



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3124 OF 2019

Hardeep Singh Gogna

....COMPLAINANT(S)

VERSUS

M/s GLM Infratech Pvt. Ltd. & Ors.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 30.06.2022

Hearing: 12th

Present: Mr. Puneet Singla, ld. counsel for complainant through VC.
Mr. Surjit Bhadu, ld. counsel for respondent through VC.

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. While perusing the case file, it is observed that a detailed and reasoned order was passed disclosing tentative view of the Authority on the last date of hearing dated 18.05.2022 of this case. Said order is being reproduced for ready reference.

“1. While perusing case file, it is observed that complainant has sought relief of refund of the amount paid by him to respondents along with applicable interest. Initially Authority had not been hearing the matters in which relief of refund was sought on the ground of jurisdiction dispute to deal with such matters which was subjudice first before Hon’ble High Court and later before Hon’ble Supreme

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1. 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.

2. 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."

3. 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 complainant is that he booked a residential unit in the project "Amazon Defence County" of respondent situated in Sector 30, Panchkula on 06.05.2011. Flat No. A/502, Type A, 4 BHK was

allotted to him. Flat - Buyers Agreement was not executed between the parties. Complainant have made payment of Rs. 1,00,00,000/- against the allotted flat till 01.08.2011. it is also alleged by the complainant that Mr. S. S. Deswal, Managing Director of the respondent company promised to hand over the possession of the unit within 15 months from the date of final payment and if possession could not be handed over, they will return the paid amount along with interest to complainant. Therefore, deemed date of delivery of possession comes out to be 01.11.2012

6. Ld. Counsel for complainant submitted that complainant booked an apartment in the said project by making payment of Rs. 15,00,000/- on 06.05.2011. Complainant has paid total amount of Rs. 1,00,00,000/- towards the said flat to respondent till 01.08.2011. Receipts of the abovementioned payments have been annexed with complaint file as Annexure A-1 at page no. 24 to 34. After paying full amount towards the said flat, complainant several times approached managing director of the respondent company for handing over possession of the said flat but he continued giving reassurances that minor difficulties have caused on-going delay and soon the project will be completed and unit will be handed over to the complainant. Complainant is aggrieved by the fact that even after eight years from booking of the unit, no major construction has taken place in the tower in which complainant unit is located. Aggrieved by the same, complainant filed the present case.

7. Complainant has further submitted that project is still not complete. Complainant has prayed for refund of amount paid 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.

8. Today is the twelfth hearing in the matter, Respondents have not filed their reply even after availing numerous opportunities. Notice was delivered to the respondent on 11.01.2020. More than four opportunities have already been given to the respondent to submit their reply.

9. Factual position reveals that possession has not yet been offered by respondent even after of delay of 9-10 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 itself resulted in frustration of very purpose of booking the unit for complainant. 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, all 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.

10. Aforesaid view expressed by Authority is tentative in nature subject to final arguments by the respondent, if he desires so. Further it is being made clear that order for refund in future 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. Last opportunity is granted to

respondent to argue his case failing which Authority will confirm its tentative view expressed in this order.

11. Case is adjourned to 30.06.2022.”

2. On the last date of hearing, respondent was also given an opportunity to place on record any additional fact/ documents having bearing on the outcome in this case. No additional facts/ documents have been placed on record by ld. counsel for the respondent. Therefore, view taken by the Authority in the order dated 18.05.2022 stands confirmed. Authority directs the respondent to refund entire principal amount of ₹ 1,00,00,000/- to the complainant. Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 9.70%. Therefore in nutshell, respondent shall pay total amount of ₹ 1,00,00,000/- + ₹ 1,06,78,956/- that comes out to be ₹ 2,06,78,956/- to the complainant within a period prescribed under Rule 15 of HRERA Rules i.e., 90 days in two equal instalments.

3. **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]