

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh
----- Member (J)
Hon'ble Mr. Rajeev Gupta
-----Member (A)

APPEAL NO. 19 of 2021

M/s S.R. City Planners Pvt. Ltd. (mentioned in the Memo of parties as M/s S.R. Housing Planner Pvt. Ltd. Through its Director Sh. Sanjeev Jain, D-2, First Floor, Panchwati (opposite Subzi Mandi), Delhi-110033.)

..... Appellants

vs

Shri Vinay Mehtani, s/o Sri T.R. Mehtani, House no. 300/8, Krishna Colony, Bhiwani, Haryana-127021.

.....Respondent

Present: Sri Saifullah, Advocate, for the appellant-promoter
Sri Vinay Mehtani, respondent-homebuyer

JUDGMENT

DATED: DECEMBER 23, 2022

Per: Sri Rajeev Gupta, Member (A)

This appeal has been filed against the judgment dated 19.09.2019 of the Uttarakhand Real Estate Regulatory Authority, Dehradun (RERA) vide which the appellant has been ordered to return the entire amount of Rs. 14,80,000/- with interest @ 10.25% per annum [SBI highest marginal cost of lending rate (8.25%) +2% per annum] received from the complainant (respondent herein) regarding sale of studio apartment-G-106 in Anandam City, Haridwar. The interest has been directed to be calculated separately from the dates on which the respondent (appellant herein) has received the amounts from the complainant. Fine of Rs. 30,000/- has also been imposed on the respondent (appellant herein) for violation of the provisions of the Real Estate (Regulation and Development) Act, 2016, (No. 16/2016) (hereinafter referred to, the Act). The appeal briefly states that appellant issued allotment letter containing standard terms and conditions

and assured the respondent that the possession of the Studio Apartment shall be delivered before 15.11.2016. On 05.11.2013, the last payment was made to the appellant and a total amount of Rs. 14,80,000/- was paid by the respondent out of Rs. 16,00,000/- excluding the registry amount. The appellant had periodically enquired and requested the respondent for making the payment of the balance amount, but the respondent always gave vague reply that he does not wish to get the registry done in his favour and wants to sell the said Studio Apartment. Respondent with unclean hands, preferred an online complaint against the appellant, bearing Complainant no. 62/2019, titled as Vinay Mehtani vs. M/s S.R. City Planner Pvt. Ltd. Dated 09.04.2019. Complaint of the respondent was decided by the single member bench of Ld. Authority against the appellant by the impugned order.

2. Facts of the case as narrated in the impugned judgment dated 19.09.2019 of the learned Authority below are as follows:

(i) The respondent had made an online complaint to RERA stating that he had booked the studio apartment-G-106, Anandam City on 30.07.2012 with the appellant herein (respondent before the learned Authority below). According to the scheme, the complainant had paid 92.5% i.e. Rs. 14,80,000/- after which the respondent Company and its Directors started making excuses about delivery of the studio apartment. The respondent Company and its Directors, Sri Sanjeev Jain and Sri Rajpal Jain with malafide intention have not yet offered possession since the last payment made in November 2013. Despite many telephones and emails, the respondent did not make any efforts to deliver the possession. The complainant also approached the Delhi Police but there was no result. The respondent be made to return the hard-earned money of the complainant with interest.

(ii) Learned Authority below issued notice to the respondent who submitted his reply stating that the complainant after getting details of the studio apartment, booked the same on 30.07.2012 after making a payment of Rs. 1 lac. The total consideration for the flat was Rs. 16 lacs plus registry

charges. The complainant made the payments according to the payment plan. Despite some payments having been made with some delay, the company has not imposed penalty on the complainant. The complainant has paid Rs. 14,80,000/-. The complainant was requested on telephone and through other means and during meeting in the office, to pay balance Rs. 1,20,000/- and get the registry done many times since the year 2014. The complainant has not agreed to such requests and informally told the officers of the company that he is not interesting in getting the registry done and he wants to sell the booking as it is. The complainant on various occasions offered to the officers of the company to purchase back the said booking from him who always refused the same. The intention of the complainant was bad since September-October, 2014 and complainant had refused to make the balance payment to take the possession. As per version of the complainant himself, he approached the company first time, after his booking, in the year 2018 and never complained about the delay in possession. Before 2018, the respondent company had been writing letters and intimating the complainant for making full and final payment. When the company talked about cancellation of the booking, the complainant made a false complaint to the police. The company is still ready to hand over the possession. The company or its officers have not committed any default or delay in handing over the possession. The complaint has no merit and be dismissed.

