



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2787 OF 2023

Balbir Kumar

....COMPLAINANT

VERSUS

Konark Rajhans Estates Pvt. Ltd.

(Sector-14, ASHA Panchkula)

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Chandra Shekhar

Member
Member

Date of Hearing: 03.09.2024

Hearing: 3rd

Present: Adv. Ram Mohan, counsel for complainant, through VC.
Adv. Viren Sibal, counsel for respondent, through VC.

ORDER

1. Today, the case was fixed for arguments. Arguments of both parties were heard at length. Ld. counsel for complainant submitted that as per clause 9 of builder buyer agreement executed on 08.08.2016, respondent was obliged to deliver possession of apartment within a period of 36 months plus a grace

period of 6 months, unless there is delay or failure due to force majeure circumstances. However, till date, respondent builder has not been able to deliver the possession of the unit allotted to complainant. He further submitted that captioned complaint relates to matter which has been previously decided by Id. Authority in complaint no. 2343 of 2022 and prayed that present matter may also be decided in terms of that case only.

2. Ld. counsel for respondent submitted that as per preliminary objection taken by him in his written reply, delay is not attributable solely to respondents. He submitted that clause 9 of builder buyer agreement clearly states that *"respondent builder is obliged to offer possession of the said apartment to the apartment allottee within a period of 36 months from the receipt of first installment against the allotment of said apartment plus a grace period of 6 months unless there is a delay or failure due to force majeure conditions and due to failure of apartment allottee to pay in time the Total sale price and other charges...."*. Herein, delay was due to following 3 reasons:

- i. Default committed by supplier of raw material, i.e. M/s fortune Metals Ltd. with whom respondent contracted to buy 216 metric tons of TMT steel in 2018; however he supplied only 72.28 metric tons of steel and did not fulfill the remaining order. Against such deficiency in service, arbitration proceedings were initiated in 2019 and an arbitration award was passed in favor of respondent on 14.01.2020, wherein respondent got the relief of refund of amount paid. Thus, due



to said non-supply of raw-material and illegal; forfeiture of respondent's money, development of project has been seriously hampered and thus, respondent's project was not completed within estimated time.

- ii. Secondly, at the time of start of development work, contract for civil and structural work of the project was given to M/s Bucon Infratech Pvt. Ltd. in year 2016 and as per terms of contract, contractor was obliged to complete construction within a period of 27 months. However, in 2018, contractor stopped construction work and started to raise illegal demands of money. Contractor then filed mediation petition before Hon'ble Delhi High Court but said mediation failed and later a civil suit was filed for recovery of alleged outstanding amount. In said suit settlement was arrived at between respondent and contractor; however it resulted in delay in construction of said project which was beyond the control of company, thus a force majeure circumstance.
- iii. Further in the month of March, 2020 covid 19 pandemic came which resulted in further delay as nationwide lockdown was imposed by Central Government which caused reverse migration of laborers, break in supply chain of construction material etc. and thus all construction activities came to a halt.



3. Respondent admits that there was a delay, however same was only due to force majeure circumstances which were beyond its control. To this, Id. counsel for complainant submitted that as per section 18 and 19 of the RERA Act of 2016, if delay is there in completion of project and that is admitted by respondent then they have to pay the delay charges as stipulate in the Act. Further he submitted that Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.*" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them or seek interest for delayed possession. Para 24 and 25 of this judgment is reproduced below:

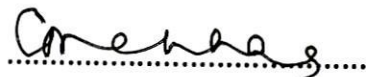
"24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

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

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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."

4. Complaint is adjourned to **04.02.2025** for further arguments and pronouncement of final order.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]