



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1341 OF 2022

Raj Kumar Balain

.....COMPLAINANT

Versus

1.M/s Parker Buildes Pvt. Ltd

2. Ms Javier Management Pvt. Ltd

.....RESPONDENTS

2. COMPLAINT NO. 1342 OF 2022

Prem Lata

.....COMPLAINANT

Versus

1.M/s Parker Buildes Pvt. Ltd

2. Ms Javier Management Pvt. Ltd

.....RESPONDENTS

3. COMPLAINT NO. 1343 OF 2022

Raj Kumar Balain

.....COMPLAINANT

Versus

1.M/s Parker Buildes Pvt. Ltd

2. Ms Javier Management Pvt. Ltd

.....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Hearing: 7th

Date of Hearing: 05.10.2023

Present: - Mr. Kamal Dahiya, Id counsel for the complainants through VC.

Mr. Gaurav Gupta, Id counsel for the respondents.

ORDER (NADIM AKHTAR- MEMBER)

1. Id counsel for the complainants referred to para 4 of last order dated 12.09.2023, wherein it is mentioned that deficiencies as mentioned in point (i), (ii) and (iv) have been rectified is not been correctly recorded in the said order. These deficiencies have still not been rectified and thus para 4 of the order dated 12.09.2023 need rectification w. r. t this point only, rest of the averments are same as per last order. Complainant sought relief of possession along with delay interest.
2. Id counsel for respondent stated that complainant was offered possession for fit-out purposes vide letter dated 01/08/2015. Complainant was also served with a letter dated 01/10/2015 wherein the fact that project "Parker Suites" is complete except some minor finishing works, repair, cleaning and activation of services etc. The complainant was asked to deposit payment under several heads but the complainant did not come forward for depositing payments and now, complainant raised issues as to deficiency in the unit which are unsustainable and illegal on the part of



the complainant. Further, counsel for respondent submitted his submissions as follows:

1. Regarding Maintainability of suit:

By referring to para 4 of reply counsel for respondent stated that respondent's project "Parker Suites" received Occupation Certificate on 12/08/2016 and Completion Certificate on 17/07/2017, whereas the Real Estate (Regulation and Development) Act became applicable in the State of Haryana only upon the publication of a Notification in Gazette of Haryana on 28/07/2017. As such the project of the respondent is not an On-going project under the terms of the Act, thus the project is outside the purview of the Act. Therefore, the Complaint of the complainant deserves to be dismissed on this ground alone. He also submitted that when the respondent commenced construction of the said project; when the project received occupation certificate and completion certificate from the competent Authority, the Real Estate (Regulation and Development) Act was not in existence and as such the provisions of the Act are not applicable upon the "Parker Suites" project of the respondent. It is humbly submitted that the project "Parker Suites" do not fall under the ambit of RERA as stated above, therefore, Hon'ble Authority have no jurisdiction over the "Parker Suites" project of the respondent.

Further by referring to judgement of Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.", wherein the Hon'ble Supreme Court of India vide its order dated 11/11/2021 while adjudicating upon the issue "Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on anvil of the Constitution of India", the Hon'ble Supreme Court in para No. 52 of the said order has observed



that “ *the Parliament has intended to bring within the fold of the Statute the ongoing real estate projects in its wide amplitude and also observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued, within fold of the Act.* ”

The Hon'ble Supreme Court of India in para no. 54 of the said order further observed that “*From the scheme of the Act 2016, its application is retroactive in character and it safely be observed that the projects already completed or to which 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*”.

That means from the above well settled law of Hon'ble Supreme Court of India and from the intention of the Legislature as discussed above, this Hon'ble Authority doesn't exercise any jurisdiction over the projects which have already been completed or to which Completion Certificates have been issued by the Competent Authority in this regard. To conclude that project of the respondent was not an On-going project under the terms of the Act, thus the project is outside the purview of the Act. Therefore, the complaint of the complainant deserves to be dismissed on this ground alone.

