



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 723 OF 2020

SANJEEV KUMAR JINDAL

....COMPLAINANTS

VERSUS

ANSAL PROPERTIES AND INFRASTRUCTURE LTDRESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Dilbag Singh Sihag

Member
Member
Member

Date of Hearing: 21.09.2022

Hearing: 5th

Present through video call: - Sh. Gaurav Gupta, learned counsel for the complainant

Sh. Aditya Pratap, learned counsel for the respondent.

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his arguments, learned counsel for the complainant apprised the Authority that present matter was heard at length and was disposed of while granting relief of refund along with permissible interest to the complainant on last date of hearing i.e. 05.05.2022. But while perusing the file, it was revealed that complainant had not mentioned total paid amount nor he had attached clear copies of receipts issued by the respondent against said payments. Therefore, matter was relisted for today for placing on record the receipts of paid amounts. In this regard, learned counsel apprised the Authority that receipts of the paid amount had already been submitted by the complainant on 29.06.2022 in the registry of the Authority.

2. On perusal of file, it is observed that detailed facts and arguments were heard on 05.05.2022, whereby Authority has expressed its tentative view to allow relief prayed by the complainant. However, matter was adjourned on request of learned counsel for the respondent apart from want of receipts of paid amounts.

Relevant part of said order is reproduced below for ready references:

1. Initiating his pleadings, learned counsel for complainant argued that complainant had booked a unit in respondent project named, "Green Escape Apartment, Sonipat" in year 2011. As per Builder Buyer Agreement dated 23.11.2011, basic sale price of flat was agreed to be ₹ 41,14,400/- against which complainant has already paid an amount of ₹ 34,74,807/- . Complainant has annexed copies of payment receipts as Annexure C-1,5-15 at page no 8, 40-58 of complaint book in support of claim of having made payment.

Unit bearing no.203, in Tower 37 admeasuring 2224 sq.ft. was allotted to the complainant. Respondent was supposed to hand over possession of the booked apartment within 48 months from the date of execution of BBA which works out to 23.11.2015. Respondent has not offered possession to the complainant till date.

3. Averment of complainant as made in para 4(h) of the written complaint is that the project is nowhere near completion, nor is likely to be completed in near future. There is already inordinate delay of five years in completion of the project. Therefore, complainant has prayed for refund of his money along with permissible interest as per Rule 15 of HRERA Rules, 2017 and compensation on account of damages having been suffered.

4. On the other hand, learned counsel for respondent Sh. Ajay Ghangas sought time to file reply and argue the matter on merits.

5. After perusal of the file, it is revealed matter has been adjourned for fourth time today. Initaly, Case was not heard by the Authority due to dispute over the jurisdiction of the Authority with regard to relief of refund claimed by the complainant. But now, law on the question has been settled by Hon'ble High Court and by Hon'ble Supreme Court as well. Recently Hon'ble Punjab and Haryana High Court has disposed of a bunch of CWPs vide its order dated 13.01.2022 passed in case no. 6688 of 2021. Considering said orders, this Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority 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.

6. 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."

Since, basic issue of jurisdiction stands settled, therefore, Authority has started hearing all the complaints relating to refund.

5. *After going through record, Authority observes that learned counsel for the respondent had already availed two opportunities for filing reply but has failed to file the same till date. On the other hand, learned counsel for complainant contented that tower in which complainants flat is situated is nowhere completion. There is already inordinate delay of eleven years from date of booking, which clearly shows that respondents have neither any intention to complete the project nor they are in a position to complete it. For all practical purposes, this is a failed project, therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted.*

Accordingly, Authority proposes to grant relief of refund of paid amount of ₹ 34,74,807/- along with permissible interest as per Rule 15 of HRERA Rules, 2017 from the respective dates of making payment till actual realization of the amount to the complainant.

Further, Authority observes that complainant had attached all receipt of payments made by him to the respondent but Annexure C-10 at page no. 45 of complaint book is not clear. Therefore, he is directed to clarify the receipts attached with complaint book on the next date of hearing.

7. *Considering request of respondent counsel, case is adjourned to 14.07.2022 granting last opportunity to the respondent to rebut argument of complainant, if he so desires failing which Authority will confirm its tentative view expressed above and allow the prayers complainant for refund on the next date of hearing. No further opportunity will be granted."*

3. Learned counsel for the respondent has filed reply. Whereby, respondent have raised mostly technical objections like complaint is not maintainable; RERA

Act cannot be implemented with retrospective effect; Authority does not have jurisdiction to hear the complaint; complaint has not been filed on proper format etc. From reading of para-9 of the reply submitted by the respondent, it could be clearly made out that respondent has conceded that they were not in a position to complete the project. Further, respondent is ready to consider allotment of an alternate flat to the complainant in some nearby project of other builder. Further respondent has argued that complainant has paid an amount of Rs. 32,54,808/-.

4. Complainant has sought relief of refund but the same was not adjudicated initially by the Authority on account of dispute with regard to jurisdiction of the Authority to deal with complaints vide which relief of refund had been sought and the issue of jurisdiction was subjudice before Hon'ble High Court and the Hon'ble Supreme Court.

Now, position of law has stands cleared, in view of Judgment passed by Hon'ble Supreme Court 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. plea raised against the maintainability of the complaint is no more tenable. Since the issue relating to jurisdiction of Authority stands finally settled, accordingly, Authority proceeded in dealing with such cases on their respective merits.

5. After going through record, especially respondent's stand in reply under para 9 that construction of the project has been stopped and respondent was not

in position to handover booked flat, Authority comes to the conclusion that respondents have admittedly failed to complete the project on time. Booked flat of complainant would not be completed in foreseeable future. As far as offering of alternative unit is concerned, it can be offered to the allottee only with his express written consent. Allottee has a right to get possession of the apartment booked by him. As per law, they cannot be forced to relocate themselves to an alternate unit. Respondent have failed to show any progress of towers nor they are in a position to commit any time line to complete the project even after delay of nearly five years.

Therefore this is a fit case for grant of refund as per provisions of Section 18 of RERA Act 2016 to the complainants. Refund of paid amount paid by the complainant to the respondents along with interest in terms of Rule 15 of RERA, Rules, 2017 allowed from respective dates of making payments till passing of this order. Further, it is pertinent to mention that complainant in present complaint has submitted that he had paid an amount of Rs. 34,74,807/- to respondent in complaint book. However, receipts attached with the file, shows that complainant has paid an amount of Rs.37,90,460/-to the respondent. Considering said receipts attached at page no. 8, 40-50 of complaint book. Refund of amount of Rs. 37,90,460/- is allowed and interest on the said paid amount has been calculated below.



6. Accordingly, respondent is directed to refund an amount of ₹ 37,90,460/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payments till passing of this order. Authority has got calculated the interest, which works out to ₹ 35,54,216/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 21.09.2022 at the rate of 8 plus 2%= 10%. Respondent shall pay ₹ 73,44,676/- (37,90,460/-+ ₹ 35,54,216/-) to the complainant within period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.

Disposed of. File be consigned to the record room after uploading of this order on website of Authority.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]