(iii) The complainant and respondent have both filed allotment letter dated 15.11.2013 and other correspondence between them in support of their contentions. Learned Authority below after hearing oral arguments of both the parties has further recorded in the impugned judgment that contention of the complainant is that even after many requests, the respondent has not executed the sale agreement nor has intimated the date of handing over possession. The respondent *vide* his mail dated 14.09.2016 (Annexure-5) informed that the possession will be handed over before 15.11.2016 but the respondent kept demanding the balance amount, while the balance amount had been agreed to be given at the time of registry, as is

clear from the paper no. 15 on the file (payment plan). Last payment was made by the complainant on 05.11.2013 to which respondent agrees but despite repeated requests, the respondent has neither executed agreement nor given offer letter for possession. The respondent has been making false statement about the incomplete project to be completed and ready to hand over possession, while till today, respondent does not have the completion certificate. The complainant went to construction site on 13.11.2016 and 13.06.2017, where the construction work was incomplete. He made entries in the entry/visitor register of the company which can be summoned. The complainant is waiting for the return of his money to which respondent is not paying any heed. The respondent be made to return hard earned money of the complainant with interest.

It was contended during the arguments by the respondent that after 2014, the complainant has been rejecting the requests of the respondent for paying the balance amount and for taking possession. The truth is that the complainant is adamant that the respondent buys back the studio apartment in question and returns his money after selling it again, which has been clearly refused by the respondent. Because of this reason only, the complainant is making complaint some times in police and sometimes in RERA and making false statements. Even if complainant makes the balance payment today, the respondent is ready to hand over the possession and get the registry done and the complaint deserves to be dismissed.

Learned Authority below asked the respondent about completion certificate to which respondent did not give any reply. About the complainant having gone to the project site on 13.11.2016 and 13.06.2017, and making entries in the visitor register and observing that the construction work is incomplete, the respondent stated that the complainant is lying and has never gone to the construction site. The complainant demanded summoning of the register on which, the respondent was directed to produce the entry/visitor register, but the respondent never produced the entry/visitor register and after that respondent continuously made himself absent. The respondent has

accepted that no sale agreement document has been executed regarding the property in question.

(iv) Learned Authority below has observed that the respondent has accepted the receiving of the amount paid by the complainant. The disputed issue is only whether the project had been completed within the given time or as the complainant is saying that the construction of the studio apartment booked by him was incomplete and despite many requests, respondent did not execute the agreement, nor has shown the completion certificate and nor has given any offer letter for possession, due to which the complainant demanded refund of the amount paid. Learned Authority below has further stated that vide his email (paper no.39 of the file), the respondent has mentioned to hand over possession before 15.11.2016 because of which, the statement of the respondent that the complainant did not want to take possession after 2014 and therefore, he did not make the balance payment to the respondent, becomes forceless. The complainant has not produced any offer letter of possession while regarding the balance payment, on paper no.15 of the file, it has been clearly mentioned that the balance amount is to be given at the time of registry. Then, how the respondent can demand the balance payment in 2014 while till now the respondent has not obtained the completion certificate. The respondent has not produced any such evidence which provides force to his arguments. If the project had been completed, then the photos of the project, completion certificate, affidavit etc. should have been produced by the respondent to give force to his contentions but it did not make any such effort. Even if the statement of the respondent that the complainant was not interested in making balance payment because he did not want possession is assumed to be correct then the respondent could have cancelled the allotment and paid the balance amount to the complainant, but the respondent did not also do this. In the light of these circumstances and produced evidence and arguments, those contentions of the complainant get force that respondent is making all false statements for *Peshbandi*. By not producing the entry/visitor register, the respondent has

weakened his arguments and statements and the statement of the complainant gets strengthened that the complainant had gone to the project site on 13.11.2016 and 13.06.2017 and had seen that the project work is incomplete and he had made entry of his visits in the entry/visitor register of the company.

