



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	167 of 2023
Date of filing:	14.02.2023
First date of hearing:	26.04.2023
Date of decision:	02.11.2023

Lt. Col. Vijay Kumar Retd.
R/o DDA SFS, Flat no. 605,
Sector 22, Pocket 1,
Dwarka

.....COMPLAINANT

Versus

Haryana Shehri Vikas Pradhikaran through
Chief Administrator, HSVP Panchkula -134109

.....RESPONDENT No. 1

Administrator, HSVP Hisar-125005

.....RESPONDENT No. 2

Chief Secretary, to Government of Haryana
Haryana Civil Secretary, Chandigarh-160001

.....RESPONDENT No. 3

Handwritten signature

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Lt. Col. Vijay Kumar Retd., complainant himself through VC.

Sh. Arvind Seth Advocate, learned counsel for respondents

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint was filed on 14.02.2023 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Freehold Residential Plots scheme

had

2.	Location of the project	Sector 4, Part II, Hisar, Haryana
3.	Nature of the Project	Residential Plots
4.	RERA registered/not registered	Un-registered
5.	Allotment letter	08.12.2009 (Annexure-4 in complaint book)
6.	Deemed date of possession	08.12.2012 (Clause 7 of allotment letter reads "the possession of the plot will be offered within a period of 3 years from the date of allotment after completion of development works in the area") Note- 3 years from date of allotment, i.e., 08.12.2009 comes out to be 08.12.2012
7.	Amount paid by complainant	₹41,91,482/-
8.	Possession certificate	23.02.2015

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

3. That complainant was allotted 14 marla, 324 sq. Yds. residential plot no. 3138, Sector 4, Part II, Hisar in the respondent's project, namely; "Freehold Residential Plots Scheme" via an allotment letter dated 08.12.2009 under reserve category through the draw of lots. Copy of allotment letter dated



08.12.2009 is annexed as "Annexure -4". The complainant has paid an amount of ₹41,91,482/- against the total sale consideration of ₹22,03,200/-

Copy of the HSVP allottee account statement is annexed as "Annexure-5".

4. That physical possession of booked plot was handed over to complainant on 23.02.2015. A copy of the possession certificate dated 23.02.2015 is annexed as "Annexure-6". However, due to some financial constraints faced by the complainant, the said plot was surrendered to the Estate Officer, HSVP Hisar, through a surrender application dated 22.07.2015. The copy of surrender application dated 22.07.2015 is annexed as "Annexure-7". The said application was sent to the respondents through speed post article no. EO-624093635IN dated 22.07.2015. Copy of speed post receipt is annexed as "Annexure-8". Further, Indiapost website, SMS, and Post Master Model Town Hisar confirmed successful delivery of speed post article on 28.07.2015 at 11:44:20. Copy of Post Master, Hisar, letter no. 2445 dated 17.11.2017 is annexed as "Annexure-10". Subsequently, booked plot of the complainant was cancelled by the Estate Officer, HSVP, Hisar, due to the allotment of more than one plot wherein it was mentioned that "the order of forfeiture and refund to be made as per HSVP policy". Copy of the Estate Officer, HSVP memo dated 06.08.2015 is annexed as "Annexure-11".



5. That complainant sent a reminder letter dated 03.09.2015 to the Estate Officer, HSVP, Hisar to expedite the refund after the surrender of the plot on 22.07.2015. A copy of reminder letter dated 03.09.2015 is annexed as "Annexure-12". On the other hand, the respondents, rather than initiating a process of refund, lodged an F.I.R no. 0806 dated 14.09.2015 in Police Station, Civil Lines, Hisar, against the complainant for obtaining allotment of more than one plot under reserve category, i.e., Defence. Copy of FIR is annexed as "Annexure-13".
6. That after a lapse of 438 days, Chief Administrator HSVP, Panchkula decided that "at this stage surrender request made by applicant cannot be accepted and cannot be refunded at this stage". Copy of Chief Administrator memo dated 10.10.2016 is annexed as "Annexure-14". Subsequently, Chief Administrator memo dated 10.10.2016 was challenged by the complainant in the Hon'ble High Court, Chandigarh, through Civil Writ petition no. 149 of 2017. After taking cognizance of all facts, including allotment of more than one plot, F.I.R dated 14.09.2015 & subjudice case, two division bench High Court directed HSVP Authorities "*to pay the refund as per policy/law within three months from date of receipt of certified copy of judgment*". Copy of judgment dated 11.01.2017 is annexed as "Annexure-15". Further, the Estate Officer,



HSVP, Hisar had turned down the directions given by the Hon'ble High Court through a speaking order dated 02.05.2017. Copy of speaking order dated 02.05.2017 is annexed as "Annexure-16".

