



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 647 OF 2020

Nikhil Asrani

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 29.07.2022**

**Hearing: 5<sup>th</sup>**

**Present: -** Mr. Dixit Garg, Ld. Counsel for the complainant through VC.

Mr. Shubhmit Hans, Ld. Counsel for the respondent.

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

1. On perusal of record, it is observed that a detailed order was passed by Authority on last date of hearing i.e. 08.03.2022. Facts of the case

and arguments advanced by both parties were recorded therein. Relevant part of aforementioned order dated 08.03.2022 is reproduced below:

“1. Since complainant has sought relief of refund of the amount already paid to the respondent for purchase of his commercial plot in respondent’s project, captioned case was being adjourned on the ground that jurisdiction of this Authority to adjudicate upon relief of refund sought by complainants was subjudice before Hon’ble Supreme Court in SLP No. 13005 of 2020 titled as M/S. SANA Realtors Pvt. Ltd. vs. Union of India, SLP No. 13093 of 2020 and SLP No. 13238 – 13256 of 2020.

2. Now the law laid down by Hon’ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and other matters, has been further clarified by Hon’ble High Court in CWP No. 6688 of 2021 and other connected matters, therefore, the Authority has passed a Resolution No. 164.06 dated 31.01.2022 which has been hosted on the website of the Authority. Relevant part of aforesaid resolution is reproduced as below:

“ 4. The Authority has now further considered the matter and observes that after vacation of stay by Hon’ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon’ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon’ble Supreme Court vide order dated 05.11.2020, Authority

had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.

Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of

refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly."

3. In view of above resolution, Authority decides to proceed further for adjudication of captioned complaint. Present case has been transferred to Authority from Ld. Adjudicating Officer. Present case has been listed today for first time after its transfer from Ld. Adjudicating Officer.

4. Case of the complainant is that he had booked a commercial plot in the project named "TDI City" of the respondent situated at Sonipat on 28.03.2006. Plot No. EC-2/15, measuring 204 sq. yards was allotted to him on 26.02.2007. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 13.02.2019. No reasonable date or delivery of possession of plot has been mentioned in BBA. Complainant has paid Rs. 27,31,900/- till Feb,2009 against basic sale consideration of Rs. 43,86,000/-. Plea of the complainant is that after booking of plot in March, 2006, complainant had paid more than fifty percent of the consideration by Feb,2009. Respondent should have executed BBA within a year of booking of the plot but BBA was executed in Feb, 2019 i.e. after delay of about thirteen years from date of booking which is unreasonable.



In certain similar cases respondent had assured allottees to deliver possession of plots within three years from the date of booking. After taking more than half of the consideration amount, three year period for delivery of possession is quite reasonable. Thus, learned counsel for the complainant pleaded that deemed date of delivery of plot should be taken as three years from the date of booking, meaning thereby that complainant's plot should have been delivered to him by March,2009.

Learned counsel for complainant stated that respondent has failed to offer possession of the plot to him till date. Moreover, since requisite infrastructural facilities in the project have not been developed and whole area/ colony is uninhabited, therefore, it will not be viable for him to construct a shop in middle of nowhere.

Further, grouse of complainant is that respondent has failed to perform his contractual obligation to deliver possession of the plot to him till date. He cannot be compelled to wait further for indefinite time to get possession of his allotted plot. Therefore on account of multiple defaults by respondent, complainant is seeking refund of Rs. 27,31,900/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Leaned counsel for the respondent has disputed the allegations made by complainant on the ground that project has been developed and Part Completion Certificate was granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. He stated that respondent has offered possession of plot to the complainant

on 20.04.2017 after development of basic infrastructural facilities in the project. He stated that the plot of the complainant, the Commercial Plaza as well as nearby area/colony is fully developed, and sought some time to place on record evidence and latest photographs to support his averments. On a query put by the Authority that whether respondent has obtained Part Completion Certificate qua complainant's plot, learned counsel sought adjournment to seek instructions.

6. After hearing arguments of both parties and perusal of record, Authority observes that in such circumstances, when respondent claims that he has received Part Completion Certificate for the project but the complainant asserts that his plot has not been developed, respondent company has to prove by way of photographs as well as necessary documentary evidence that plot of complainant and surrounding area/colony is developed, inhabitable, ready for usage and a Completion Certificate qua plot of complainant has been received. Respondent shall also file an affidavit stating total number of plots in the project, number of plots handed over to the allottees and number of plots already constructed along with a copy of layout plan of the said project. Said information shall also be reflected in the layout plan with distinct colour differentiation. All aforesaid information shall be filed within two weeks with an advance copy to the complainant failing which the matter will be heard and decided on merits on basis of documents available on record.



In case, respondent fails to establish that the plot is developed and has received Part Completion Certificate and the colony is inhabitable and ready for usage, the Authority will consider it to be a fit case for allowing refund of the amount paid by the complainant and will proceed to grant refund of the amount paid to the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of the order on the next date of hearing.

