HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1212 OF 2020

Sanjeev Khokhar ....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd. ....RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 30.03.2022

Hearing: 5th

Present: - Mr. Vishal Madaan, learned counsel for the complainant

Ms. Rupali S. Verma, learned counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Case was heard at length on 03.03.2022 and a detailed order was passed stating therein view of the Authority that relief of refund as

sought by the complainant deserves to be granted. Said order is reproduced below:

> "1. While initiating his pleadings, learned counsel for the complainant submitted that complainant had booked a villa bearing no. B-152 admeasuring 2250 sq. ft. in the year 2008 in respondent's project named 'Parsvnath City, Dharuhera, Rewari' and had paid a sum of ₹50,16,986/- to the respondent till 22.08.2008 against basic sale price of ₹58,43,512.50/-. As per villa buyer agreement executed between the parties on 04.08.2008, respondent was supposed to hand over possession of the booked villa by 04.08.2010 but respondent failed to do so.
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> 2. Further, complainant had submitted in the written complaint that respondent has stopped construction for last ten years or so and the structure already raised is also in dilapidated condition. There is no hope for completion of the project even after lapse of several years. Complainant has also given complaint dated 01.11.2016 before The Economic Offence Wing, New Delhi against respondent promoter in which FIR against the builder has been lodged. Therefore, complainant intends to withdraw from the project. Hence present complaint has been filed seeking refund of the amount deposited with the respondent along with interest and cost of legal expenses.
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> 3. On the other hand, respondent in his reply has admitted the payment made by the complainant. It has been contended that licence no. 129 to 132 and 134 to 138 of 2007 were granted to respondent for project in question and respondent company has applied for renewal of said licences which are pending with competent authority. Respondent has contended that there is no intentional delay on his part and project has been delayed for the reasons beyond his control. It has further been contended that superstructure and brick work of ground floor of complainant's unit has already been completed and simultaneously pillar of first floor has also been casted. Respondent company intends to complete the finishing work of the unit shortly and hand over the final possession to the complainant. Respondent is however willing to offer an alternate property to complainants subject to mutual negotiations.
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> 4. This Authority had kept sine die all refund cases for more than a year or so on the account of disputes regarding

jurisdiction of Authority to deal with such cases. Now law on the question has been settled by Hon'ble High Court and by Hon'ble Supreme Court as well. Besides, same has been endorsed by Hon'ble High Court again vide its orders dated 13.01.2022. This Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority 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.
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> 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.
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> 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
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> 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. Since, the basic issue of jurisdiction stands settled, therefore, Authority has started hearing those complaints relating to refund which were kept sine die.

6. In the captioned complaint, booking was made in the year 2008 and possession of the villa has not been offered to the complainant till date, therefore complainant is interested in withdrawal from the project and wants refund of the amount deposited by him. Besides, respondent is interested to offer alternate unit in his other projects which clearly indicates that respondent is not in a position to complete the project in question and hand over the possession of the villa to the complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority tentatively proposes to grant relief of refund to the complainant along with permissible interest as per Rule 15 of HRERA Rules, 2017. Since this

> refund matter has been taken up for the first time after adjournments sine-die, matter will be disposed of on next date after affording another opportunity to the respondents to argue their case if they so desire.
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> 7. Case is adjourned to **30.03.2022.**"

2. The matters were adjourned giving opportunity to respondent to put forward their arguments. A common application dated 10.03.2020 has been received on behalf of the respondent through Ms. Rupali Verma, learned counsel in which the complaint case nos. titled are: 1010 of 2019, 365 of 2020, 649 of 2020, 654 of 2020, 1087 of 2020, 700 of 2020, 1148 of 2020, 200 of 2020, 201 of 2020, 202 of 2020, 203 of 2020, 204 of 2020, 205 of 2020, 206 of 2020, 207 of 2020, 191 of 2020, 241 of 2020, 455 of 2020, 308 of 2020, 911 of 2020, 912 of 2020, 537 of 2018 and 1212 of 2020 wherein it has been argued that the apartment of the complainant is located in an un-registered project of the respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects. Learned counsel while arguing on the application, drew attention of the Authority towards Para-54 of the judgement of Hon'ble Supreme Court as reproduced below:-

> "54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore,

vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016." (emphasis supplied).