(v) Learned Authority below has held that the respondent has accepted the receiving of Rs. 14,80,000/- regarding purchase of furnished studio apartment from the complainant, and also that no sale agreement deed has been executed for the same and it is clear that the completion certificate of the project has not been received. The respondent, to conceal his improper business conduct, has given such arguments for which it did not have any evidence. It is clear that even after many years, the respondent has not been able to give possession of the property in question to the complainant nor it has returned the money taken from the complainant. The respondent has violated the provisions of the Act for which it deserves to be imposed with fine. Complainant has the right to get the entire amount of Rs. 14,80,000/- paid to the complainant with interest. Consequently, the order, as mentioned in para 1 of this judgment, has been passed by the learned Authority below.

3. When the appeal was filed, according to the proviso 43(5) of the Act, the appellant was required to show its *bonafide* before the appeal is entertained, by depositing 50% of the amount indicating in the operative portion of the impugned order dated 19.09.2019 of the learned Authority below vide this Tribunal's order dated 10.11.2021. In compliance of the same, the appellant filed two bank drafts of total amount of Rs. 14,05,000/- in favour of this Tribunal, after which the appeal was admitted and notice was issued to the respondent and photocopy/scanned copy of the RERA file was summoned.

Respondent-homebuyer has appeared in person thereafter before this Tribunal.

4. We have heard learned Counsel for the parties and perused the record and the photocopy/scanned copy of the RERA file. The parties have also filed written submissions/arguments.

5. The contentions of learned Counsel for the appellant are as below:

5.1 The adjudication by the single member of the Authority or even the authority is against the section 71 of the Act as the grievance of the respondent is completely covered under the Section 18 and 19(4) of the Act. The Section 71 of the Act clearly laid down that any such complaint under section 18 and 19 for return of money with interest can only be adjudged by the authority as provided under section 21 of the Act and adjudication by the single member of the authority is against the specific provisions of the Act. It is pertinent to mention here that the intent of the sub section 2 and 3 of the Section 29 of the Act is that Ld. authority is meant to be a multi-member body and should function as such. Never in the Act, RERA authority was intended to be single member body and any decision in such contradicting the provisions of this Act is void, illegal and is liable to be quashed and set aside. The said position has been cleared by Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 8548 of 2020 titled as Janta Land Promoters Private Limited vs. Union of India & Ors, vide judgment dated 16.10.2020.

The Ld. Authority failed to appreciate that for coming to a conclusion of ordering a refund with interest, the Ld. Authority has to first of all come to the conclusion that there was any delay in offering possession or giving the possession of the property in question as per section 18 of the Act. The Ld. Authority failed to appreciate that no specific timeline was ever provided to the respondent and even otherwise the appellant has been offering to get the registry done in favour of the respondent who was not ready to deposit the remaining amount. The Ld. Authority failed to appreciate the documents filed alongwith the reply on behalf of the appellant that the appellant has been duly getting sale deed registered of the buyers who have taken the possession upon making the rest of the payments. The Ld. Authority has presumed that

the project is incomplete as the appellant failed to bring visitors register which is in itself a whimsical presumption as the visitors registers, if any, are kept at the site and not with the appellant which are further, time to time, destroyed if not required for any other purpose. The Ld. Authority had made observations upon the wrong and false facts stated by the Respondent. It is pertinent to mention here that no completion certificate was required to be given by the Appellant at the time of giving possession and getting the Registry/sale deeds done in favor of the buyers as sale deeds have been registered in favour of many buyers way back in 2012 as well since RERA was not even in force at that point of time.

5.2 The Order/Decision of the Ld. Authority dated 19.09.2019 is not a reasoned and justifiable decision as the same does not at once mention about any section that are being violated by the appellant company and decision is passed in most mechanical manner with a mere mention that the said act of the appellant company is violating RERA ACT, 2016. The Ld. Authority has grossly erred in not considering the actual facts that the Respondent was never willing to make the remaining payment and get the Registry/sale deed done in his favour. The Appellant had pleaded earlier as well, while contesting the Complaint case, that the Respondent was never interested in taking possession of the Studio Apartment and instead wanted to sell the same. The Ld. Authority has grossly erred in not considering the fact that the Appellant had executed sale deed/registry of the Studio Apartment, just above to the one allotted to the Respondent. Thus, the claim of the Respondent that upon visit, he found the project incomplete, stands falsified. This further goes to prove that the Respondent herein had taken the order dated 19.09.2019 in his favor only on the basis of a concocted story, holding no truth. the Ld. Authority has grossly erred in not considering and totally sidelining the fact that the Appellant had produced the copies of the Registries/sale deed executed in favour of the other buyers in the same project, before the Ld. Authority. The said copies of registries prove the completion of the project and subsequent handing over of the possession of the Studio Apartments to

their respective buyers and also falsify the claim of the Respondent. The present appeal in the given facts and circumstances requires to be allowed and the order of the Ld. Authority is liable to be set aside. The appellant is even now ready to hand over the possession of the property and further ready to abide by the orders or directions of this Tribunal.

