



Complaint no. 2068 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 12/2021

Atul Seksaria

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 15/2021

Veena Ahuja

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 19/2021

Brijbala

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 22/2021

Ankit Gaur

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

5. COMPLAINT NO. 25/2021

Tuhina Singh

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

6. COMPLAINT NO. 130/2021

Satish Kumar RastogiCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

7. COMPLAINT NO. 131/2021

Vinod RustagiCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

8. COMPLAINT NO. 145/2021

Pratibha RustagiCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

9. COMPLAINT NO. 316/2021

Praveen Kumar SethiCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

10.COMPLAINT NO. 609/2021

Deepak Makol& Sangeeta MakolCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

11.COMPLAINT NO. 619/2021

Kailash Chander AroraCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)



12. COMPLAINT NO. 2068/2019

Baldev GautamCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

13.COMPLAINT NO. 2069/2019

Sandeep ParasharCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

14.COMPLAINT NO. 2070/2019

Rajeev Kumar JainCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

15.COMPLAINT NO. 2071/2019

Rajesh BhatiaCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

16.COMPLAINT NO. 2072/2019

Bhavik BhatiaCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)

17.COMPLAINT NO. 2080/2019

Divya Jyoti BhatiaCOMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.RESPONDENT(S)



18.COMPLAINT NO. 2081/2019

Sanjay Goel

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

19.COMPLAINT NO. 2082/2019

Sanjay Goel

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

20.COMPLAINT NO. 2083/2019

Sanjay Goel

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

21.COMPLAINT NO. 2833/2019

Rajiv Nangia

....COMPLAINANT(S)

VERSUS

Rise Projects Pvt Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 06.10.2021

Hearing: 5th in serial no. 1-5
4th in serial no. 6-9
2nd in serial no. 10-11
12th in serial no. 12-21



Present: - Mr. Vikas Deep, Counsel for complainant
Mr. Paru Jarewal, Counsel for complainant.
Mr. Akshay Bhaan, Counsel for the respondent
Mr. Venket Rao, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

In the captioned bunch of complaints, lead complaint No. 2068 of 2019, Baldev Gautam Versus Rise Projects Pvt. Ltd, was filed before this Authority on 10.9.2019. Today is 12th hearing of the matter. The Authority is well on its way to decide the matter on merits. However, an application dated 04.10.2021 has been filed by respondents challenging jurisdiction of the Authority to consider the prayer made by complainants. It has been prayed that question of jurisdiction may be decided at the outset before entering upon merits of the case.

2. Authority is aware of law of the land that question of jurisdiction can be raised at any stage of proceedings before a Court or a Tribunal, therefore, it decides to deal with question of jurisdiction before proceeding with the case on merits.

3. In the application dated 04.10.2021 jurisdiction of Authority has been challenged on following grounds:

(i) That complaints do not fulfil conditions precedent as



specified in the statute itself which must be met before Authority could exercise its jurisdiction.

(ii) That in similar facts and circumstances RERA Gurugram declined its jurisdiction to entertain such matters.

(iii) That Authority does not have territorial jurisdiction to deal with prayers made in the complaints because impugned agreements were executed at New Delhi.

(iv) That nature of relief sought is specific performance which would fall within the jurisdiction of the Civil Courts and not this Authority.

(v) Since relief being demanded is in the nature of compensation, jurisdiction under RERA Act, 2016 can only be said to have been vested with the Adjudicating Officer under Section 71.

4. Shri Akshay Bhan, learned counsel along with Shri Venkat Rao, Advocate argued on behalf of respondents. Shri Vikas Deep, learned counsel argued on behalf of complainants.

5. Regarding first ground of challenging jurisdiction of this Authority, learned counsel Shri Akshay Bhan reasoned that complainants have not specified any violation of any particular provision



of the RERA Act,2016, including Sections 12, 13, 18 & 19, to invest this Authority with appropriate jurisdiction. He argued that without citing violation of a specific provision of aforesaid sections, or any other section of the Act, condition precedent for investing jurisdiction upon the Authority is not fulfilled. Therefore, these complaints do not fall within jurisdiction of this Authority. Applicant-respondent has cited several rulings to the effect that conditions precedent for investing jurisdiction upon a Court/Tribunal must exist to enable it to exercise jurisdiction.