3. Learned counsel also drew attention of the Authority towards similar view taken by learned RERA Punjab that un-registered projects do not fall within jurisdiction and purview of the Authority.

4. While questioning contention of learned counsel for respondent, Authority had observed that the orders of Hon'ble Supreme Court have not been understood by respondent in correct perspective. Authority observed that the entire orders especially Paras 32, 33, 34, 40, 53 and 87 should be read with Para 54. Said Paras are reproduced below for reference:

"32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25th March, 2016.

33. Under Chapter II of the Act 2016, registration of real estate projects became mandatory and to make the statute applicable and to take its place under subSection (1) of Section 3, it was

made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by subsection (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.

34. The term "ongoing project" has not been so defined under the Act while the expression "real estate project" is defined under Section 2(zn) of the Act which reads as under: "2(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

"40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, exfacie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes

projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection."

"87. It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the single member of the authority only for hearing complaints under Section 31 of the Act. To meet out the exigency, the authority in its meeting held on 14 th August 2018, had earlier decided to delegate the hearing of complaints to the benches comprising of two members each but later looking into the volume of complaints which were filed by the home buyers which rose to about 36,826 complaints, the authority in its later meeting held on 5th December, 2018 empowered the single member to hear the complaints relating to refund of the amount filed under Section 31 of the Act."

5. To answer the questions posed by the learned counsel for the respondents, reference is also drawn to Section-79 and Section-89 of the RERA Act as reproduced below:

"**Section 79: Bar of jurisdiction** - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any

matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

"**Section 89: Act to have overriding effect** - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

6. Conjoint reading of Paras referred to above and Sections 79 and 89 of the RERA Act leads to unmistakable conclusion that the provision of this Act will have over riding effect notwithstanding anything inconsistent therewith contained in any other law. Further after coming into force of RERA Act, exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is empowered under this Act to determine shall be that of the RERA only and not of any other court.

7. Question that arises herein is that numerous complaints are filed before this Authority by allottees who have booked/purchased apartments in all kinds of projects including compleed projects, under construction projects, registered projects as well as unregistered projects. An unregistered project can be a completed project which has not received Occupation Certificate or an ongoing project which has not been registered by the promoter in gross violation of Section 3 of the RERA Act. Further, allottees of incomplete or completed, as well as registered and unregistered projects have variety of grievances against the promoters. Such grievances includes

the grievances like excess money demanded by promoters over and above agreed sale consideration; common facilities not being provided; deficiencies in construction due to which the apartments are inhabitable; change of plans made at the level of the promoters thus adversely affecting rights of the allottees; apartments having been delivered after delay of 5-10 years and promoters refusing to pay to the allottees interest/compensation admissible as per law; even though possession is handed over but conveyance deeds not being executed, etc.etc. These are but only a few illustrations of the grievances of the allottees against the promoters. Such grievances relate to registered as well as unregistered projects, and in fact even relates to completed projects.

8. A considered view of this Authority is that two distinct kinds of jurisdictions have been conferred upon the Authority by the RERA Act,2016. The first jurisdiction is in relation to registration of the projects. Section 3 of the Act mandates that all new projects shall be registered with the Authority before an advertisement for booking of plots/apartments is issued. Further, all those projects which are ongoing and have not received a completion certificate from the competent authorities shall be registered within a period of 3 months. Section 4 of the Act provides for a long list of disclosures to be made by promoters for getting the project registered. The purpose and intention of the law in this regard is to bring about transparency in the functioning of real estate promoters. They are bound to disclose full

details of ownership of the land of the project; details regarding development plans got approved from competent authorities; the timelines within which project is proposed to be completed; specifications of the apartments to be constructed, etc. Further, the process of registration mandates that 70% of money collected from allottees shall be spent only on development of the project. In the event of violation of provisions of law and stipulations made by Authority, registration of the project can be cancelled. A consequence of cancellation of registration is that alternate mode for getting the project completed can be explored, including by handing it over to association of allottees.

