

उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण, क्षेत्रीय कार्यालय, गौतमबुद्धनगर।

सुनवाई पीठ-3

उपस्थिति :- श्री बलविन्दर कुमार, सदस्य (रेरा)

शिकायत संख्या : एनसीआर144/06/0086/2019

मनीष कुमार, निवासी- 110 इन्डस इन्नोवा महादेवापुरा बंगलौरवादी

बनाम

न्यू वे होम्स प्रा.लि पता: ए-16 द्वितीय तल, मेफियर गार्डन नई दिल्ली.....प्रतिवादी

अधि-निर्णय

प्रस्तुत वाद वादी द्वारा प्रतिवादी के विरुद्ध यूनिट का कब्जा मय विलम्बित अवधि का ब्याज व प्रतिपूर्ति (Compensation) दिलाये जाने हेतु संस्थित किया गया है।

संक्षेप में वादी का कथन है कि प्रतिवादी द्वारा संचालित परियोजना **Saviour Greenarch** में यूनिट संख्या K- 1801 बुक किया था, जिसके एवज में वादी ने प्रतिवादी को **रु0 65,23,628/-** भुगतान किया था। वादी व प्रतिवादी के मध्य आवंटन पत्र पर दिनांक **27.05.2016** को हस्ताक्षर किया गया, जिसके अनुसार उक्त यूनिट का कब्जा 36 माह में अर्थात मई 2019 में उपलब्ध कराना था। वादी द्वारा अपने शिकायतपत्र में कथन किया गया कि प्रतिवादी द्वारा जो डिमांड लेटर दिनांक 13.12.2017 को जारी किया गया वह उसे प्राप्त नहीं हुआ। इसी क्रम में वादी दिनांक 30.12.2017 को प्रतिवादी के कार्यालय गया जहां उसे उक्त डिमांड लेटर जारी होने का पता चला।

वादी ने वादपत्र के समर्थन में आवंटन पत्र, प्रतिवादी को भुगतान की गयी धनराशि की रसीदें, की छायाप्रति दाखिल किये हैं।

प्राधिकरण की ओर से प्रतिवादी को नोटिस जारी किये गये और जिसकी तामीला प्रतिवादी पर सम्यक रूप से की गयी। प्रतिवादी अधिवक्ता द्वारा प्रतिवादपत्र प्रस्तुत किया गया। प्रतिवादपत्र के प्रस्तर संख्या 2, 8 में यह अंकित किया गया है

कि " That final demand letter was issued to all the allottees on 31-12-2017 post receipt of occupancy certificate on 12-12-2017 from the authority. That it is stated that the Respondent has given possession to more than 900 allottees, i.e. whoever has come to take possession has given the possession as the construction is already complete and occupancy certificate was issued on 12-12-2017 itself. The complainant is not entitled to any relief. "

सुना एवं पत्रावली का अवलोकन किया। प्रतिवादी का कथन है कि ओ.सी प्राप्त हो गयी है और वादी को दिसम्बर 2017 को ऑफर ऑफ पजेशन जारी कर दिया गया था। परन्तु ओ.सी की कॉपी व ऑफर ऑफ पजेशन का साक्ष्य पत्रावली पर उपलब्ध नहीं है। उपरोक्त विश्लेषण से स्पष्ट है कि वादी अपनी यूनिट का कब्जा चाहता है और जब तक उसकी यूनिट नहीं दी जाती है, तब तक उसे विलम्बित अवधि का ब्याज दिलाया जाये। इस सम्बंध में उल्लेखनीय है कि :-

Under the Act, obligation of promoter has been provided under Sect 11 (4), which reads as: *The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

On the other hand, rights and duties of allottee have been clearly provided under the Act. Sub-section 4 of Section 19 Read as under; (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under.

Besides, Section 18 (1) provides that "If the promoter fails to complete or is unable to give possession of an apartment, plot or building, 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.

If we read these provisions conjointly, the language of these provisions suggest that if the promoter/developer fails to fulfill his obligations to handover the possession as per terms of the agreement, the allottee is entitled to claim refund. However, different Authorities set up under the Real Estate (Regulation & Development) Act, 2016 across the country are taking a balanced /pragmatic view as far as refund to the allottees of project is concerned when the projects

are at a much more advance stage of development. Authorities are considering the situation of allottees of a real estate project as well as status of the project i.e stage of construction, timelines for completion, tentative possible 'offer date of possession' from the developer/promoter, possible consensus of the allottee in acceptance of possession within the possible new 'offer date of possession' etc.

