



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2726 OF 2019

Action Construction Equipment Ltd.

....COMPLAINANTS

VERSUS

ABW Infrastructure Ltd.

....RESPONDENT

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 20.07.2022

Hearing: 4th

Present: - Ms. Ruchi, Proxy counsel for the complainant.
Respondent already ex-parte

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Complainant in year 2006 booked retail spaces in project 'Gateway Towers' of the respondent situated in village Anangpur, District Faridabad, Haryana. On 25.12.2007, complainant paid Rs. 1,46,25,000/- as evident from receipt annexed at page 15 of complaint file. Complainant further paid Rs. 1,95,00,000/- on 13.05.2009 and receipt corresponding to it has been annexed at page 16 of complaint file. After receipt of above payment, 6 memorandums of understanding were executed between respondent and complainant on

12.10.2013. Vide allotment letter dated 13.10.2014, unit no(s) 710 to 717A (Eight units) were allotted to the complainant. Possession was decided to be handed over in 30 months from signing of MOUs. Because of delay in starting the project by almost 7 years, a compromise deed dated 13.11.2013 was executed between parties wherein respondent offered a guaranteed assured monthly return of Rs. 4,29,628/-. The assured return was to be paid from 13.11.2013 till the date of handing over of possession. But respondent failed to hand over the possession of allotted units within 30 months. Even the construction work had stopped and respondent also stopped paying monthly assured return to complainant. Aggrieved by the actions of respondent, complainant filed complaint before this Authority.

2. When the matter was heard on 18.02.2020, following orders were passed:

“1. None for the complainant. Ld. counsel for respondent no.7 apprised the Authority that in the present case, complainant is seeking relief of possession of the booked unit in respondent's project named 'Gateway Towers'. However, Authority vide its order dated 30.10.2018 in bunch of cases with lead case complaint no. 383 of 2018 titled Gurbaksh Singh Versus ABW Infrastructure Ltd. had ordered refund looking at the status of the project. Therefore, the present case be disposed of in the same terms.

2. In view of above, prima facie, Authority is of the considered opinion that the present case should be disposed of in terms of the order passed by the Authority in complaint no. 383 of 2018. But as per the Haryana Real Estate (Regulation and Development) Amendment Rules 2019, relief regarding refund matter in terms of Rule 28(2)(k)

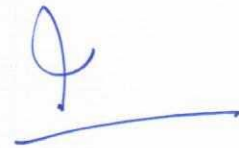


has to be dealt with by Real Estate Regulatory Authority. However, the Hon'ble Punjab and Haryana High Court vide order dated 25.11.2019 has stayed the operation of the amended rules in writ petition no. CWP-34244 of 2019 titled Wg. Cdr. Sukhbir Kaur Minhas Versus State of Haryana and Others. Case is now listed for hearing on 05.03.2020.”

3. Initially, this matter was taken up for consideration on 18.02.2020 and then on 21.10.2020 but thereafter it could not be heard as Authority had not been hearing matters in which relief of refund was in question for the reasons that its jurisdiction to deal with such matters was subjudice before Hon'ble Supreme Court.

4. Now position of law has changed on account of verdict dated 13.05.2022 passed by Hon'ble Supreme Court in SLP Civil Appeal no. 13005 of 2020 titled as M/s Sana Realtors Pvt Ltd vs Union of India & others whereby special leave petitions have been dismissed with an observation that relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matters.

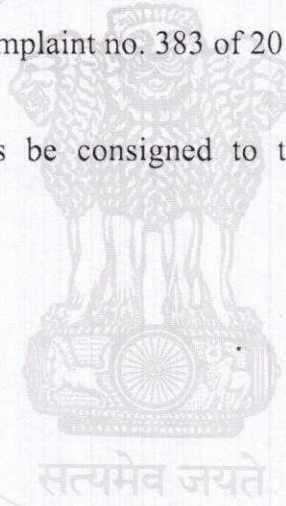
5. Consequent to decision of above referred SLPs, issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.



6. Learned counsel for complainant stated in the Court today that decision already taken by the Authority in bunch of cases with lead case Complaint no. 383 of 2018 titled as Gurbaksh Singh V ABW Infrastructure Ltd. squarely covers the controversy involved in this complaint also. Hence, these complaints be disposed of in same terms.

7. Authority is satisfied that issues and controversy involved in present complaints are of similar in nature as were subject matter of cases disposed of with lead case Complaint no. 383 of 2018 titled as Gurbaksh Singh V ABW Infrastructure Ltd. Therefore, captioned complaint is disposed of in terms of order passed by the Authority in complaint no. 383 of 2018.

8. **Disposed of.** Files be consigned to the record room and orders be uploaded on the website.



RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]