



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: 8th

Date of Hearing: 30.11.2023

Present: - Mr. Kamal Dahiya, Id counsel for the complainants .
Mr. Gaurav Gupta, Id counsel for the respondents.

ORDER (NADIM AKHTAR- MEMBER)

1. Ld counsel for complainants stated that respondent has not deposited the cost imposed vide order dated 18.05.2023. Further, by referring to para 2 of order dated 05.10.2023, Ld counsel for complainants stated that it is an admitted fact that in year 2015 respondent had offered possession for fit outs only and had not offered valid offer of possession till date. Also, valid offer of possession accompanies statement of account reflecting delay interest, compensation for delay caused to the complainants as well as details of grant of occupation certificate and copy of occupation certificate is annexed with valid offer of possession. Since no such document were annexed by the respondent, no valid possession has been offered.
2. Regarding the maintainability of complaint he referred to para 54 of M/s **Newtech Promoters and developers Private Limited v. State of U.P and ors 2022(1) RCR (Civil) 375** which is reproduced for reference:



"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".

Ld counsel for complainant further stated that Hon'ble Supreme Court has held that Act is retroactive in nature which means that something which starts in past and continues at present. Respondent had obligation under section 11 and 14 of the Act and had not discharged such obligation by not giving valid offer of possession.

3. Ld counsel for complainant also referred to para-1 of order dated 12.09.2023 passed by this Hon'ble Authority, which is reproduced for reference:

"1. Builder buyer agreement (BBA) was executed on 08.07.2011 with total cost of shop as ₹19,06,500/-. As per clause 4 of BBA the construction of unit was to be completed within 36 months from date of execution of agreement or within an extended period of 6 months subject to force majeure conditions or reasons beyond the control of builder. However, no force majeure conditions ever came into existence, hence due date of possession as per agreement was 08.07.2014. Respondent has failed to hand over possession of unit on time and complainant has sought relief of possession along with delay interest. Further, he refers to page no. 20 of complaint mentioning various deficiencies found in the unit which the respondent failed to rectify. At page no. 20 following deficiencies have been pointed out:



- a. *Internal flooring is incomplete as flooring tiles of size 2X2 of a reputed company is not affixed even after receipt of Rs.1,90,647/- for flooring by the respondent*
- b. *No provision of electric distribution and switch boxes, Conduit Pipes have not been laid and wires have not been provided therein. Even the installation points for fans, light and A.C. have not been provided.*
- c. *Feeder cable and earth wire hanging loosely despite receipt of Rs. 1,90,647/- for electrification.*
- d. *Iron Pipes of 4" and 5" diameter that is meant for fire fighting system are hanging loose along the roof that is detrimental to the inhabitants of shop. Even false ceiling has not been provided to cover these iron pipes.*
- e. *There is no provision of water supply in the shop in question whereas water supply connection has been provided to all units/shops located at ground floor to 8th Floor.*
- f. *The size of unit in question is much smaller i.e. only 280 sq.ft. whereas the size of unit was mentioned to be 465 sq.ft. in the Builder Buyer Agreement.*

Ld counsel for complainants submitted that it is nowhere disputed in reply nor in arguments that BBA was executed on 08.07.2011 and as per clause 4 of BBA, the construction of unit was to be completed within 36 months from date of execution of agreement or within an extended period of 6 months subject to force majeure conditions or reasons beyond the control of builder. As no force majeure conditions ever came into existence, hence due date of possession is 08.07.2014. Regarding deficiency specifically mentioned in (f), he stated that it is in complete violation of section 14 of the Act as respondent reduced the area without any justification.



4. Further, the issue whether these units are shops or suites, Ld counsel for complainants referred to para 6 of order dated 12.09.2023, relevant para is reproduced for reference:

“6. Furthermore, it has been admitted by the respondent that complainant along with his wife has taken possession and conveyance deed has been done of two units ,i.e., unit no. 201 and 207, which the respondent claim to be suites and not shops. It is pertinent to mention that Builder Buyer Agreement of such purportedly suites are exactly similar to the BBA of shops as allotted to the complainant. There is no material difference in terms and conditions of the both BBA. Thus, specification of the purportedly suites should be the specification of shops and as per the impression given by the respondent's representatives at the time of booking. Had the impression given by the respondent's representative would be different for suites and shops then complainant would not have booked the shops at that time. Because of false impression, deception and wrong promises made by the respondent's representatives, the complainant got an impression that suites and shops would be of same specifications. Moreover, the cost of suites is less than cost of shops inspite of the fact that area of suites is bigger than area of shops. So, the complainant had every reason to believe and trust on the presentation, promises made by the respondent's representatives at the time of booking.”