6. The contentions of the respondent are as below:

6.1 The appellant had actively participated in the proceedings before the learned Authority below and on 14.08.2019, it submitted its reply dated 13.08.2019. The appellant cannot take the plea that the impugned order dated 19.09.2019 was received by the appellant on around 22.02.2020 by post. After delivery of the decision on 19.09.2019, the same was informed to the appellant by the respondent no. 05.11.2019 by email. As per the brochure of the scheme, the appellant claims itself to be a Govt. approved registered developer but as per the RERA website the project as well as the developer is not registered with the Authority till date. Except the allotment letter, no standard terms and conditions were supplied to the respondent by the appellant. Further no allotment agreement/builder buyer agreement was ever offered by the appellant. The appellant had not completed the project and not submitted the completion certificate till the decision of the complaint no. 62/2019 filed by the respondent with RERA. The appellant is demanding remaining payment from the respondent despite payment of 92.5% of the agreed amount of Rs. 14,80,000/- within stipulated time and the appellant never replied about the emails and text message of the respondent regarding builder buyer agreement, offer of possession etc. since 11.09.2012. The respondent himself visited the site twice in November 2016 and June 2017 and found the construction of the apartment incomplete. Further no completion certificate was submitted before RERA in the reply filed by the appellant. It is very much clear in the Civil Appeal No. 3182 of 2019 decided by Hon'ble Supreme Court titled as Kolkata West International City vs. Devasis Rudra that a buyer cannot be allowed to wait indefinitely for offering possession by the developer.

6.2 There is no violation on the part of RERA of the provisions of Section 71 of the Act. The Hon'ble Supreme Court of India in Civil Appeal NO(S). 6745-6749 of 2021 (Arising out of SLP(Civil) No(s). 3711-3715 of 2021) titled as M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. Versus STATE OF UP & ORS ETC. decided on 11 November 2021 has settled the following law points in this regard:-

“Question no. 2: Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?” (Page 33 refers).

The law has been settled while answering the above said point issue in the said Supreme Court of India judgment. The same is enumerated below:-

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than Compensation as envisaged, is extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.” (page 54 refers)

Further the Supreme Court of India had also cleared the under-mentioned point of law in the said judgment i.e.

“Question no. 3: Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to

hear complaints instituted under Section 31 of the Act?" (page 55 refers)

The same has been answered accordingly which is as follows:-

"120. In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, the power of delegation under Section 81 of the Act by the authority to one of its members for deciding applications/ complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be de hors the mandate of law." (page 77 refers).

7. About the reliance placed by the respondent on the above judgment of the Hon'ble Supreme Court of India, Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. to state that single member can adjudicate the complaints under section 31 of the Act, the learned Counsel for the appellant has further contended that it is not applicable in the facts and circumstances of the present case as the SC in the said judgment has arrived to the conclusion that the single member can adjudicate complaints under section 31 of the Act only and that only when the said power was delegated by the authority with a specific or by a general order to do so, which is clearly missing in the present case as there is no rule, regulation, order, etc. of the authority to this effect and hence the said judgment cannot be relied upon in the given facts and circumstances.

Learned Counsel for the appellant accordingly argued that Sri Manoj Kumar, Member, RERA who has delivered the impugned judgment dated 19.09.2019 had no authority to decide the complaint filed by the respondent-homebuyer and sought time to obtain documents under Right To Information Act (RTI) in support of this contention. However, nothing further has been filed on behalf of the appellant in this regard. The respondent in the hearing of 01.10.2022 has produced copy of the minutes of the meeting of the Uttarakhand RERA dated 06.08.2018, obtained by him through RTI, according to which complaints filed with the Authority were to be heard by the Chairman and Members of the Authority individually according to a roster

and on this basis, the respondent has claimed that Sri Manoj Kumar, Member, RERA had the authority to hear and decide the complaint filed by him and pass the impugned order dated 19.09.2019. This Tribunal has again given last opportunity to the appellant-promoter to file any documents by the next date which they might have received under RTI or otherwise to show that Sri Manoj Kumar, Member, RERA did not have such authority to hear and decide the complaint. In the hearing on the next date (04.11.2022), learned Counsel for the appellant-promoter has submitted that they agree to the reply received under RTI and filed by the respondent and have nothing to file further in the matter.

