



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. Complaint No. 2850 of 2019

Amit Sareen

...Complainant.

Versus

Trishul Dream Homes Ltd.

...Respondent.

2. Complaint No. 2854 of 2019

Shilpa Sareen

...Complainant.

Versus

Trishul Dream Homes Ltd.

...Respondent.

3. Complaint No. 2855 of 2019

Ravi Madan

...Complainant.

Versus

Trishul Dream Homes Ltd.

...Respondent.

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of hearing: 05.05.2022

Hearing: 21st

Present: -

Mr. Nitin Kant Setia, learned counsel for complainant (in all complaints)

None for respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing cases files, it is observed that captioned matters were filed before this Authority in the year of 2019 seeking relief of refund. Initially, these matters were not being heard for last nearly two years on account of dispute over the jurisdiction of Authority to deal with those complaints in which relief of refund had been sought and been under consideration firstly before Hon'ble High Court and then before Hon'ble Supreme Court of India.
2. Now 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 have 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. Consequent upon above judgment passed by Hon'ble High Court, this Authority has also 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 were 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.”

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

3. Authority has taken up the entire bunch for disposal and has taken complaint No. 2850 of 2019 Amit Sareen Vs. Trishul Dream Homes Ltd. as lead case.

4. The facts averred by complainant are as follows:-

i) That the complainants in the year 2014 booked a 2BHK flat in Affordable Group Housing Colony project of respondent named 'SRS Hitech Project' at Sector- 84, Faridabad. The complainants deposited an amount of Rs. 1,00,000/- as booking amount. Respondent allotted unit bearing no. 706, Type B, Tower A6 to complainant. Letter of allotment in favour of complainant is annexed as Annexure A2 in complaint file.

ii) An allotment letter dated 18.05.2015 was issued for the apartment measuring 475.618 sq. ft. carpet area and 98.759 sq. ft. as balcony area. Total agreed sale consideration was Rs.19,51,852/-.

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iii) Flat buyer agreement was executed on 18.07.2015 in which it was stipulated that possession will be offered within 4 years from sanction of building plans. The actual date of delivery of possession in accordance with clause 3.6 works out to be 17.12.2018 as the building plan no. ZP-1004/SD(DK)/2014/28305 dated 17.12.2014 and possession was to be handed over within 4 years of approval of building plans. The complainant has already paid an amount of Rs. 14,63,891/- as is evident from the receipts issued by respondents, which are annexed by the complainant as Annexure P-5 (Colly) at page 29-33 of the complaint file. The complainants alleges that even after receiving over 75% of the total sale consideration, the tower in question is nowhere near completion and with the current pace it would take many more years to complete.

iv) Complainant further states that occupation certificate in the instant case have not been issued for the project in question. Further, promoter company "SRS Hitech Projctcs Ltd." has changed its name to "Trishul Dream Homes Ltd." and same was communicated to complainant vide letter dated 21.07.2016. Complainant on account of severe breach of terms of the agreement requests for refund of money paid by him to the respondents along with delay interest as admissible under Section 18 of the RERA Act and Rule 15 of the RERA Rules.

5. Respondent has submitted their reply dated 14.10.2020 in the lead complaint No. 2850 of 2019. Respondents have submitted as follows:-

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- i) Out of total sectioned 816 units, 331 has already been allotted and remaining 485 units stands unallotted/surrendered and are available for sale. In order to avoid delay towards convenience of 331 allottees, Respondent Company is trying to complete construction of 4 towers i.e., A-1, A-2, A-3 and A-4. Status of Tower A-2, A-3 and A-4 is 100% structure and 70% finishing. Tower A-1 has only raft and stilt complete and no floors have been constructed till now. The complete project will be complete by July 2022.
- ii) Vide communication dated 04.02.2019, communication was sent to Ld. Senior Town Planner, Town and Country Planning Dept., Haryana for adjustment of 122 flats allottee in Tower A-5, A-6 and A-7 to already constructed towers A-1, A-2, A-3 and A-4. Matter is pending adjudication with the concerned authority. Respondent is ready and willing to hand over the possession of the flat subject to approval bt Ld. Senior Town Planner.
- iii) Respondent has approached "SWAMIH Investment Fund I" to avail investment. Vide communication dated 18.09.2020, said investor accorded in-principle approval to invest up to Rs. 24 Crores and an additional amount of Rs. 10 Crores.
- iv) As per clause 3.6 of Builder Buyer agreement, due date was supposed to be 4 years from approval of building plans or grant of environment clearance whichever is later. Building plans were approved on 14.12.2014 whereas environment clearance was granted on

19.03.2015. Accordingly, due date of possession from 19.03.2015 works out to be 19.03.2019.

- v) Till date complainant has paid Rs. 14,63,891/- to the respondent.
- vi) Complainant was irregular in making payments. In this regard multiple demand letters dated 18.05.2015, 25.12.2015 and 07.05.2016 was sent to complainant.