Section 32 of the RERA Act deals with functions of the Authority for promotion of Real Estate Sector. This Section reads as: *The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on, (a) protection of interest of the allottees, promoter and real estate agent; (b).....; (c).....; (d).....; (e).....; (f); (g).....; (h).....; (i) any other issue that the Authority may think necessary for the promotion of the real estate sector."*

On the other hand, Section 38 of the RERA Act, which deals with powers of the Authority expect the authority/RERA to act on the principle of natural justice. The Section reads as (1) *The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made there under. (2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made there under, the Authority shall have powers to regulate its own procedure"*

This provision confer power to the Authority to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the

3


allottees and the real estate agents for contravention of any provisions of the Act and Rules made there under and it also provides that the Authority shall be guided by the principles of natural justice.

If we read these provisions together along with the scheme of the Act, the Authority is created not only to protect interest of the allottee of the real estate project but also to protect the interest of promoters in order to promote a healthy growth of the real estate sector. Thus, from the provisions referred above and view taken by the different authorities, it is clear that complainant has right to withdraw from the project if promoter failed to deliver the flat/unit within the time specified in the agreement. However, different real estate regulatory Authorities are deciding matters and awarding refund on the basis of fact of each case considering stage of construction of the project and period and reasons of delay in handing over the possession to homebuyers.

In any case, the promoter will be required to pay interest on delayed period till the date of possession.

इस सम्बंध में माननीय उच्चतम न्यायालय द्वारा सिविल अपील सं० 744/2017 चित्रा शर्मा आदि बनाम यूनियन ऑफ इंडिया आदि में किया गया आब्जरवेशन महत्वपूर्ण है :-

" 40. The figures..... which have been made available presently, following the opening of the web portal by the amicus curiae, indicate that 8% of the home buyers have sought a refund of their monies while 92% would evidently prefer possession of the homes which they have purchased. We cannot be unmindful of the interests of 92% of the home buyers many of whom would also have obtained loans to secure a home. They would have a legitimate grievance if the corpus of Rs 750 crores (together with accrued interest) is distributed to the home buyers who seek a refund."

इस स्टेज पर रियल एस्टेट सेक्टर की वर्तमान वित्तीय स्थिति को दृष्टिगत रखते हुए धनराशि वापस किये जाने से उन आवंटियों के हित प्रतिकूलतः प्रभावित होने संभावित है, जो कि यूनिट का कब्जा लेना चाहते हैं। ऐसी स्थिति में धनवापसी किया जाना उचित प्रतीत नहीं होता है

उपरोक्त निर्णय के आलोक में यह स्पष्ट है कि उ०प्र० रेरा के प्राविधानों के अन्तर्गत प्रमोटर व क्रेता के बीच किये गये अनुबंध के अनुरूप विलम्ब अवधि तथा मूल धनराशि पर ब्याज देय होगा, क्योंकि प्रमोटरों द्वारा उक्त धनराशि का उपभोग


4

किया गया है। अतः वादी को कब्जा व विलम्बित अवधि पर ब्याज कब्जा की तिथि तक दिलाया जाना न्यायोचित प्रतीत होता है।

आदेश

प्रतिवादी को आदेशित किया जाता है कि **occupation certificate** के साथ वादी को **नवम्बर 2019 तक** यूनिट का भौतिक कब्जा (physical possession) उपलब्ध कराये। साथ ही शिकायतकर्ता व प्रमोटर के बीच हुये हस्ताक्षरित Builders Buyers Agreement (BBA) के अनुसार विलम्बित अवधि/delayed period के सम्बंध में दिनांक 30.04.2016 तक BBA में उल्लिखित दण्ड/penalty के अनुसार तथा दिनांक 01.05.2016 (Real Estate Regulation & Development, Act 2016 के लागू होने की तिथि) से **ऑफर ऑफ पजेशन की तिथि 13.12.2017 तक** MCLR + 1% की दर से प्रमोटर द्वारा दण्ड ब्याज/penal interest अदा किया जाएगा। ब्याज /दण्ड की इस धनराशि को कब्जा दिये जाने के समय अंतिम देय धनराशि में समायोजित की जाएगी।

यदि वादी द्वारा किन्हीं किश्तों का भुगतान नहीं किया गया है तो प्रतिवादी विलम्बित अवधि का ब्याज पाने का अधिकारी है परन्तु यह ब्याज MCLR + 1% की दर से अधिक देय नहीं होगा।

जहां तक प्रतिपूर्ति (compensation) दिलाये जाने का प्रश्न है तो इस सम्बंध में वाद न्यायनिर्णायक अधिकारी (adjudicating officer) को संदर्भित की जाए।

इस आदेश का उल्लंघन उ0प्र0भू-सम्पदा (विनियमन तथा विकास) अधिनियम, 2016 की धारा-63 तथा अन्य सुसंगत प्राविधानों के अन्तर्गत दंडनीय होगा। आदेश पोर्टल पर अपलोड किया जाये।

दिनांक : 26.09.2019


(बलविन्दर कुमार)
(सदस्य)

उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण