PROCEEDINGS OF THE DAY	35
Day and Date	Wednesday and 14.09.2022
Complaint No.	CR/5544/2019 Case titled as Raj Kumar Chawla & Anr. V/s Parsvnath Hessa Developers Pvt. Ltd.
Complainants	Raj Kumar Chawla & Anr.
Represented through	Shri Nitin Yadav Advocate
Respondent	Parsvnath Hessa Developers Pvt. Ltd.
Respondent Represented	Shri Dhruv Gupta Advocate
Last date of hearing	01.08.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

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, (1) 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.

The present complaint has been received on 05.03.2018 and the reply of the same was filed on 16.05.2018 before the authority.

Succinct facts of the case are as under:

S.N.	Particulars	Details

1.	Name and location of the project	"Parsvnath Exotica", sector-53, Gurgaon
2.	Nature of the project	Group Housing
3.	DTCP license no.	69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre) 52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre) 191 of 2007 dated 20.06.2007 valid up to 19.06.2024 (area 53.54 acre) 1079-1080 of 2006 dated 28.08.2006 valid up to 01.09.2019 (area 4.99 acre)
4.	RERA Registered/ not registered	**Not registered**
5.	Unit no.	403, 4th floor, Tower B-5 [page no. 51 of complaint]
6.	Unit admeasuring area	3390 sq. ft. of super area [page no. 51 of complaint]
7.	Date of booking	13.07.2012 (as per booking amount receipt, page 72 of complaint)
8.	Allotment letter	N/A
9.	Date of builder buyer agreement	03.09.2012 [page 49 of complaint]
10.	Possession clause	***10 (a) Construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months***

		from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approval of all concerned authorities including the Fire Service Deptt.,……"
11.	Date of start of construction	Not Provided
12.	Due date of possession	13.01.2015 (Calculated from the date of booking of the flat) ***Note: Date of commencement of construction of the particular block is not given in file. So, due date is calculated from the date of booking of flat as per agreement)**
13.	Total sale consideration	Rs.3,47,00,000/- (BSP Rs. 3,39,00,000/- + 2 covered car parking charges Rs. 8,00,000/-) [page 11 of complaint]
14.	Total amount paid by the complainant	Rs 1,56,26,537/- [as per customer ledger page 66 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of Possession (Fit-outs)	23.03.2018 (Page 52 of complaint)

The complainants have sought following relief:

1. Direct the respondent to refund the amount of Rs 1,55,26,537/- with interest @ 24% p.a. from the date of payment till date of refund.

The complainants submitted that they booked an apartment in the project named as "Parsvnath Exotica". On 13.07.2013, a receipt of Rs. 10,00,000/- towards the booking was issued to complainants by the respondent. A buyer's agreement was executed between the parties on 03.09.2012. As per clause 10(a) of the said agreement the respondent was under an obligation to complete the construction of the project and handover the physical possession of the unit within a period of 24 months from the date of booking of the unit. The date of booking can be taken as 13.07.2012. Thus, the possession was to be handed over by the respondent on 03.07.2014 and after inclusion of grace period of 6 months the same date comes out to be 03.01.2015. The complainants have paid a total sum of Rs. 1,55,26,537/- towards the unit in question. The complainants in view of the delay caused by the respondent in handing over physical possession of the unit filed a complaint bearing no. 27 of 2018 for seeking refund before the authority. The authority vide order dated 13.09.2018 rejected the prayer for refund and rather granted delayed interest to the complainants. The complainants herein preferred an appeal bearing no. 104 of 2019 before the Haryana Real Estate Appellate Tribunal, Chandigarh against the order passed by the authority. The appellate tribunal vide appeal bearing no. 06 of 2018 case titled as ***Sameer Mahawar Vs MG Housing*** decided on 02.05.2019 allowed the appeal of the appellants and accordingly set aside the order passed by the authority and further directed the complainants to appear before adjudicating officer.

It is pertinent to mention here that respondent issued various reminders on 03.01.2015, 11.02.2015, 02.03.2015, 01.04.2015, 16.07.2016, 04.08.2016, 16.08.2016, 04.02.2017, 10.03.2017, 21.04.2017, 27.07.2017 respectively. However, the unit was never canceled in fact the respondent issued an offer for fit outs on 23.03.2018.

Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to

complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is **13.01.2015** and there is delay of 3 years on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

> *"" .... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

> 25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer,*

the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return the amount received by him i.e., **Rs 1,55,26,537/-** with interest at the rate of 8% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

2. Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards cost of litigation.

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.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

Sanjeev Kumar Arora
Member

Ashok Sangwan
Member

Dr. KK Khandelwal
Chairman
14.09.2022