6. During hearing dated 10.08.2021, Ld. Counsel for respondent brought the notice of the court to the fact that complaint no. 2872/2019 titled "Jagpreet Singh Vs. Trishul Dream Homes Ltd." along with 28 other complaints have been disposed off by the authority vide order dated 22.07.2021. In this complaint respondent has submitted an affidavit along with list of allottees being adjusted and transferred from Tower A-1, A-5, A-6 and A-7 to completed towers A-2, A-3, and A-4. For some allottees having issues with allotment because of change in floors, respondent stated that he will make necessary adjustments as and when vacant apartments are available. Authority agreed with the submissions of respondent and held that respondent is making efforts to complete the towers. Respondents were thereby directed to handover possession of the apartments to all the complainants after in the new Towers after completing construction work. Relevant order is produced below:

3. The Respondent had placed on record an affidavit along with list of allottees being adjusted and transferred from Towers A1, A5, A6, and A7 to Towers A2, A3, A4. He had also submitted a copy of the letters written to all allottees and monthly



construction schedule for Towers A1, A2, A3 and A4. Copies of the same were supplied to the complainants. Respondent further apprised that possession of completed apartments would be handed over to the complainants/allottees by July 2022. Learned counsel for the respondent further submits that reply filed in complaint no. 2353 of 2019 is to be adopted in all the cases and no separate reply shall be filed.

On the other hand, learned counsel for complainants pointed out that the offer made by the respondent is acceptable to 16 allottees and they have settled their disputes, but 12 allottees have objections because floors of their apartments has been changed. He stated that they had initially been allotted apartment on 2nd floor but now the respondent has offered him 7th floor etc. Change of floor is not acceptable to them.

In response to this, the respondent stated that there is no vacant apartment available after adjustment of the allottees from the Towers. If any apartment becomes available in any Tower, he will try to adjust the complainants who may wish to be readjusted.

4. After consideration of the matter, the Authority observes that this is an affordable Group Housing Colony. The apartments were allotted to the allottees on the basis of draw of lots carried out under the supervision of State Government authorities and not on the basis of choice exercised by the complainants. Since the respondent is making efforts to complete the Towers and facilitate the complainants by adjusting them in completed Towers, the objection raised by complainants is not sustainable. However, if any apartment becomes available, the respondent will adjust them.

5. Keeping in view of the above stated facts and circumstances, the Authority considers it appropriate to dispose of all these matters with a direction to the respondent to hand over possession of the apartments

to all the complainants after adjustments in the new Towers after completing construction work.

7. Ld. Counsel for the complainant submitted an application dated 09.11.2021 wherein they submitted an affidavit stating that he is not interested reallocation as offered by the respondent in separate towers and therefore prays for the decision of the Authority on merits of complaints.

8. After considering submissions of both parties, Authority observes that complainant had booked the unit in the project of the respondent in the year 2014 and by 2017 had paid an amount of Rs 14,63,891/- for the booked unit. Possession of the flat should have been delivered by the year 2019 however, respondent company. However, it is more than 3 years from due date, the project of the respondent is yet to be completed. As per the submission of the respondent the tower in which the flat of the complainant is located is yet to be completed. Further, complainant was given an opportunity to shift his unit in any of the three towers of the project which is complete but of all the available flats none suited the complainant and therefore he did not accept the offer of relocation sent by the respondent. There has already been a delay of more than 3 years and the tower in which the unit in question is located will not be ready for possession in the foreseeable future, in these circumstances, complainant cannot be forced to wait for another uncertain amount of time to avail possession of his booked unit.

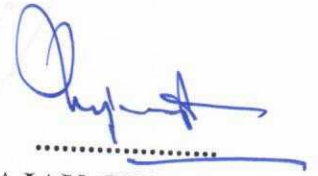
For these reasons, complainant is insisting on refund of paid amount alongwith interest. Authority accordingly allows refund of the money paid by complainant along with delay interest calculated @ 9.40 % which is rate of SBI

MCLR+2% on the date of passing the order. The amount of interest payable to the complainant has been calculated and same has been tabulated below:

S.No	Complaint No.	Amount Paid	Interest @ 9.40% till 05.05.2022	Total
1.	2850/2019	Rs. 14,63,891/-	Rs. 8,35,371/-	Rs. 22,99,262/-
2.	2854/2019	Rs. 14,63,891/-	Rs. 8,26,045/-	Rs. 22,89,936/-
3.	2855/2019	Rs. 14,63,891/-	Rs. 8,45,360/-	Rs. 23,09,251/-

Therefore, respondent is directed to pay amount as mentioned in table above as refund of deposited money alongwith interest to the complainant. The money shall be returned by respondent within time period prescribed in Rule 16 of the RERA Rules.

9. In these terms, the present complaint stands disposed of. File be consigned to record room, after uploading order on website of Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIAG
[MEMBER]