2. On merits:

In support of the fact that all the demands raised by the answering respondent are justified and reasonable, counsel for respondent relied upon the order dated **18/08/2021** of Hon'ble Authority in **complaint No. 2282 of 2019**, wherein this Hon'ble Authority, after proper



justification given by the respondent towards the charges demanded by the company, has observed and held as follows:

a) *Enhanced EDC/ IDC amount-* This Hon'ble Authority observed and directed to the complainant that complainant is liable to pay the said amount of enhanced the EDC of Rs.44,175/- to the respondent without prejudice their rights to recover the same from the concerned department as per the final decision taken by the Hon'ble High Court of Punjab and Haryana.

b) *EEC-* The complainant is liable to pay in addition to total price of the purchased unit, all such charges as are leviable by any Authority in respect of the purchased unit. EEC Charges of Rs.55,800/- are stated to have been paid to the electricity department for obtaining electricity connection. So the complainant is liable to pay said charges of Rs.55,800/-.

c) *Power Back up charges-* Upon observing the fact that power back up to the tune of 3 KW is being provided to each unit of the project @ Rs. 15,000/- per KW and expenses incurred on purchase of DG set, cable, maintenance staff, maintenance cost and running cost for providing of power back up to the extent were calculated and found to be around Rs.45,000/-. At last, the complainant was directed being liable to pay the same towards the expenses to be incurred on power backup. The Hon'ble Authority also added that amount so being charged will be exclusive of the amount which the complainant will be liable to pay on the basis of consumption of electricity supplied to the unit through DG Sets.

d) *Fire Fighting, Sinking Fund, Holding Charges and Labour Cess-* The Hon'ble Authority upon perusal of the terms of the Builder Buyer Agreement observed that both the parties agreed to pay charges on pro-rata basis for the purpose of preventive measures. The



complainant was therefore held liable to pay the above said charges as well.

e) Delay Interest- So far as the issue of delay interest on account of delay in handing over of possession is concerned, the possession of the unit was to be delivered within a period of 42 months from the date of agreement i.e. 08/07/2011, thus as per the terms of the agreement, the deemed date of possession comes to 08/01/2015. As the valid offer of possession was made on 27/08/2016 after obtaining Occupation Certificate from the concerned Department, it was stated before the Hon'ble Authority by the respondent that delay if any caused is only for the period from and between 08/01/2015 to 27/08/2016 and not thereafter. Accordingly, this Hon'ble Authority while observing upon the same, also came to the conclusion that the delay caused in offering possession is only of the above mentioned period and not thereafter.

By referring to para 8 of aforesaid order, Hon'ble Authority directed complainant to make payment of amounts which have been held valid by this Authority. Thereafter complainant approached respondent for settlement and same can be ascertained by order dated 09.02.2022. Later on vide order dated 30.03.2022, complaint was dismissed for non-prosecution.

3. **Deficiencies pointed by complainant:** By referring to order dated 26.02.2020, respondent stated that directions were issued to respondent for rectifying the deficiencies. It is observed that vide order dated 02.12.2020, deficiencies w.r.t point 2 and 4, i.e., hanging wire and iron pipe rectified by the respondent. Further, w.r.t deficiency of water supply respondent referred to para 5 of order dated 02.12.2020 wherein, Authority decides that availability of water points can't be



claimed as rights by the complainant in commercial unit unless such facility is specifically provided in buyers agreement. As there is no specific clause in the agreement, complainant can't claim it from the respondent.

4. In regard to the averment of the complainant that respondent did not provide internal floor with tiles of 2X2 measurement of reputed company despite receiving Rs.1,90,647/- under the head of "Flooring", counsel for respondent submitted that the aforesaid amount of Rs. 1,90,647/- was raised from all the allottees/ unit holders as per the stage of construction of floor wise common area etc. in the project and not for providing flooring of any specification inside the shop/unit, as payments were to be made in accordance with construction linked payment plan by the complainant. It is nowhere mentioned in the agreement that the respondent was required to lay tiles of 2X2 measurement on the floor of the unit booked by the complainant. Moreover, the complainant is demanding the said flooring in parity with the studio apartment/ suite booked by the complainant in the same project of which possession of the same is with the complainant and conveyance deed is registered in his name. Respondent has provided smooth cemented floors (as per routine business practice of the relevant market) in the shop booked by the complainant as well as in all the shops in the project so that the allottee can do interiors of shop as per his choice.
5. **Issue that occupation certificate is not valid:** As per law application for grant of occupation certificate is made before Town and Country Planning Department, Haryana (T&CP). T&CP Department official inspect the site and after their satisfaction and comparing the services as per approved service estimates, issue completion certificate.