6. The second argument put forward by Shri Bhan, is that RERA Gurugram in complaint No.141 of 2018 titled Brhimjeet Versus M/s Landmark Apartments Pvt.Ltd. and complaint No.355 of 2018 Kailash Devi Versus M/s Landmark Apartments Pvt. Ltd. has ruled that RERA Gurugram does not have jurisdiction to deal with the subject of assured return. Learned counsel argued that decision of coordinate bench of the same State is binding on this Authority. Further, if contrary views is taken by two Authorities of the same State, it will create chaos and uncertainty in interpretation of law which will adversely affect the cause of orderly development of real estate sector.



7. Regarding third reason of lack of jurisdiction, it was argued by Id. counsel that impugned agreement dated 10th April, 2014 in which monthly assured returns has been agreed to be paid by respondents to the complainants is a separate and stand alone agreement and is not a part of the agreement for sale of apartments. Therefore, this separate agreement having been executed at Delhi will fall outside the territorial jurisdiction of this Authority. It was asserted that no dispute is being raised in regard to the principal agreement for sale. However, impugned agreement being not part of the agreement for sale and having been executed at Delhi, therefore, only Civil Courts of Delhi will have jurisdiction to deal with the matter.

8. Regarding the lack of jurisdiction to deal with prayer for specific performance several rulings have been cited by the respondents to the effect that suits claiming relief under Specific Relief Act are entertainable only by a Civil Court. Other forums like this Authority or Tribunals are debarred from entertaining prayers for specific performance of an obligation.

9. The last argument put forward by Shri Akshay Bhan is that, without prejudice, even if it is assumed that dispute being raised in these complaints falls within provision of RERA Act, 2016, the relief sought being in the nature of compensation,



exclusive jurisdiction to deal with the questions of compensation will fall within the exclusive jurisdiction of Adjudicating Officer as per provision of Section 71 of the Act and not this Authority.

10. Ld. counsel Shri Vikas Deep, Advocate put forward brief arguments refuting the arguments put forward on behalf of respondents. He stated that provisions of the RERA Act, 2016 are clear and specific, and after enactment of the Act all disputes relating to real estate projects shall fall only within jurisdiction of Authority. Present disputes also are squarely and clearly covered by various provisions of the Act, therefore the Authority is rightly exercising its jurisdiction.

11. Authority has gone through contents of the complaint, the reply, as well as application dated 4.10.2021 filed by respondent. After consideration of facts, written submissions, and oral arguments put forward by respective parties, it observes and orders as follows:

(i) One common argument/presumption underlying various grounds of challenging jurisdiction of this Authority is that the second agreement dated 30.04.2014 executed between the parties is totally distinct, separate and unrelated to the first agreement of the same date executed between the same parties. The argument of the respondent is that



while the agreement titled as allotment letter-cum-Builder-Buyer Agreement binds both parties in respect property in question but the second agreement is a separate and distinct agreement having no relation with the first agreement. Therefore, the second agreement having been executed at Delhi can only be enforced at Delhi and that too before a Civil Court, being a matter of specific performance. The respondents however admit that the first agreement which also was executed at Delhi on the same date is a BBA enforceable before this Authority.

The Authority is unable to agree with the arguments put forth by the respondents. The respondent promoters of the project and the complainants executed an allotment letter-cum-agreement dated 30.4.2014 setting out therein specifications of the apartment to be constructed by respondents and consideration amount to be paid by allottee complainants in respect of the said property. Detailed recitals have been given in respect of the money already exchanged, specifications of the property, the time period within which the possession is to be delivered and large number of other consequential and incidental provisions for orderly discharge of respective obligations of the parties. However, in the said allotment letter-cum-agreement, there is no provision specifying the



consequences which will result if respondent promoter fails to deliver the apartment within agreed time period. Details recitals have, however, been given of the consequences in case complainant delays in making payments or taking over of possession of completed apartment.

The second agreement executed between the parties is titled "agreement of monthly investment assurance". In the second agreement almost all the important clauses of first agreement have been recited again. The consideration amount to be paid and the amounts already paid have also been cited again. It has also been specified "that the terms of this agreement shall where applicable or in conflict be read to supersede the terms of allotment letter-cum-agreement dated 30.04.2014." This particular clause along with other provisions of the subsequent agreement makes it abundantly clear that the subsequent agreement is only intended to fill the gaps which may have been left in the first agreement. The above quoted clause of the subsequent agreement leaves no doubt that both the agreements together constitute one single agreement forming part 1 and 2 of the same agreement. In the first agreement the consequences of delay in handing over the possession were not specified. The same were specified in the subsequent agreement. The relevant clause relating to



monthly assured return stipulated in the subsequent agreement is reproduced below:

