



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 2844 OF 2019

Anita Jindal

....COMPLAINANTS(S)

VERSUS

Bigjos Infra Estate Limited

....RESPONDENT(S)

## 2. COMPLAINT NO. 2910 OF 2019

Pradeep Kumar Jindal

....COMPLAINANTS(S)

VERSUS

Bigjos Infra Estate Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 10.05.2022**

**Hearing: 4<sup>th</sup> (in both cases)**

**Present: Mr. Rahul Jindal, Counsel for the complainant through VC.**

None for the respondent.

**ORDER: (RAJAN GUPTA- CHAIRMAN)**

1. Captioned complaints are similar in facts and circumstances and relates to the same project of the respondent. So, complaint no. 2844 of 2019 titled as Anita Jindal v/s Bigjos Infra Estate Ltd is taken as lead case.
2. Case of the complainant is that he had booked a plot in respondent's project named 'Bigjos City', Gannaur, Sonipat, on 30.01.2006 by paying an amount of Rs. 3,42,000/-. Respondent sent a letter dated 17.07.2008 to the complainant stating that company is starting the process of allotment of plots. Complainant was directed to comply with payment terms before 31.07.2008 to participate in allotment. Said letter is annexed as Annexure III of the complaint. Thereafter on 19.08.2008, complainant made a payment of Rs. 5,88,000/- in compliance of letter dated 17.07.2008. On 07.09.2008, respondent sent a letter asking the complainant to visit their office for execution of application for provisional allotment. Said application was executed by the allottee on 11.06.2009(Annexure VII). In the said application total price of the plot was mentioned as Rs. 20,32,500/-. Complainant had made a total payment of Rs. 9,30,000/-. Complainant sent a legal notice dated 19.08.2014 for the possession of his plot but respondent failed to reply to the said legal notice.



Complainant also visited respondent's office numerous times for possession of his plot but possession was not given by the respondent.

2. Complainant is seeking relief of possession of booked plot and payment of admissible delay interest or in alternate refund of amount paid by him i.e. Rs. 9,30,000/- along with interest.

3. Respondent have not filed reply even after expiry of more than 2 and a half years of receipt of notice. The notice was delivered to the respondent on 17.12.2019. Numerous opportunities have already been given to the respondent to submit their reply but they have failed to do so. Accordingly, Authority decides to proceed ex-parte against the respondent.

3. Authority in second hearing of this case dated 11.03.2020 had observed that there is no likelihood of completion of this project and complainant will be entitled to relief of refund and interest. Thereafter the case was adjourned sine die. Authority had not been hearing the matters in which relief of refund was to be given for the reasons that its jurisdiction to deal with such matters was sub-judice first before Hon'ble High Court and later before Hon'ble Supreme Court.

4. 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.

5. 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."

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



7. Admittedly the respondent has received an amount of Rs. 9,30,000/- from the complainant as is evident from receipts annexed as Annexure-I and Annexure-V. Said receipts are duly signed by respondent. Booking for the plot was done in the year 2006 whereas application for allotment was given in the year 2009. As per facts mentioned by complainant neither plot was allotted in favor of the complainant nor any agreement was executed. It was respondent's duty to execute agreement after having been received an amount of Rs. 9,30,000/- but respondent has failed to do so. Respondent has failed to file reply even after the expiry of 2 and half year since initiation of this complaint. Non filing of reply by the respondent amounts to admission. Further, payment has been adequately proved by the receipts annexed by the complainant. No possession has been offered to the complainant. Authority has already observed that project is not likely to be completed in near future.

The complainant being entitled to refund of the entire amount of Rs. 9,30,000/- paid by him in each case, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order.

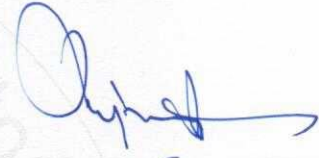
The total interest for the period ranging from receipt of payments to date of this final order (10.05.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @



9.40% payable by the respondents to the complainants works out to Rs. 12,81,414/- in each case.

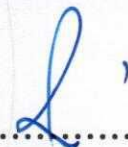
The Authority hereby orders that the respondents shall refund the principal amount of Rs. 9,30,000/- plus interest amount of Rs. 12,81,414/- to the complainant in each case, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

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



.....

**RAJAN GUPTA  
(CHAIRMAN)**



.....

**DILBAG SINGH SIHAG  
(MEMBER)**