



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 269 OF 2021

S K Baliwal

....COMPLAINANT

VERSUS

1. SRS Real Estate Limited

2. SRS Real Infrastructure Limited

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 30.03.2022

Hearing: 13th

Present: -

Mr. Shubham Chandel, Proxy Counsel for Complainant
through VC

Respondent already ex-parte

ORDER (DILBAG SINGH SIHAG-MEMBER)

While perusing case file, it is observed that present case was pending for adjudication before ld. Adjudicating Officer. Complainant has

sought relief of refund of the amount already paid to the respondent for purchase of flat in respondent's project. Initially jurisdiction of this Authority to adjudicate upon relief of refund sought by complainant was subjudice before Hon'ble Supreme Court in SLP No. 13005 of 2020 titled as M/S. SANA Realtors Pvt. Ltd. vs. Union of India and SLP No. 13238 – 13256 of 2020, the cases in which refund has been sought were adjourned. Although no specific stay was granted in respect of present respondent promoter, Authority by way of abundant caution had decided not to deal with such matters for the time being and decided to await the outcome of SLPs relating to Haryana matters pending before Hon'ble Apex Court. Now the law laid down 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 other matters, has been further clarified by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, therefore, the Authority has passed a resolution no.6705-6709 dated 14.01.2022 which has been hosted on the website of the Authority. Relevant part of aforesaid resolution is reproduced as 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. After the question of jurisdiction having been settled, learned Adjudicating Officer has sent this case to the Authority for further action. Accordingly, this matter has been placed before the Authority for the first time after its receipt from learned Adjudicating Officer. In view of above resolution, since no specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court in present matter, Authority decides to proceed further for adjudication of the complaint.
3. It is observed that complainant was allotted a flat bearing no. 508, Type-A, Tower-A8 admeasuring 431.437 sq ft and balcony area 57.61 sq ft in the project namely 'SRS Palm Homes', Sector-7, Palwal on 26.08.2015. Copy of allotment letter has been attached at Annexure C/8. Total sale consideration of the flat was ₹15,81,978/- against which complainant had paid an amount of ₹7,90,989/- till 26.07.2016. Builder buyer agreement was not executed by the respondent. However, as per clause 19 of allotment letter dated 26.08.2015, possession of the flat was to be handed over within 4 years from the date of approval of building plans i.e. up to August 2019. Till date, neither project has been completed nor possession has been handed over to the complainant.



Moreover, complainant had also sent a legal notice dated 22.02.2019 to the respondent claiming refund of entire paid amount but the respondent did not pay any heed to this. So, aggrieved from above facts, the complainant sought relief of refund of the entire paid amount along with interest.

4. Notice was sent to the respondent. Despite service of notice upon respondent through Jail Superintendent, respondent had opted not to appear before the Court and it was ordered to be proceeded against ex-parte.

5. Authority after going through written submissions of complainant observes that complainant had booked flat in the year 2015 and paid ₹7,90,989/- against total sale consideration of ₹15,81,978/-, details of the same are placed on record at Annexure C/13. Vide allotment letter dated 26.08.2015, flat bearing no.508, Tower-A8 was allotted to the complainant. Copy of allotment letter has been attached at Annexure C/7.

6. Keeping in view above facts, Authority prima facie is of the view that due date of offering possession of the booked flat to the complainant was August 2019 as per allotment letter i.e. four years from the date of approval of building plans. Since no specific date of approved building plans has been provided in this case, Authority would add six months grace period to deemed date of possession. So, deemed date of possession in the present case would become February 2020. Already delay of two years has been taken place. Directors of respondent company are confined in jail. They have failed

to assist the Authority. The Project is not complete till date and there is no likelihood that it would be completed in the near future as Directors of respondent company are in jail. In these circumstances, this is a stuck project. There appears little hope of its completion in near future. Despite receiving payment from the complainant, the respondent company has not carried out any construction work since five to six years. Chances of completion of project are very less. Authority cannot keep the complainant waiting endlessly. It has been observed by the Authority that properties of the respondent company have already been attached by Enforcement Directorate, insolvency proceedings are also going on and the competent authority has already revoked the license issued for the project in question. In these circumstances, there is no likelihood of completion of the project.

7. On account of above reasons, case is clearly made out to allow relief of refund as sought by complainant. Therefore, complaint deserves to be allowed. Authority directs the respondent to refund principal amount of ₹7,90,989/- 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% from the date when amounts were paid till today. The total amount payable to the complainant works out to ₹12,62,257/- (₹7,90,989/- principal amount + ₹4,71,268/- interest) as per following details:



S. No.	Principal Amount	Date of payment	Interest Accrued till 30.03.2022
1.	₹20,000/-	17.03.2015	₹13,040/-
2.	₹80,000/-	05.07.2015	₹50,123/-
3.	₹2,95,500/-	20.05.2015	₹1,88,682/-
4.	₹1,97,742/-	30.12.2015	₹1,14,925/-
5.	₹1,97,747/-	26.07.2016	₹1,04,498/-
Total	₹7,90,989/-		₹4,71,268/-

8. Respondent shall pay the entire amount within 90 days in two equal instalments of which first instalment will be paid within 45 days and the next within 45 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website of the Authority. In the circumstances that the Directors of the respondent company are in Jail and they are facing multiple criminal proceedings, there will be a challenge in getting these orders executed. It is ordered that the appropriate mode of execution of the orders as prescribed in the RERA Act, 2016 shall be available to the complainants.

9. The Authority in another bunch matter with lead case **Complaint No. 383 of 2018 Gurbaksh Singh & Another Versus ABW Infrastructure Pvt. Ltd.** has passed a detailed order for protecting the interests of allottees in real estate projects which get stuck due to misdeeds of the promoters and face serious financial difficulties. The Authority has ordered that if there are

multiple claims against the assets of respondent company, the claims of the complainant/allottee shall be served first of all on in preference to any other claim including the claims of the lending financial institutions or other financial creditors. The reasoning and logic cited in that complaint shall be applicable as it is in this case as well. Accordingly, the complainant may present this order before any appropriate Authority dealing with disposal of the assets of the respondent company for serving his claims first of all on priority.

10. Case is **disposed of** accordingly and file be consigned to record room after uploading of order on the website of the Authority.



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(RAJAN GUPTA)
CHAIRMAN



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(DILBAG SINGH SIHAG)
MEMBER