*“ The second party shall be entitled to receive **Assured Return** with effect from the date of receipt of second instalment (i.e. with effect from the date of receiving 100% of TSV developer/First party will pay returns of Rs 2,36,340/-) per annum on the amount of TSV received by developer /first party.*

The return shall be paid to the Second party on monthly basis after deducting TDS. This return shall be inclusive of all taxes including service tax, if applicable on such returns. The return shall be payable till the date of offer of possession of unit. No returns shall be paid on excess payments, if made or payment made after the due date even if with late payment interest. ”

Normally in all builder-buyer agreements, certain amount of interest or lump sum payment calculated on per Sq. ft. of area is agreed to be payable in the event of default by either of the parties. In this agreement the respondents have demanded 100% payment from the complainants and in lieu have assured them investment return w.e.f. the date of receiving 100% of the total sale value. This assured return is consideration for receiving 100% upfront payment of total sale value prior to handing over of possession to the allottee complainants.

The Authority is, therefore, of the considered view that both agreements are inseparable. They have to be read together. The second agreement has intentionally been worded in a manner so as to

supersede the terms of the first agreement in case of any conflict. The second agreement has to be considered a clarificatory addendum to the first agreement, therefore, the arguments of respondent that the two agreements should be treated separate and distinct agreements cannot be accepted.

(ii) In the first ground, respondents have denied existence of jurisdictional facts. They have stated that complainants have not specified violation of any condition precedent specified in any provision of the Act in order to invest jurisdiction upon this Authority.

In this regard Authority refers to provisions of Section 18 ~~(4)~~, Section 19, Section 79 and Section 89 of the RERA Act, 2016. Sub Section 1(a) of Section 18 and Sub Section 4 of Section 19 makes it obligatory upon a promoter to discharge his obligations in accordance with terms of agreement for sale. These two clauses leaves no doubt that the terms of agreement for sale shall bind both the parties. Non adherence to terms of the agreement will entitle either of parties to invoke jurisdiction of this Authority.

At this stage, provision of Section 79 of the Act needs to be referred according to which "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 Appellate Tribunal is empoweredto determine.....". Accordingly, the jurisdiction of the Civil Courts have been completely barred to deal with the issues adjudicable under the RERA Act after commencement of the Act. This issue had also been dealt with by Hon'ble Supreme Court in Writ Petition (Civil) no. 43 of 2019 titled as Pioneer Urban Land Infrastructure Limited & Anr. Vs Union of India & Anr. in which it has been clearly ruled that allottee may take recourse for redressal of its grievances to RERA or Consumer Court or NCLT under Insolvency & Bankruptcy Code. Jurisdiction of Civil Court however is totally barred.

Accordingly, conditions of agreements executed by parties having not been honoured by respondent promoter fulfils the requirement of condition precedent for invoking jurisdiction of this Authority. Violation of lawful agreement made between parties is a sufficient jurisdictional fact to enable the parties to invoke jurisdiction of this Authority. Mere absence of mention of any particular provision of the Act of 2016 will not deny a right to the complainant to approach the Authority which otherwise has full jurisdiction to deal with the dispute.

For the aforesaid reasons, the Authority is unable to accept arguments of respondents that condition precedents for invoking



jurisdiction of the Authority do not exist. The argument therefore is declined.

(iii) The second argument put forward by respondent is that RERA Gurugram has refused to enforce the clause relating to assured return of an agreement executed between builders and buyers. The argument put forward by learned counsel Shri Akshay Bhan is that a ruling given by Gurugram Authority is binding on this Authority.

The Authority is unable to agree with this argument put forward by the respondent. RERA Gurugram had first given its views in complaint No.141 of 2018 titled Brahmjit Versus Landmarks Pvt.Ltd. and the ruling was subsequently followed in Complaint No.355 of 2018. RERA Gurugram while observing that “assured return is not a formal clause with regard to giving or taking possession of a unit” has concluded that “buyer is directed to pursue the matter with regard to getting assured return as per the MoU by filing a case before appropriate forum/Adjudicating Officer. There appears to be some contradiction in the orders passed by learned RERA Gurugram because if the opinion was that the issue of assured return do not fall within the purview of the RERA Act, then it could not have referred the matter to Adjudicating Officer. The quoted judgement also does not specify reasons as to why such

clause of MoU cannot be enforced by RERA. Facts of the matter have not been stated in the judgement. However, this Authority is of the considered view that if a specific agreement has been made between the parties and same has been reproduced in writing forming a part of BBA, the same can be agitated before the RERA or the Consumer Court or the NCLT for enforcement.