8. In view of the above, the Appellate Tribunal holds that Sri Manoj Kumar, Member, RERA had the authority to hear and decide the complaint filed by the respondent-homebuyer. The Tribunal also holds that the flat was not complete by the assured date *i.e.* 15.11.2016 as the completion certificate of the project had not been obtained by that date and even till the hearing of the complaint by the learned Authority below. The contention of the learned Counsel for the appellant that registry of some other flats of the project including one on top of the flat allotted to the respondent had been got done by the concerned homebuyers earlier is of no benefit to the appellant as according to Section 11(4)(b) of the Act, the promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be.

Section 17 of the Act reads as below:

“17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.”

It is clear from the above that transfer of title through a registered conveyance deed in favour of the allottee and handing over of the physical possession should normally be done after the issue of occupancy certificate/completion certificate and if some allottees got the registry done earlier it does not imply that the project is complete or that it is obligatory on the part of the other allottees to take possession, even when the occupancy/completion certificate has not been issued. Moreover, in the present case, the respondent-homebuyer has been saying time and again that the construction work of the flat is incomplete and has also visited the project site twice in November 2016 and June 2017 and found that the construction was incomplete and has claimed to have made the entries in the entry/visitor register of the project. Despite the directions of the learned Authority below to produce entry/visitor register, the appellant-promoter has neither presented the entry/visitor register before the learned Authority below nor has attended further hearings before the learned Authority below. Learned Authority below has correctly held that if project was complete, the promoter could have filed photos, completion certificate, affidavit etc. in support of its contention. Moreover, the promoter has been insisting upon the home-buyer to make the balance payment, which according to the payment plan was to be made at the time of registry, without giving any offer letter for possession.

Section 18(1) of the Act reads as below:

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

It is clear from the above that if the promoter fails to complete or is unable to give possession of apartment or building by the assured date and in that case, if the allottee wishes to withdraw from the project, he shall be liable to return the amount received by him in respect of that apartment, plot or building with interest at the prescribed rate. The rate of interest has been prescribed in Rule 15 of the Uttarakhand Real Estate (Regulation and Development) (General) Rules 2017, which is as below:

15. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent.

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use, it would be replaced by such benchmark lending rate which the State Bank of India may fix from time to time for lending to the general public."

Learned Authority below has accordingly ordered the appellant herein to refund the entire amount received from the complainant (respondent herein) along with interest at the prescribed rate. This Tribunal upholds the same.

9. Learned Authority below has also imposed a fine of Rs. 30,000/- on the appellant-promoter for violation of the provisions of the Act. Though no specific provisions have been mentioned whose violation has been done, but it is clear that the project of the appellant was incomplete. According to Section 3 of the Act, such project which was ongoing on the date of commencement of the Act and for which the completion certificate had not been issued, the promoter was required to make an application to the

learned Authority below for registration of such project within a period of three months from the date of commencement of the Act, which has not been done in the instant case. Moreover, the appellant absented himself from further hearings of the learned Authority below without any cogent reasons for which also fine can be imposed upon him. However, if the appellant wishes to be exempted from the fine imposed on him, he may appear before the learned Authority below and submit his case on this point, which shall be duly considered by the learned Authority below.

10. With the above observations, the appeal is hereby disposed of. No order as to costs.

11. The amount of Rs. 14,05000/- deposited with this Tribunal by the appellant be remitted to the learned Authority below and the same shall be deemed to have been realized from the appellant in compliance of its order dated 19.09.2019.

12. Let a copy of this order be sent to RERA for information and necessary action, in terms of Sub Section (4) of Section 44 of the Act.

(RAJENDRA SINGH)
MEMBER (J)

(RAJEEV GUPTA)
MEMBER (A)

DATED: DECEMBER 23, 2022
DEHRADUN
KNP