



Complaint no. 726 & 804 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 726 OF 2021

Rakesh Kumar Garg

....COMPLAINANT(S)

VERSUS

Shalimar Estate Pvt Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 804 OF 2021

Manjit Kaur & Anr

....COMPLAINANT(S)

VERSUS

Shalimar Estate Pvt Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing:

31.05.2022

Hearing:

4th

Present through:

Mr. Ajay Chikara, Counsel for the complainant
through video conferencing
Mr. R. K Aggarwal, Director of respondent company
Mr. Ashwani Chaudhary, Learned counsel for respondent
number 2

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ORDER (RAJAN GUPTA-CHAIRMAN)

Reply has not been filed by respondent. Mr. R K Aggarwal, Managing Director of respondent company verbally argued that the unit booked by the complainant is located in an un-registered project of the respondent. 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 complaint relating to unregistered project. While arguing he 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)."

2. On the other hand, respondent no.2 namely Estate Office HSVP Panchkula has filed an application dated 23.11.2021 for dismissal of complaint qua the applicant-respondent no.2. Shri Ashwani Chaudhary, learned counsel for respondent no. 2 submitted that in the various issues raised by complainant through present complaint entire allegations have been levelled against the respondent no. 1 i.e Shalimar Estate Pvt Ltd as well as the main relief has been

sought against the respondent no. 1. Applicant-respondent no.2 is not a necessary party to the complaint and therefore, he prayed to the Authority to delete the name of respondent no. 2 from the array of parties in above complaint.

3. In regard to the arguments raised by respondent pertaining to jurisdiction of present complaint in view of judgement of Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt Ltd. versus State of Uttar Pradesh and others, Authority is of the considered view that respondent is completely misreading provisions of the Act and para-54 of the judgement of Hon'ble Apex Court in Newtech Promoter's 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. 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. In Complaint no. 191 of 2020 titled 'Mrs. Rajni and Mr. Ranbir Singh Vs Parsvnath Developers Ltd.' Authority has expressed its opinion in detail in respect of the issue of jurisdiction being raised



in view of judgement of Hon'ble Supreme Court in Newtech matter. Said order is reproduced below:

"1.....

2. *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 the 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. In regard to the above submissions, a reference is made to Para-53 of the same judgement of the Hon'ble Supreme Court as reproduced below:

"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."

5. Further reference is made to Para-32, 33, 34, 87 and 40 of the same judgment. 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.*

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17.....”

Therefore, Authority is unable to accept such interpretation of law as has been sought to be put forward by respondent.

In regard to the deletion of the name of respondent no. 2 as a necessary party to this complaint, learned counsel for the complainant has not raised any objection to the same. Therefore Authority accepts the prayer of



respondent no. 2 and hereby the name of respondent no. 2 namely Estate Office HSVP Panchkula is deleted from this complaint.

4. Respondent no. 1 is being given last opportunity to file its reply before next date of hearing with an advance copy supplied to the complainant failing which its defence shall be struck off. Adjourned to **07.07.2022.**



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]