



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 351 OF 2020

Rashmi Verma & Varinder Verma ...COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd.RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 22.04.2022

Hearing: 12th

Present: Himanshu Monga, learned counsel for the complainant.

Surjit Bhadu, learned counsel for respondent through video conference.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. In this case, complainants have sought relief of refund of the amount paid by them 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 sub-judice 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 complainants is that he booked a residential unit in the project "Amazon Defence County" of respondent situated in Sector 30, Panchkula on 21.10.2010. Flat No. B-3/206, Type B, 5th floor measuring 1590 sq. ft. was allotted to him on 23.10.2010. Flat - Buyers Agreement was executed on 20.05.2014. Complainants have made payment of Rs. 20,50,000/- against total sale consideration of Rs. 29,01,240/- till date. As per clause 26 of BBA, possession was to be delivered within a period of 48 months from the date of BBA, therefore deemed date of delivery of possession was 20.05.2018.

5. Ld. Counsel for complainants submitted that complainant booked an apartment in the said project by making payment of Rs. 1,00,000/- on 20.10.2010. Respondent issued an allotment letter on 23.10.2010. Complainants paid total amount of Rs. 27,50,000/- towards the said flat to respondent till 30.05.2014. Receipts of the abovementioned payments have been annexed with complaint file as Annexure 9 at page no. 56 to 68. It is pertinent to mention here that respondent returned the amount of Rs. 7,00,000/- to complainant on demand made by complainants on 24.03.2015. This amount is not being taken into consideration while calculating delay interest. Therefore, after deduction total amount paid by complainant to respondent comes to Rs. 20,50,000/-. After paying approximately 90% towards the said flat the complainants approached managing director of the respondent company for handing over possession of the said flat but instead of handing over possession respondent company rescheduled the completion of the

said Tower B3 wherein flats of complainants is situated. Aggrieved by the same, complainants filed the present case.

6. The complainant further submitted that project is still not complete. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have inordinately delayed completion of project and even now there is no hope of its completion in near future.

7. Today is the twelfth hearing in the matter, respondent filed the reply on 02.03.2022 after availing eleven opportunities. Respondents in his reply has submitted that complaint lacks cause of action as no proof has been produced by complainant to show that respondent company was obligated to deliver unit booked within a particular time frame or on a specific date. Bare reading of clause 26 of BBA shows that respondent company never promised to give possession within 36/48 months from the date of execution of BBA, it merely provides that developer will endeavour to complete construction of the unit within abovementioned period. Today none was present for respondent.

8. Factual position reveals that possession has not been yet offered by respondent even after of delay of 3-4 years from deemed date of offer of possession. Respondent has not provided any specific timeline for handing over of possession. Respondent in the present case has failed to complete the project and therefore in complaint no. 559 of 2018 Authority has already handed over the project to GLM Buyers Welfare Association for completion. Non-completion of

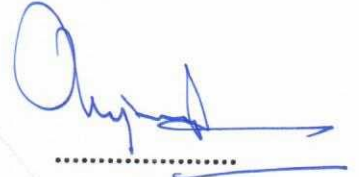


project has resulted in breach of contract executed between the parties. Therefore, complainants are entitled to get refund in this case. Furthermore, complainants are not interested in waiting for possession endlessly and are insisting upon refund. In these circumstances, it is observed by the Authority that by virtue of section 18 of RERA Act, 2016 allottee is within his right to ask for refund when unit is not ready and no timeline is committed by respondent for handing over of possession, allottee cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.40%) from the respective dates of making payment till the actual realization of the amount.

Authority directs the respondent to refund entire principal amount of Rs. 20,50,000/- to the complainant. The Authority has got the interest payable to the complainant calculated from its Accounts Branch which works out to Rs. 18,24,605/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order at the rate of 9.40%. Now, respondent has to pay total amount of Rs. 20,50,000/- + Rs. 18,24,605/- which comes out to be Rs. 38,74,605/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

9. Further it is being made clear that this order for refund will be executed against other assets of the respondent company and not against the assets of the project "Amazon Defence County" of respondent situated in Sector 30, Panchkula as this project has been handed over to GLM Buyers Welfare Association in complaint no. 559 of 2018 for its completion by the Association.

9. **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]