Completion certificate issued on 17.07.2017 means all provisions are complied by the respondent only than T&CP Department issued Occupation and Completion Certificate. Director, Town & Country Planning, Haryana (DTCP) is the competent authority to grant occupation/ completion certificate. Further, provision 4.12 of Haryana Building Code, 2017 relating to revocation of occupation certificate is reproduced below:

4.12. Revocation of Occupation certificate: In case, after the issuance of occupation certificate, if found at any stage that the building is used for some other purpose against the permission or make any addition/ alteration in the building then, after affording personal hearing to the owner, the Competent Authority may pass orders for revocation of occupation permission and the same shall be restored only after removal of violations.

If there is any discrepancy, DTCP can revoke the occupation certificate. Thus, instead of approaching the Authority, the right forum to file grievance w.r.t occupation certificate and completion certificate, the complainant should have approached DTCP.

6. Further, the allegation of complainant that respondent is not entitled to maintenance charges as respondent, i.e., Parker Builders Pvt. Ltd neither made any averments w.r.t the maintenance of unit by the respondent no. 2, i.e., M/s Javier Management Services Pvt. Ltd in the Builder Buyer Agreement nor maintenance agreement has been executed between complainant and respondent no. 2. To this, Ld counsel for respondent by referring to clause 23 of Builder Buyer Agreement stated that complainant has specifically agreed in Builder Buyer Agreement that respondent has right to appoint a maintenance agency. Also agreed that buyer shall be bound to sign the maintenance agreement with such maintenance agency before taking possession of



unit along with security deposit of two months. As such signing of maintenance agreement was mandatory requirement under the agreement at the time of taking possession and there was no discretion of any allottee to sign or not to sign maintenance agreement. Thus, respondent is well within its right to claim maintenance charges and complainant cannot object to this.

7. Complainant is not entitled to seek relief from this Hon'ble Authority qua possession as the booking of the complainant has already been cancelled vide letter dated 29/10/2020 on account of non-payment of outstanding dues for a long period of time, due to the fact that the complainant did not come forward to take possession of the unit booked by him, despite the fact that Occupation Certificate and Completion Certificate have been issued in respect of the project, valid offer of possession was made vide letter dated 27/08/2016 and further the respondent has time and again reminded the complainant to take the possession and execute conveyance deed of the unit but the complainant has slept over his rights for a considerable period of time and now at this stage, complainant is not entitled to seek any relief. Further by referring to para 5 of order dated 18.03.2021 that *"In view of the above mentioned reasons, respondents is directed to submit a revised statement of receivable-payable amounts within 10 days and forward a copy to the complainants. The complainant is directed to make the payment of amounts against the components which have been held by this Authority as justified before next date of hearing, otherwise the cancellation dated 29/10/2020 will be allowed on next date of hearing."* Meaning thereby, the Authority was also of the view that the Cancellation letter dated 29/10/2020 is issued under reasonable circumstances and the demands of the answering respondent are also justified. Thereafter, complainant approached respondent for



settlement but settlements failed and later on earlier complaints filed by the respondent got dismissed for non-prosecution.

3. Ld counsel for the complainant stated that due to technical defects, he is not able to hear the arguments properly. However he referred to judgment of Hon'ble Punjab and Haryana High Court in CWP No. 7852 of 2022 which gives the jurisdiction to this Authority to entertain the complaint and also request for short date to rebut the arguments of respondent. To rebut the argument of complainant regarding jurisdiction, ld counsel for respondent stated that the said judgment is not applicable in his case because in aforesaid judgment petitioner had already applied /obtained occupation certificate whereas completion certificate is to be obtained. Where HC observes that simply obtaining of an occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017, the petitioner would not be considered to be outside the purview of the jurisdiction of the respondent Authority. Whereas in present case respondent has already obtained completion certificate and occupation certificate before RERA Act come into existence and therefore, the complainant is not entitled to seek any relief by placing reliance upon this judgment as it facts varies from case to case.
4. Arguments part heard and request of complainant is accepted. Further, both the parties are directed to file written submissions in the matter. Case is adjourned to **30.11.2023**.


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]