



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 02 OF 2018

Rajnesh Gupta

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.07.2022

Hearing: 7th (Rehearing)

Present: - Mr. Vivek Sethi, Ld. Counsel for the Complainant through VC.

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

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Captioned complaint was initially filed before this Authority by the complainant-allotees seeking refund of paid amount along with interest. It was disposed of by the Authority vide order dated 21.08.2018 with a direction to respondent to offer possession of the villa to complainant along with interest as per Rule 15 of the HRERA, Rules 2017 which shall be calculated from 01.01.2013 till actual delivery of possession. Thereafter, complainant-allotee filed the Appeal no. 16 of 2019 before Hon'ble Real Estate Appellate Tribunal against the order passed by the Authority. It was disposed of vide order dated 30.05.2019 with a direction/observation that complaint stands transferred to the Adjudicating Officer, Panchkula for fresh decision in accordance with law. Accordingly, case was listed for hearing before Learned Adjudicating Officer.
2. Since complainant had sought relief of refund of the amount already paid to the respondent for purchase of unit in respondent's project under section 18 of The RERA Act, 2016, present case was being adjourned by Adjudicating officer on the ground that question of jurisdiction of appropriate forum to adjudicate upon relief of refund sought by complainants was sub-judice first before Hon'ble High Court and then before Hon'ble Supreme Court.
3. Hon'ble High Court while disposing of a bunch of writ petitions with lead Civil Writ Petition No 38144 of 2018 M/S Experion Developers Pvt.



Ltd. v/s State of Haryana and others had upheld jurisdiction of the Authority to deal with complaints in which relief of refund was sought. Thereafter said judgement of the Hon'ble High Court in aforesaid matter was stayed by the Hon'ble Supreme Court in SLP No. 13005 of 2020 titled M/s Sana Realtors Pvt. Ltd. v. Union of India & Ors. and SLP No. 13238 – 13256 of 2020 which have now been dismissed vide order dated 13.05.2022. The relevant portion of the judgment passed by Hon'ble Apex Court, is reproduced below:-

“We do not see any reason to interfere in these matters. However, the 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. With these observations, the Special Leave Petitions are dismissed.”

4. Hon'ble Apex Court vide its judgment dated 13.05.2022, has upheld jurisdiction of the Authority to deal with complaints in which relief of refund was sought in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others. Thus, in view of judgment dated 13.05.2022 passed by Hon'ble Apex Court, this matter is being taken up for hearing before the Authority.

5. Authority observes that it has already passed its order dated 21.08.2018 in the present complaint. It further observes that the only reason for which Hon'ble Appellate Tribunal had remanded this case to learned Adjudicating Officer was the dispute relating to jurisdiction of the Authority to deal with complaints in which relief of refund had been sought. Now the question of jurisdiction of Authority stands finally settled both by Hon'ble Supreme Court.

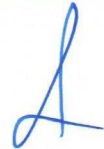
6. In view of above, Authority observes that orders dated 30.05.2019 passed by Hon'ble Appellate Tribunal now has become infructuous. Accordingly, the original order dated 21.08.2018 passed by Authority stands revived. The Authority cannot decide the same matter again once it had disposed it of by giving its final order. Accordingly, the Authority decides to dispose of the captioned complaint in terms of the same order dated 21.08.2018.

7. Learned counsel for the complainant apprised Authority that till date complainant has not received possession of the villa, therefore, respondent be directed to offer possession to complainant along with interest for delay in delivery of possession to be calculated till date.

8. Learned counsel for the respondent in response argued that respondents are not liable to pay interest for period during which litigation was pending before Hon'ble Supreme Court and Hon'ble High Court.

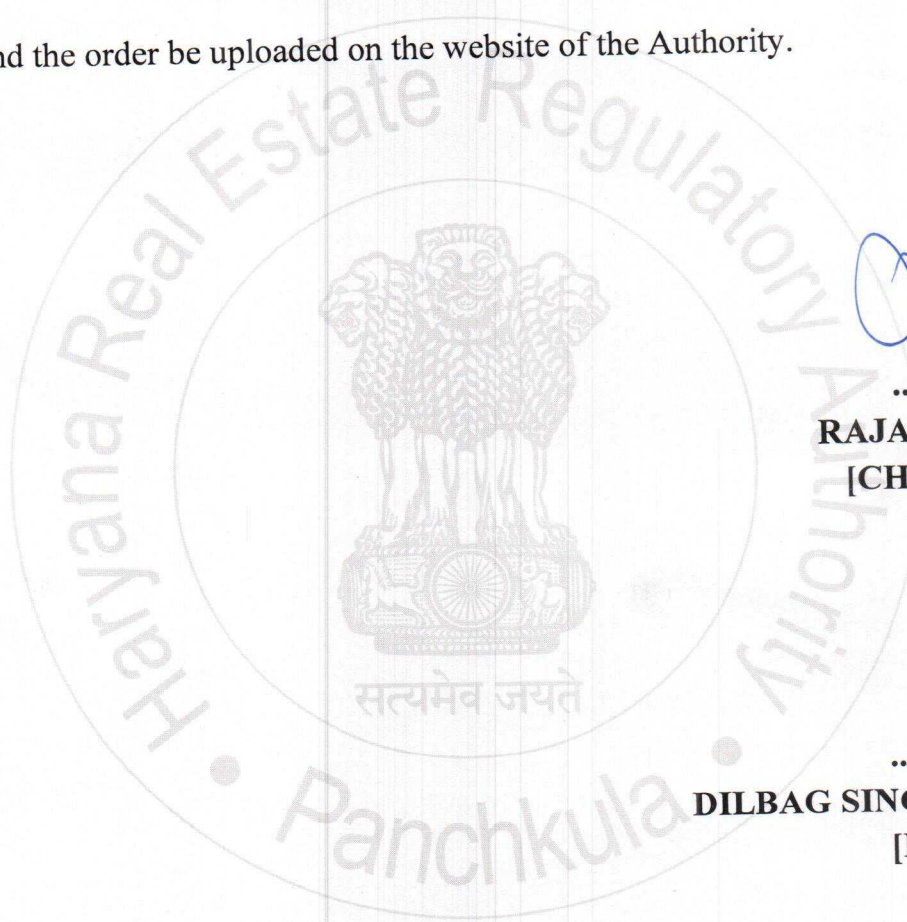
9. Authority is of the considered opinion that since respondent has failed on multiple counts, therefore, Authority vide its order dated 21.08.2018 had directed respondent to offer possession of the villa to complainant along with interest as per Rule 15 of the HRERA, Rules 2017 which shall be calculated from 01.01.2013 till actual delivery of possession. It has been apprised by both parties that respondent had applied Occupation Certificate for this project on 09.05.2014 but has not received the same from the department concerned. Therefore, respondent is directed to issue a proper and lawful offer of possession. Respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the deemed date of possession which in this case was determined by Authority vide its order dated 21.08.2018 as 01.01.2013. Respondent shall also pay interest w.e.f. 22.08.2018 up to the date of passing of this order.

10. As per calculations made and verified by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handover of possession of the villa up to the date of passing of this order has been worked out to **Rs. 32,61,132** /- as per Rule 15 of the HRERA, Rules 2017. The Authority orders that upfront payment of **Rs. 32,61,132** /- will be made to complainant by respondent on account of delay caused in offering possession within 90 days of uploading of this order. Respondents are directed to handover possession within 30 days of uploading of the order. Said



offer letter shall be accompanied with statement of accounts showing payables and receivables. Respondent is directed to issue said statement of accounts strictly as per provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles laid down by the Authority, and may adjust receivables accordingly.

11. **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]