Meaning thereby that all the facilities which are to be provided for suites are too available to shops also, as it is admitted fact as no where in reply or during the arguments respondent had disputed that suites and shops are different..

5. Ld counsel for complainant further stated that he had filed earlier three complaints relating to the same property and certain directions were issued which were later dismissed for non-prosecution and liberty was



granted to both parties to file fresh complaints if any of the parties wished so. Therefore, issue with respect to deficiencies were never adjudicated and no finality has been attained w.r.t this issue. That respondent had raised his contentions by relying upon the erstwhile complaints. Erstwhile complaints have only persuasive value and are not binding on parties as liberty was granted to the parties to file fresh complaints.

6. Ld counsel for complainants also referred to para 3 of page 6 of last order dated 05.10.2023 which is reproduced for reference below:

“6. 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.”

Some deficiencies were adjudicated and some were not by earlier the Authority in interim orders of earlier complaints, as erstwhile complaints have only persuasive value. Therefore, these deficiencies needs to be decided afresh by taking entire documents on record.

7. Ld counsel for complainants also referred to para 4 of order dated 05.10.2023 which is reproduced for reference:

“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.”

Ld counsel for complainants stated that respondent said that he is not liable to provide tiles in the units booked by the complainants. If this is the issue then why the respondent had taken an amount of Rs. 1,90,647/- under the head of “flooring”. Moreover, the respondent stated that agreement for suits and shops are same, if that so then why respondent is not providing cement flooring in case of shops as provided in the suits. Respondent is applying pick and choose theory by providing tiles in shops to some allottee and not providing to the complainants. In the complainant’s case, the respondent has stated that as per prevalent business practice, only cemented floor is provided in case of shops so that the allottees can get the flooring done as per their choice.

8. Counsel for complainant stated that other contention raised by the respondent is that since occupation certificate and completion certificate have been granted by T &CP Department, therefore right forum to file



grievance w.r.t occupation certificate and completion certificate is T& CP department and not RERA. In regard to this, Ld counsel for complainants stated that whole case of complainants lie on validity of occupation certificate as complainants is challenging its validity which has been received by respondent by submitting forged document before the concerned Authority. Further by referring to completion and occupation certificate annexed with reply, he stated that as per para 9 of occupation certificate, for getting the occupation certificate it is pre-requisite that fire NOC is required. In this regard, complainant had filed RTI application through which it came to knowledge of complainant that memo no. 321/FSO mentioned in occupation certificate relates to some other project. That license no. 57 to 59 is not related to the project of the respondent and also requirement of fire NOC is not fulfilled. Also fire NOC has been issued in year 2018 and occupation certificate has been received in year 2016. Also, this fire safety certificate/NOC has been granted to Mr. Sudhir Gupta and not to Parker Builder in general. This clearly indicates that occupation certificate has been obtained by the respondent by submitting fraud and fabricated document. Hence said occupation certificate is null and void and criminal action is to be initiated against the respondent. Ld counsel further stated that case has already been filed before Director, Town and Country Planning department for revocation of occupation certificate.

9. Further, Ld counsel for complainants referred to para 6 of last order dated 05.10.2023, which is reproduced for reference:

"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.”

Regarding the liability to pay maintenance charges, Ld counsel for complainants stated that complainants are not liable to pay any maintenance charges as agreement mentioned that signing of agreement with maintenance agency will be before taking of possession of unit. Complainants were forced to sign agreement for taking possession., therefore said agreement with maintenance agency is invalid as complainant was forced/compelled to sign the one sided agreement.

10. Para 7 of last order dated 05.10.2023 was also referred by Ld counsel for complainants during arguments and thus para is reproduced below for reference:

“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."

