



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2415 OF 2019

Sachin Dhingra & Anr.

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 10.03.2022

Hearing: 6th

Present: - Mr. Sachin Dhingra, complainant through video conference

Ms. Rupali S. Verma, learned counsel for the respondent through video conference

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. While perusing case file, it is observed that relief of refund has been sought by the complainants vide present complaint. Initially, this Authority had kept sine die all refund cases for more than a year or so on the account of dispute regarding jurisdiction of Authority to deal with such

cases. Now law on the question has been settled by Hon'ble High Court and by Hon'ble Supreme Court as well. Besides, same has been further endorsed by Hon'ble High Court again vide its orders dated 13.01.2022. This Authority has also passed a resolution No. 164.06 dated 31.01.2022 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority 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."

2. Since, the basic issue of jurisdiction stands settled, therefore, Authority has started hearing those complaints relating to refund which were kept sine die.

3. Initiating his pleadings, complainant has submitted that he had booked a flat bearing No.T8-303 admeasuring 1740 sq. ft in project named 'Parsvnath Royale, Sector 20, Panchkula' in the year 2013. Complainant had paid a sum of ₹18,28,918/- towards basic cost by the year 2013 against basic sale price of ₹73,95,000/- to the respondent. Complainant has annexed copies of payment receipts as Annexure-B which depicts total sum of

₹19,63,362/- being paid to the respondent. As per clause 10(a) of flat buyer agreement executed between the parties on 21.12.2013, respondent was under an obligation to hand over the possession of the flat within a period of 18 months with grace period of 6 months i.e. by 21.12.2015, whereas more than six years have lapsed from the deemed date of possession but respondent has miserably failed to complete the project and to handover possession of the flat to the complainants. Complainants visited the site number of times and realized that respondent has failed keep its commitment of handing over the possession. Therefore, complainants vide letters dated 18.08.2018 and 25.10.2018 asked for cancellation of unit and refund of the amount deposited with respondent but no response was received from respondent. Complainants further argued that the project is not complete and the respondent is not in a position to offer actual possession of the unit even after lapse of more than 6 years from deemed date of possession. Since there is no hope that possession would be offered in near future, complainant has prayed for relief of refund along with interest at the rate 24%.

4. Respondent in its reply has admitted the major facts of booking of the apartment, agreed sales consideration, area and location of the apartment. He has not denied the payment made by the complainants. It has been contended that project is being developed in terms of statutory approvals granted by the competent authority and the license granted by the competent authority and building plans and its revalidation has also been

approved by the competent authority. It has been submitted that project has already been registered vide certification no. HRERA/PKL/(PKL-16-2018) dated 19.06.2018. It has further been contended that all statutory dues in form of EDC, IDC, conversion charges etc have been paid in full to the competent authority. Out of total nine towers to be constructed, four towers i.e.T1-T4 are almost complete for delivery wherein the possession has already been offered for fit outs purpose. In towers T5-T9, remaining work has been in progress. It has been further submitted that the tower in which complainant had booked the flat i.e T-8 is progressing in construction and gradually leading towards completion. Respondent has contended that delay caused in completion of the project is not intentional and is due to reasons beyond the control of respondent company. Respondent has also referred to clause 10(c) of the flat buyer agreement whereby it has been stipulated that in the event of delay caused on account of force majeure conditions, complainants shall be paid compensation @ ₹5/- per sq.ft. Respondent has also stated that time is not essence of the contract. It has also been submitted that post 18.02.2015, department came out with a policy for formal transfer of beneficiary of interest/development and marketing rights and the same has been implemented with retrospective effect. Policy was under review till 31.01.2017 and thus, license could not be renewed by the department which in turn affected the registration of the project under RERA. The issue has now been resolved and after completion of all formalities, competent

authority had granted in principle approval of transfer of beneficiary interest/development and marketing rights on 08.06.2018. It has been contended that complainants can be shifted in the towers in which the fit outs for possession have already been offered as per availability and mutual understanding between both the parties. It has also been submitted that respondent is not liable to pay refund along with interest as per flat buyer agreement executed between the parties.

5. Learned counsel for the respondent reiterated the submissions already made in reply and argued that project is being developed in terms of statutory approvals granted by competent authority. She further stated that complainant may be shifted to another towers (in which possession for fit outs has already been offered), if he so desires. She further argued that if complainant is awarded refund, progress of entire project may be halted.

6. After hearing both the parties and going through documents on record, Authority observes that due date of offering possession was 2015. Already delay of more than six years has taken place and respondent has failed to offer the possession of the flat to the complainant till date. Therefore, Authority observes that complainant who has nearly paid 25% of the basic sale price, can't be asked to continue in the project after such inordinate delay and discharge his obligation of paying the balance 75% of the amount. Since, complainant wants to withdraw from the project, relief of refund of the amount deposited by him deserves to be granted. For these

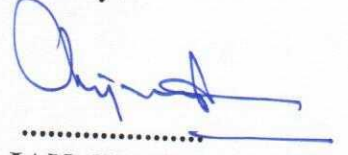
reasons, a case is clearly made out to allow relief of refund as sought by complainants as per provisions of Section 18 of RERA Act. Hence, Authority directs respondent to refund to the complainant his entire amount of ₹19,63,362/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.30% (7.30% + 2.00%) from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.30% works out to ₹35,23,226/- as per detail given in the table below:

S.No.	Principal Amount paid by complainants	Date of payment	Interest Accrued till 10.03.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹7,54,727/-	01.08.2013	₹6,04,592/-	₹13,59,319/-
2.	₹12,08,635/-	12.09.2013	₹9,55,272/-	₹21,63,907/-
Total	₹19,63,362/-		₹15,59,864/-	₹35,23,226/-

Respondent is directed to make the entire payment of ₹35,23,226/- within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.



7. Complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