7. Complainant is also at liberty to file latest photographs showing current stage of completion of his plot with an advance copy to the respondent.

8. Case is adjourned to 10.05.2022.”

2. Learned counsel for the complainant has submitted documents in compliance of order dated 08.03.2022 vide an application and also stated that copy of same has been supplied to the respondent. He further stated that photographs annexed with application show that his plot is not developed and no basic infrastructure is available at site.

3. Learned counsel for the respondent refuted allegation raised by complainant regarding non-completion of the project. He pointed out that even photographs annexed by the complainant show that electricity poles have been erected and road has been constructed partially. He further stated that Part Completion Certificates were also granted by the Department of Town &

Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017 which proves partial completion of the project. He further apprised Authority that respondent had offered possession of plot to the complainant on 20.04.2017 after development of basic infrastructural facilities in the project.

4. After hearing arguments of both parties and perusal of record, Authority observes that vide its order dated 08.03.2022, Authority had specifically directed respondent to prove by way of photographs as well as necessary documentary evidence that plot of complainant and surrounding area/colony is developed, habitable, ready for usage and Completion Certificate qua plot of complainant has been received. Respondent was also directed to file an affidavit stating total number of plots in the project, number of plots handed over to the allottees and number of plots already constructed along with a copy of layout plan of the said project duly showing said information with distinct colour differentiation. Respondent has failed to place on record photographs/documents in compliance of order dated 08.03.2022. Part Completion Certificates granted to respondent by Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017 are only qua the project and does not establish development of basic infrastructure qua the complainant's plot. Even, photographs annexed by the complainant show only partial development of basic infrastructure in the project. Thus, in absence of Completion Certificate/Part Completion Certificate qua





complainant's plot, it will be presumed that complainant's plot is not covered under said Part Completion Certificates and the colony as well as plot is not habitable/ready for usage. In such circumstances, offer for possession letter dated 20.04.2017 qua plot, issued without Part Completion Certificate cannot be deemed to be a legal offer. Further, it cannot be ascertained from copies of Part Completion Certificates dated 23.01.2008, 18.11.2013 and 22.09.2017 annexed by the respondent with his reply that plot of complainant falls under them. Thus, respondent has failed to prove that basic infrastructure qua the plot has been developed; Completion Certificate/Part Completion Certificate qua complainant's plot has been received and the colony is habitable and ready for usage.

Meanwhile, it cannot be ignored that respondent has received Part Completion Certificates qua the project on 23.01.2008, 18.11.2013 and 22.09.2017 from the department concerned, and respondent has already invested substantial amount paid by the allottees/ complainant towards development of the project, therefore, no case for refund is made out at this stage. Further, refund of amount paid by complainant at this stage will also encourage other allottees to withdraw from the project and seek refund which would adversely affect the project. Therefore, request of complainant for refund of amount deposited by him cannot be accepted as same will adversely affect the project. In such circumstances, Authority observes that complainant cannot be allowed refund of the amount paid by him.



Nevertheless, as per provisions of section 18 of The RERA Act, 2016, respondent promoter is liable to pay interest to the complainant as per Rule 15 of the HRERA Rules, 2017, on account of delay caused in handing over of possession from deemed date of possession i.e. 28.03.2009 till the date of receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot.

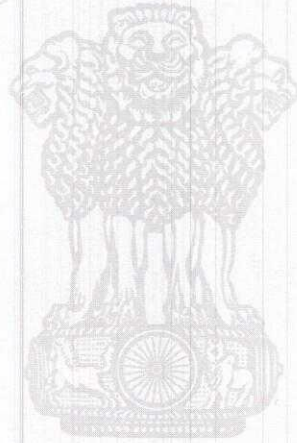
Further as per provisions of section 18 of The RERA Act, 2016, accrued interest on account of delay caused in handing over of possession from deemed date of possession up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter up to receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot shall also be paid. Both amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

5. Admittedly, complainant has paid total amount of Rs. 27,31,900/-. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the plot from the deemed date of delivery up to the date of passing of this order has been worked out to Rs. 35,73,595/- . Authority orders that upfront payment of **Rs. 35,73,595/-** will be made to the complainant on account of delay caused in offering possession within 90 days and further monthly interest @ **Rs. 22,311/-** will be paid to the complainant by the respondent w.e.f. 29.07.2022 till the date a legally valid offer of

possession is made after receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot.

6. Respondent is directed to make a legal offer of possession only after after receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time.

**Disposed of in these terms.** File be consigned to the record room and the order be uploaded on the website of the Authority.



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**RAJAN GUPTA**  
**[CHAIRMAN]**

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**DILBAG SINGH SIHAG**  
**[MEMBER]**