



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. Complaint no. 2365 OF 2019 (7th Hearing)

Rajiv Arora

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

2. Complaint no. 2775 OF 2019 (6th Hearing)

Ashu Rajput

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

3. Complaint no. 10 OF 2020 (4th Hearing)

Anju

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

4. Complaint no. 255 OF 2020 (3rd Hearing)

Saransh Mahajan

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

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5. Complaint no. 778 OF 2020 (4th Hearing)

Manish Sharma

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

...RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 06.05.2022

Present: -

Mr. Parneet S. Bhargav, Ld. Counsel for the complainant
in complaint no. 2365/2019.

Mr. Sukhdev Singh Ld. Counsel for the complainant in
complaint no. 10/2020.

Complainant in person in complaint no. 255/2020

None for the complainant in complaint no. 2775/2019
and 778/2020.

Mr. Kamaljit Dahiya, Ld. Counsel for the respondent in
all complaints

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While perusing case files, it is observed that all captioned matters were filed before this Authority in the year 2019 and 2020 praying for relief of refund. However these matters were not being heard for last nearly 2 years

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on account of jurisdiction dispute of the Authority in those complaints in which relief of refund had been sought as the matter was under adjudication firstly before Hon'ble High Court and then before Hon'ble Supreme Court of India.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. Thereafter, Hon'ble High Court of Punjab and Haryana have further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. Vide order dated 13.01.2022.

Consequent upon above judgment passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced 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 were 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.”

Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

3. Above captioned complaints are taken up together as grievances involved therein are pertaining to the same respondent and their project. Hence facts of Complaint no. 255 of 2020 titled as Saransh Mahajan Versus Raheja Developers Ltd. is taken as lead case.



4. Vide this complaint, complainant has sought refund of an amount of ₹2,25,000/- along with permissible interest under the provision of RERA 2016 under rules framed thereunder. Alleged amount has been paid by the complainant for booking of plot in the project to be developed by the respondent. Respondent had assured that plot would be allotted as and when of draw of lots take place. First draw of lots for the plots were held in the year 2017 whereas second draw of lot was held in the year 2019. No allotment was made in favour of complainant during these draws of lots. Therefore, complainant requested respondent to refund his money along with interest. Now, two years have lapsed but this money was not returned by the respondent.

5. While perusing file, it is observed that notice to the respondent was successfully delivered on 17.03.2020 but no reply has been filed yet. For this non-compliance, cost of Rs. 5,000/- and Rs. 2,000/- was imposed in favour of Authority and Complainant respectively was imposed on respondent. Authority vide order dated 24.02.2021 had adjourned these matters sine die but even after resumption of hearing from 17.03.2022, no reply has been filed by respondent.

6. Authority vide order dated 27.10.2020 has given its tentative view that Respondent has unjustifiably holding the money of the complainant therefore it was a fit case for allowing refund. Relevant order is reproduced below:

After consideration of the matter, the Authority observes that after completion of two draws of lot, no plot has been allotted to the complainant. Since the complainant was unsuccessful in draw of lot, the amount paid by him should be refunded by the respondent immediately. However, no efforts have been made by the respondent to do the same even after requests made by the complainant. The respondent is unjustifiably holding the money of the complainant. The complainant cannot be made to wait endlessly, therefore, the Authority is prima facie of the view that the present complaints are fit for ordering that the money paid by the complainants deserves to be returned to them along with interest.

7. Sh. Kamaljit Dahiya, Id. Counsel for the respondents during hearing submitted that they were ready to settle the matter and refund the amount. In this regard they claimed to have send mails to the complainants calling them in their office but none came to their office for settlement. Further, he submitted that in present case, complainants were not allottees as no allotment has been made to them. Hence present compliant is not maintainable under RERA as no builder allottee relationship has been established.

8. Authority observes that complainants should agree for settlement and in this case, offer of settlement has not been acceptable to them. When a unit has not been allotted to the complainants, then respondent is duty bound to

refund entire earnest money to the complainants. Their money could not be held on the ground that complainants has not approached respondent to collect money. This is a simple case of refund of earnest money on unsuccessful allotment. Therefore Authority allows relief of refund to all the complainants along with interest calculated in accordance with Rule 15 of the HRERA Rules i.e. @ SBI MCLR+2%. The principal amount and interest thereon payable to each of the complainants is tabulated below by the accounts wing of the Authority:-

S.No	Complaint No.	Amount Paid	Interest	Total
1.	2365/2019	Rs. 1,25,000/-	Rs. 52,313/-	Rs. 1,77,313/-
2.	2775/2019	Rs. 1,25,000/-	Rs. 53,116/-	Rs. 1,78,116/-
3.	10/2020	Rs. 1,75,000/-	Rs. 74,048/-	Rs. 2,49,048/-
4.	255/2020	Rs. 2,25,000/-	Rs. 94,161/-	Rs. 3,19,161/-
5.	778/2020	Rs. 2,25,000/-	Rs. 94,460/-	Rs. 3,19,460/-

In complaint no. 2775/2019, complainant has annexed demand letter dated 27.06.2019 issued by respondent wherein respondent has acknowledged receipt of Rs. 1,25,000/-. No other receipt in support of this payment has been supplied by complainant. In order to prove the date of above payment, bank acknowledgement via e-mail dated 30.11.2017 stating successful transaction in favor of respondent has been annexed.

9. Respondents are directed to refund entire amount as mentioned in above table to all the complainants within a period of 90 days as prescribed in Rule 16 of the RERA Rules.

10. **Disposed off**. File be consigned to the record room and orders be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

