



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 862 OF 2019

Vishal Wig and Nisha Wig

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

**CORAM:** Rajan Gupta  
Dilbag Singh Sihag

**Chairman**  
**Member**

**Date of Hearing:** 12.05.2022

**Hearing:** 3<sup>rd</sup> Re-hearing

**Present:** - Adv. Sanjeev Sharma, learned counsel for the complainants through video conferencing  
Adv. Sourabh Goel, learned counsel for the respondent through video conferencing.

### ORDER (RAJAN GUPTA - CHAIRMAN)

1. The captioned complaint has been filed by complainant seeking relief of refund of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession.
2. This case was disposed off by Authority along with bunch of complaints with lead complaint case no. 762 of 2018 titled Rakesh Kumar versus M/s Ferrous Infrastructure Private Ltd., vide its order dated 19.11.2019. However, application for recalling the case was filed by learned counsel for

complainants on the ground that project involved in this complaint is a different project altogether i.e., "Beverly Homes" situated at Phase-II, Sector- 89, Faridabad and therefore, it was wrongly clubbed. Accordingly, the case has been relisted for hearing.

3. Authority observes that the project involved in present complaint is "Beverly Homes" situated at Phase-II, Sector- 89, Faridabad, whereas the project involved in bunch of complaints disposed off with lead complaint case no. 762 of 2018 was "Ferrous City" situated at Phase-II, Sector- 89, Faridabad. Therefore, present complaint is re-listed for hearing.

4. Learned counsel for the complainant stated during hearing that decision already taken by Authority in bunch of cases with lead case Complaint No. 843 of 2019 titled as Manoj Kumar Versus Ferrous Infrastructure Pvt. Ltd. squarely covers controversy involved in above mentioned complaint. Hence, this complaint may be disposed of in same terms.

5. On the other hand, Respondent through his written submissions submitted that 50 allottees have already taken possession of their units. Allotted unit is ready for possession and respondent is ready to handover possession of the unit. He therefore prayed that relief of refund should not be granted to the complainant.

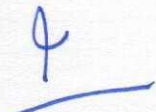
6. The complainant is seeking relief of refund. This complaint was filed in the year 2019 but it had not been taken into consideration by Authority due to the fact that jurisdiction of the Authority to deal with complaints in which

relief of refund was sought was subjudice before Hon'ble High Court and Hon'ble Supreme Court.

7. 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.

8. 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."

Now the issue relating to the jurisdiction of Authority also stands finally settled.

9. The Authority is satisfied that the issues and controversies involved in present complaints are similar as bunch of cases with lead case **Complaint No. 843 of 2019** titled as **Manoj Kumar Versus Ferrous Infrastructure Pvt. Limited**. Therefore, captioned complaint is disposed of in terms of order passed by Authority in Complaint no. 843 of 2019, relevant part of which is reproduced below:

"20. In conclusion, Authority observes that project is not complete; OC has not been even applied for; services are highly deficient; project is in a dilapidated condition; even an offer of possession sans occupation certificate also has not been made; statement of account has not been furnished; and no

effort has been made to take the project further even after filing of captioned complaints in 2019, therefore, right of the complainants to seek refund of the money paid by them along with applicable interest as per rules cannot be denied.”

10. Authority accordingly orders refund of the money paid by the complainants along with interest @ 9.4% as shown in the table below-

Sr. No.	COMPLAINT NO.	DATE OF AGREEMENT	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	INTEREST (In Rs.)	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
1.	862/2019	04.11.2014	16,13,831/-	15,60,097/-	31,73,928/-

Respondent shall pay entire amount to the complainant within 90 days of uploading this order on web portal of the Authority.

11. **Disposed of.** File be consigned to the record room after uploading of this order on the web portal of the Authority.

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 RAJAN GUPTA  
 [CHAIRMAN]

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 DILBAG SINGH SIHAG  
 [MEMBER]