



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 859 OF 2021

Rohit Gupta

...COMPLAINANT(S)

VERSUS

M G Housing Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 18.05.2022

Hearing: 4th

Present: Mr. Manish Shukla, Learned counsel for the complainant (through VC).
Mr. T.S. Khaira, Learned counsel for the respondent (through VC).

ORDER (RAJAN GUPTA – CHAIRMAN)

1. while perusing case file, it is observed that complainants have sought relief of refund of the amount paid by them to respondents along with applicable interest. Initially Authority had not been hearing the matters in which relief of refund was sought on the ground that its jurisdiction to deal with such matters was sub-judice first before Hon'ble High Court and later before Hon'ble Supreme Court.

2. 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.

3. 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."

4. 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 complainants is that he booked a residential unit in the project "Mulberry County" of respondent situated in Phase II, Faridabad, Haryana on 13.07.2019. Flat No. D-1406, Tower D, 13th floor measuring 1075 sq. ft. was allotted to him on same day i.e., 13.07.2019. Flat - Buyers Agreement was executed on 17.07.2019. Complainants have made payment of Rs. 34,80,000/- against total sale consideration of Rs. 39,59,660/- till 22.07.2019. As per clause 6.1 of BBA, possession was to be delivered by 30.09.2019.

6. The complainant further submitted that no offer of possession was made by respondent till date. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have inordinately delayed in making offer of possession and violated Builder-Buyers Agreement.

7. Today is the fourth hearing in the matter, respondent filed the reply on 12.10.2021. Averments made by respondent in their reply are summarised as follows:

- i) That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.
- ii) As per clause 3.7 of BBA, timely payment of each instalment and other charges with respect to unit is the essence of agreement.
- iii) Respondent has obtained Occupation Certificate dated 18.09.2019 for residential units for Tower C and D. Copy of certificate is annexed as Annexure R-2 at page no. 27-28 of reply. After receipt



of Occupation Certificate, respondent issued a demand letter dated 17.01.2020 requesting the complainant to make the balance payment of the unit. Copy of letter is annexed as Annexure R-3 at page no. 29 of reply.

- iv) Complainant did not make the balance payment rather issued a letter dated 10.02.2020 seeking cancellation of unit D-1406. Copy of letter is annexed as Annexure R-4 at page 30 of reply. Therefore, complainant is at fault and his prayer for refund be rejected.

8. Both parties have argued their case at length. Ld. Counsel for complainants argued that complainant booked an apartment in the said project by making payment of Rs. 2,00,000/- on 13.07.2019. Respondent issued an allotment letter dated 13.07.2019. Complainants paid total amount of Rs. 34,80,000/- towards the said flat to respondent till 22.07.2019. Receipts of the abovementioned payments have been annexed with complaint file from page no. 36 to 39. Remaining amount to be paid by complainant towards total sales consideration comes to Rs. 4,79,660/-. He further stated that respondent had to make an offer of possession to complainant by 30.09.2019 which they failed to make, and therefore violated Builder-Buyers Agreement. With regards to demand letter dated 17.01.2020, counsel for complainant argued that respondent issued said demand letter whereby they asked complainant to make payment of Rs. 8,13,664/- to Fine Homes Constructions Pvt. Ltd. This demand letter was not valid on two grounds,



first there is no justification for demanding Rs. 8,13,664/- whereas the outstanding amount towards unit is Rs. 4,79,660/-; secondly, vide the letter dated 17.01.2020 respondent asked complainant to make payment to one Fine Homes Constructions Pvt. Ltd. and not the respondent company. Therefore, it was not a valid demand letter. Counsel for the complainant further submitted that till date no lawful demand letter for payment of remaining amount has been issued by the respondent and no valid offer of possession has been made by the respondent.

9. Respondent on the other hand argued that letter dated 17.01.2022 is valid as Fine Homes Construction is a group company of M G Housing. An offer of possession can be made to the complainant as and when complainant makes full payment towards the allotted unit.

10. Authority observes that an agreement was made between the complainant and the respondent for a ready to move in apartment. As per clause 6.1 of the agreement possession of the apartment was to be handed over by 30.9.2019. The offer of possession has still not been made.

11. Respondents argued that the complainant is at fault because he has failed to make balance payment of Rs.8,13,664/- which was called by the respondent vide their letter dated 17.1.2020.

12. Authority observes that the said demand letter was made by the respondent for making payment to another company M/s Fine Homes Construction Pvt. Ltd. Complainant could not have paid the money to another



company even though that company is stated to be a sister concern of the respondents. Complainants were duty bound to pay money only to the respondent with whom the Builder-Buyer Agreements has been executed. More importantly, the complainants had contracted for purchase of ready to move apartment. Legitimate expectation of complainant therefore, was that an offer of possession will be made by the due date or within reasonable time there-after. A valid offer of possession having not been made even after lapse of 3 years defeats very purpose of executing an agreement for ready to move apartment. Such agreements have to be distinguished from the agreements in respect of an under-construction project. In an under-construction project, a reasonable delay of 2-3 years is acceptable but in a ready to move apartment legitimate expectation of the complainant is that apartment will be delivered immediately. Inordinate delay of 3 years in such situations would justify prayer for refund of money paid because basic purposes of booking of ready to move apartment stands defeated by such delay. In such situations even a delay of short period would be unacceptable.

In the circumstances, Authority allows refund of the money paid by the complainant along with interest as provided in rule 15 of the RERA Rules,2017.

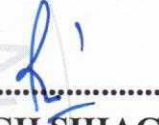
Authority directs the respondent to refund entire principal amount of Rs. 34,80,000/- to the complainant. Authority has got calculated interest payable to the complainant, which works out to Rs. 9,38,485/-. This interest has been

calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 9.50%. Now, respondent has to pay a total amount of Rs. 34,80,000/- + Rs. 9,38,485/- which comes out to be Rs. 44,18,485/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

13 **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