9. The process of registration, therefore, is meant to bring in transparency, and to bring full facts about the project as well as its promoters in public domain to enable prospective allottees to make informed decision of making investment of their hard earned money for their future homes. Sections 3 and 4 read with certain provisions relating to respective obligations of promoters and allottees are meant to provide level playing field for both sides.

10. In the above context it is relevant here to briefly discuss the concept of completion/occupation certificate. What is a completed project or a project fit to be granted occupation certificate has not been defined anywhere in the RERA Act, 2016. These concepts have been somewhat defined in relevant laws of different states of the country. The completion

certificates and occupation certificates are granted by the State Government authorities as per their own laws and policies. Grant of completion/occupation certificate by State Government authorities only signifies that relevant project has fulfilled certain requirements stipulated by certain laws enacted by State Government. It does not signify that the promoter has fulfilled its obligations towards allottees in terms of builder buyer agreements.

11. The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations then provided for in the relevant laws regulating the subjects of grant of completion/occupation certificates. It is reiterated that grant of completion and occupation certificate only mean that certain parameters of laying infrastructure facilities under set laws of the State Government have been complied with by the promoters. They do not in any manner certify that the promoters have fulfilled their obligation towards allottees. The obligation towards the allottees as enlisted in the builder-buyer agreements relate to numerous additional subjects like the consideration to be exchanged; specifications of the apartments; timeline within which the project would be completed; obligation to execute conveyance deeds; obligation to hand over the completed project to the association of allottees; laying of infrastructure facilities and handing them over to the association of allottees in the manner prescribed etc.etc. The promoters of completed as well as unregistered

projects could be defaulting in respect of such obligations. If a promoter illegally and unjustifiably demands additional amount over and above the agreed sales consideration, dispute will have to be settled by some court of law. After coming into force of this Act and in view of the provisions of Section 79 and 89, RERA and Consumer Court only will have jurisdiction to deal with such disputes.

12. Authority is of the considered view that respondents are completely misreading provisions of the Act and Para-54 of the judgement of the Hon'ble Supreme Court passed in Newtech Promoters' matter. The question as to which forum will redress the grievances of the kinds listed above of allottees pertaining to ongoing or completed or registered or unregistered projects was not before the Hon'ble Supreme Court in Newtech Matter. In considered view of this Authority operative part in para-54 of the judgement of the Hon'ble Supreme Court is that "....therefore, vested or accrued rights, if any, in no manner are affected". Such vested or accrued rights could pertain to new projects, ongoing projects, completed projects, registered projects or unregistered projects. In considered view of this Authority, genuine grievances of the allottees in any kind of project have to be redressed. Therefore, there has to be a forum for this purpose. Such forum is RERA in terms of provisions of the Act, especially Section 79 and Section 89 of the Act. In this regard relevant portion of the judgment dated 09.08.2019 of Hon'ble Supreme Court passed in Writ Petition (Civil) no. 43

of 2019 titled as Pioneer Urban land & Infrastructure Ltd. & Anr. versus Union of India & Ors is reproduced below:

> "86(ii). The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

13. Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant

to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.

16. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of the complainants. The view already expressed by Authority on 03.03.2022 stands confirmed. Hence, Authority directs respondent to refund the complainants the amounts paid by them along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.30% (7.30% + 2.00%) from the date amounts were paid till today. Accordingly, total

amount along with interest calculated at the rate 9.30% works out to ₹1,13,80,835/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 30.03.2022	**TOTAL AMOUNT PAYABLE TO COMPLAINANT**
1.	₹5,84,775/-	30.06.2008	₹7,48,265/-	₹13,33,040/-
2.	₹40,00,000/-	18.08.2008	₹50,68,373/-	₹90,68,373/-
3.	₹4,32,211/-	22.08.2008	₹5,47,211/-	₹9,79,422/-
Total	**₹50,16,986/-**		**₹63,63,849/-**	**₹1,13,80,835/-**

Respondent is directed to make the entire payment of ₹1,13,80,835/- to the complainant within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 .

17. Complaint is, accordingly, **disposed of.** File be consigned to the record room and order be uploaded on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]