Otherwise also, it is a considered view of this Authority that the opinion expressed by a sister Authority of the same State or of another State will have persuasive power but not a binding effect. The proceedings before the RERA Authorities are of summary nature. The Authority is not only vested with the responsibility to protect the interest of the allottees but is also mandated to further the cause of promotion of real estate sector. The relief to be given to the individuals can and should be modified depending upon facts and circumstances of the matter. The guiding principle is that the provisions of the Act and principles of law must be followed but at the same time the objects of the Act for protection of the interest of the allottees and of the real estate projects and furthering the cause of the justice must not be forgotten. Rulings of sister authorities cannot be made binding on the other authorities. Therefore, the rulings of any Authority cannot be considered binding on the others. In the facts and

circumstances of the present case the Authority is unable to agree with conclusions arrived at by learned RERA Gurugram in the cited judgements. This matter was heard on 06.10.2021. The judgement was reversed by the Authority. In fact on 10.11.2021 in complaint no. 2071 of 2021 titled as Sneh Sharma vs Vatika Limited. Ltd. RERA Gurugram has completely reversed its earlier order and has specifically ruled that the clause relating to monthly assured returns must be honoured by the promoters.

(iv) The next argument put forward by respondent that second agreement dated 30.4.2014 is a separate and stand alone agreement and is not a part of the agreement for sale, therefore, RERA will have no jurisdiction to deal with the same. Further, both the agreements having been executed at Delhi, the Civil Courts of Delhi only will have jurisdiction to deal with subsequent agreement being a separate agreement and not a part of the agreement for sale.

In para no. (i) above, the Authority has already given its finding that both agreements cannot be called separate agreements. Both in fact are part and parcel of the same agreement. The second agreement has been so worded so as to bridge deficiencies of the first agreement. Since both the agreements together constitute agreement for sale of apartment, therefore, this Authority will have jurisdiction to deal with disputes arising therefrom.



Regarding territorial jurisdiction, the jurisdiction will be of that Authority in whose territorial area the property in-question is situated. Agreements can be made at any place outside the state or multiple places. After coming into force of the RERA Act and in pursuance of Sections 18, 19(4), 79 and 89 of RERA Act, this Authority alone has jurisdiction to take cognizance of the disputes. The argument put forward by respondent cannot be accepted in this regard also.

(v) Next agreement put forward by respondent is that this Authority is precluded from granting relief under specific relief Act.

It is observed that the relief sought here is in pursuance of Section 18 and Section 19(4). The complainants have not approached the Authority under specific relief Act. They are seeking redressal specifically in accordance with the terms of the agreement. It is observed that almost all reliefs sought under RERA are in the nature of specific reliefs. Delivery of possession of the apartment, or payment of agreed delayed interest etc. are also specific reliefs. If argument of respondents is accepted, it will defeat RERA Act both in letter as well as in spirit. The Authority is, therefore, unable to accept with this argument also of the respondent.

(vii) The last argument put forward by the respondent is that the



relief sought by the complainants is in the nature of compensation, therefore, to deal with subject of compensation Authority has no jurisdiction, but the jurisdiction is that of Adjudicating Officer.

In this regard the Authority refers to the concept of compensation as provided for in the Section 72 of the Act. Section 72 specifies four factors which should be taken into consideration while “adjudicating the quantum of compensation or the interest”. In this case, there is no question of determining any loss or gain attained by either of the parties on account of the defaults has been raised. The agreements made between the parties are categorical and specific. It is a crystal clear stipulation in the agreement stating the quantum of assured return to be paid by the respondent to the complainant on the occurrence of certain events. The amounts to be paid by respondents to the complainants is pre-determined and not subject to determination. It is not a question of determination of compensation but a question of enforcement of a specific condition of an agreement. It is only the Authority which under Section 19(4) has to enforce the lawful agreement executed between the parties.

For the reasons given herein this argument of the respondent also cannot be accepted.

12. The Authority accordingly decides to reject the application filed by the respondent challenging jurisdiction of this Authority. It will now proceed to decide the matter on merits in furtherance of order dated 10.12.2020.

13. Adjourned to **21.12.2021** with a direction to both parties to submit their calculations of monthly assured returns alongwith with arrears and interest accrued till 31.12.2020 as per Rule 15 of HRERA rules,2017 in complaints listed at serial no.12-21. The respondent is directed to file reply in complaints listed at serial no. 1-11 one week prior to the next date of hearing with an advance copy supplied to complainants.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]