Ld counsel for complainants stated that cancellation is not valid in this case as interim orders passed in erstwhile complaints have no relevance. Also, erstwhile complaints were later on dismissed therefore, this shows that the issue of cancellation was never adjudicated in those complaints.

11. Further, respondent contention that CWP 7852 of 2022 is not applicable in this case, Ld counsel for complainants stated that this judgement is very much applicable in this case as occupation certificate matter is



- subjudice before the authorities and said occupation certificate cannot be said to be valid. Therefore, respondent is liable to be penalised under section 61 and 63 of the Act.
12. Another contention of complainants that even after receiving completion certificate by the respondent, Authority has jurisdiction to deal with delay interest as the same issue has already been decided by Hon'ble SC in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and others vs DLF Southern Homes Pvt. Ltd and also by this Authority in complaint no. 808 of 2020 titled as Indu Sangwan v. Jindal Realty .
 13. Ld counsel for respondent stated that RERD came into force in May, 2016 and Rules regarding applicability of RERD, Act in Haryana came into force on 28.07.2017. In this case, completion certificate has been issued and all the infrastructure work has been laid before enactment of RERD, Act, therefore, project of respondent did not come under the ambit of RERD Act. Moreover, para 54 of **M/s Newtech Promoters and developers Private Limited v. State of U.P and ors 2022(1) RCR (Civil) 375** judgment is not only limited to section 3 but also talks about complete provisions of RERD Act.
 14. Regarding the offer of possession, Ld counsel for respondent referred to Annexure R2 dated 27.08.2016, titled as possession and registration of conveyance deed mentions that valid offer of possession has been made to the complainants. Authority asked a specific question to the respondent that whether this offer of possession was accompanied with statement of account of receivables and payables. To this counsel for respondent stated that for receivables and payables complainant was required to visit the office of respondent promoter before 15 Sept, 2016 as same is mentioned in the ibid letter. Further, regarding agreement with maintenance agency, complainant was intimated about the same through said letter. Moreover, due amount was intimated to allottee after offer of fit out and thereafter



after receiving the occupation certificate , respondent served letter of possession dated 27.08.2016.

15. Further, it is admitted fact that complainants had booked 5 units, out of which conveyance deed has been executed w.r.t 2 units. Regarding rest 3 units complainant were also intimated to get conveyance deed done. Furthermore, shops and suites are not same but are related to same project.
16. Further, Ld counsel for respondent referred to complaint no.230 of 2021 titled as RWA Mapsko Garden Estate V/S Mapsko Builders Private Limited and a copy of the same has been supplied to opposite party and referred to para 7 of the order of abovementioned complaint whereby Authority had held that where part completion certificate has already been issued w.r.t project and no discrepancies has been disputed by the complainant, then RERD Act will not be applicable in that case. Also, regarding the obligations of builder under section-11, he mentioned that promoter /respondent has very well discharge his obligations by sending offer of possession dated 27.08.2016, annexed as Annexure R2 to the complainant wherein complainant was intimated that complainant is required to pay the dues. Thereafter, complainant did not approach the respondent and in year the 2019, filed the earlier complaints. Moreover, complainant had opportunity to avail remedy before other forums also other than RERD.
17. Regarding the cancellation letter dated 29.10.2020 annexed as Annexure R7, Ld counsel for respondent stated that unit of complainant was cancelled due to non-payments of dues and this cancellation has been justified by Authority in orders passes in earlier complaints. On perusal of said cancellation letter, Authority observed that it is nowhere mentioned that it is a cancellation letter. It is simple notice issued by the respondent and it nowhere mentions about dues on part of complainant. It was the



duty of respondent to communicate the complainant that allotment of his unit has been cancelled, whereas, no such communication has been made by respondent. Regarding this, counsel for respondent stated that he will seek instructions from his client and will assist the Authority on next date of hearing.

18. Further, counsel for respondent stated that as per BBA 42 months are to be taken for deemed date of possession. Ld counsel for complainants submitted that respondent is not able to prove the force majeure circumstances to claim 6 months grace period for calculation of deemed date of possession. Regarding this also counsel for respondent stated that he will seek the instructions.
19. Part heard. Detailed arguments will be continued on the next date of hearing. Also, both the parties are directed to file written submissions and supplied copy to opposite party.
20. Cases are adjourned to 27.02.2024.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]