority is of the view that on the basis of provisions of allotment the complainant had paid Rs. 32,19,826/- against the total sale consideration of Rs. 1,21,36,090. The respondent/builder sent number of demand letters/reminders on 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 17.12.2014, 09.01.2015 and 09.03.2015 respectively and asking the allottee to make payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 07.09.2020 in view of the terms and conditions of the agreement. No doubt the complainant did not pay the amount due despite various reminders but the respondent while cancelling the unit was under an obligation to forfeit out of the amount paid by them i.e., the earnest money, refund the balance amount deposited by allottee without any interest in the manner prescribed in clause 2&4 of the application form. According to clause 4, 15% of the sale price would be considered as earnest money and the same would be forfeited in accordingly in the event of default by the allottee.

The complainants have paid Rs. 32,19,826/- to the respondent/builder and the cancellation of the allotted unit was made on 07.09.2020 by retaining the amount beyond 10% which is not legal in view of number of pronouncements of the Hon'ble Apex court.

Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the



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judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."


Keeping in view the aforesaid legal provisions, the respondent is directed to forfeit earnest money which shall not exceed the 10% of the basic sale price of the said unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order.

- ii. To pay the compensation for causing mental agony, harassment.
- iii. To pay the legal cost.

The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/ rights which the allottee can claim. For claiming compensation under sections 12,14,18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

The complaint stands disposed of. Detailed order will follow. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member
13.01.2023