



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2830 OF 2019

Vikas Mangla

....COMPLAINANTS(S)

VERSUS

Rama Krishna Buildwell Private Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 12.05.2022

Hearing: 5th (in both cases)

Present: Mr. Vikasdeep, Counsel for the complainant through VC.

Mr. Hemant Saini, Counsel for the respondent through VC.

ORDER: (RAJAN GUPTA- CHAIRMAN)

1. In this case, complainant has sought relief of refund of the amount paid by him to respondents along with applicable interest. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction to deal with such matters was subjudice first before Hon'ble High Court and later before Hon'ble Supreme Court.
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 has 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.

3. Consequent upon above judgement 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 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."

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

5. Case of the complainant is that he had booked commercial built up shop No. G-51, Ground floor measuring 252.39 sq. ft. in the respondent's project named 'The destination', Gannaur, Sonipat. Complainant averred that respondent promised to complete the project within 24 months of booking. Total consideration for the said shop was Rs. 15,14,340/-. Complainant paid an amount of Rs. 2,00,000/- on 11.10.2013 and Rs. 3,00,000/- on 01.04.2014 (Annexure C-2 and C-3). Complainant paid total amount of Rs. 5,00,000/- towards the said commercial unit till 01.04.2014.

6. Complainant further alleges that booking was done by the respondent without obtaining mandatory license from DTCP. Respondent has failed to develop the said project. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have already inordinately delayed completion of project.

7. Respondent in his written statement has stated that complainant had opted for construction linked plan and he has defaulted in making payments. Respondent admitted that he has received an amount of Rs. 5,00,000/- in the year 2013 and 2014 but after 2014, no payment was made by the complainant.

Respondent issued several reminders dated 30.11.2013, 30.12.2012, 09.09.2015, 06.02.2016, 21.04.2016, 21.01.2017 and 25.09.2018 but complainant failed to make payment of remaining instalments.



Complainant did not contact respondent from 2013 and was sleeping over his right from last 6 years. Delay in construction is the result of default in making payment by the complainant.

In regard to the license, it is submitted that respondent applied for renewal of license in the year 2013 and it was renewed till 15.12.2014 by DTCP.

8. Respondent has also submitted that structure of the shop is completed and respondent is ready to handover possession within 30 days of receiving whole payment from the complainant.

9. Both parties have argued their case at length. Complainant reiterates his case as already discussed in para 5 and 6 of this order and pressed for relief of refund along with interest. Ld. counsel for the respondent Mr. Hemant Saini made a statement that respondent is ready to refund the amount paid by the complainant.

10. Respondent has admitted the fact of booking and payment by the complainant. Further, the receipt of Rs. 5,00,000/- by the respondent is adequately proved from the receipts annexed as Annexure-C-2 and Annexure-C-3. Ld. counsel for the respondent has made a statement that respondent is ready to refund the amount paid by the complainant.

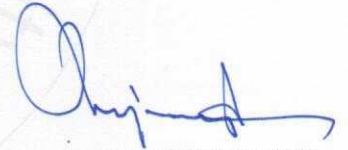


In these circumstances, Complainant being entitled to refund of the entire amount of Rs. 5,00,000/- paid by him, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order.

The total interest for the period ranging from receipt of payments to date of this final order (12.05.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.40% payable by the respondents to the complainants works out to Rs. 3,90,524/-.

The Authority hereby orders that the respondents shall refund the principal amount of Rs. 5,00,000/- plus interest amount of Rs. 3,90,524/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

Disposed of in above terms. File be consigned to record room.



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RAJAN GUPTA
(CHAIRMAN)



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DILBAG SINGH SIHAG
(MEMBER)