7. That complainant challenged the Estate Officer's speaking order dated 02.05.2017 before Hon'ble High Court, Chandigarh, through Civil Writ Petition no. 10449 of 2017. However, the said petition was dismissed on the ground that *"the impugned orders have been passed by an officer in the rank of Estate Officer which is appealable before the Administrator and Chief Administrator HUDA as well as there is a revisional power with the State Government under Section 17 of Haryana Urban Development Authority Act, 1977, the Writ Petition is accordingly dismissed with liberty to the petitioner to avail the alternate legal remedy. Copy of judgment dated 16.05.2017 is annexed as "Annexure-17".*
8. That as per directions given by Hon'ble High Court vide order dated 16.05.2017, the complainant had appealed 31 times each to Administrator HSVP, Hisar, Chief Administrator HSVP Panchkula and Chief Secretary Government of Haryana in the span of last five years and seven months through his letters/ representations. Copies of first and last appeal are annexed as "Annexure 18 and 19".



9. That Suo moto EO HSVP, Hisar has departed from his earlier stand on its speaking order dated 02.05.2017 and concurred CA memo dated 10.10.2016 (which was earlier rejected by HC judgment dated 11.01.2017. Copy of the Estate Officer letter dated 10.03.2021 is annexed as "Annexure-20". After receiving no response on 31 appeals made by the complainant to Administrator HSVP, Hisar, Chief Administrator HSVP Panchkula and Chief Secretary Government of Haryana, the complainant finally appealed to Chairman HSVP. Copy of letter dated 10.11.2022 is annexed as "Annexure-21". After that, a response was received from Administrative Officer Urban Branch, HSVP Panchkula, concurring with the Estate Officer speaking order dated 02.05.2017. However, the said letter did not have the approval of the Chief Administrator, nor was it signed on his behalf. A copy of Urban Branch Memo no. A-5-UB-2022/216851 dated 26.12.2022 is annexed as "Annexure-22".

C. RELIEF SOUGHT

10. In view of the facts mentioned in complaint book, the complainant prays for the following:

- i. Complainant seeks refund of an amount of ₹41,91,482/- deposited against the plot after forfeiting 10% of total sale consideration amount



as per "HSVP policy on surrender of plot". After deduction of 10% forfeited amount, the refund amount is calculated to ₹37,72,334/-.

- ii. An amount of interest @18 % per annum on ₹37,72,334/- for late payment may also be refunded with principle amount.
- iii. Compensation of ₹10,00,000/- for mental cruelty, harassment and torture to a septuagenarian.
- iv. Reimbursement of ₹4,00,000/- as legal fees for two civil writ petition in Hon'ble High Court, Chandigarh and for complaint.
- v. As a deterrent, reasonable penalty may also be imposed against the Estate Officer HSVP, Hisar for acting like a dictator with complete disregard for Hon'ble High Court judgement dated 11.01.2017 and its policy/ rule of law.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed a short reply on 31.08.2023 pleading therein:

11. That complainant was allotted a plot no. 3138, sector 4, II, Hisar vide office memo no. 18642 dated 20.08.2009 in the category of "Defence". Due to multiple allotment of flats to the complainant under the category of



"Defence", a show cause notice was issued to the complainant vide memo no. 12611-17 dated 06.07.2015, wherein he was directed to appear before the Estate Officer, HSVP, Hisar, on 29.07.2015. Thereafter, respondents vide letter dated 06.08.2015, cancelled the plot in question as complainant has obtained allotment of multiple plots under the category of "Defence", the details of which are as under:

Plot no.	Place	Date of Allotment
12-P, Sector- 21	Ambala	06.05.2003
44, Sector-6	Panipat	11.10.1994
218, Sector-9	Gurugram	05.07.1993
3138, Sector-4(ii)	Hisar	27.08.2009
2986, Sector-15	Panchkula	
1919, Sector-26	Panchkula	17.04.1995
All the plots were allotted under the Defence Category		

12. That Hon'ble Punjab and Haryana High Court, Chandigarh vide its order dated 11.01.2017 passed in Civil Writ Petition no. 149 of 2017 directed the HSVP to decide the complainant's representation and to give refund by passing a speaking order. In compliance with the order dated 11.01.2017, a speaking order was passed by the Estate Officer, HSVP, Hisar, vide no. 77343 dated 02.05.2017.



13. Further, respondents have challenged maintainability of the captioned complaint for the following reasons:

- i. Firstly, the allotment of land and plots by Haryana Shehri Vikas Pradhikaran is governed by HSVP (Disposal of Land and Building) Regulations, 1978, which has been enacted under section 54 of the HSVP Act, 1977. Therefore, the jurisdiction of RERA is barred.
- ii. Secondly, the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project was completed before the Real Estate (Regulation & Development) Act, 2016 came into force.

E. REJOINDER FILED BY COMPLAINANT

14. The complainant has objected to the speaking order passed by Estate Officer Hisar, stating that said speaking order is not in tangent with the High Court Judgment. The division bench of the Hon'ble Court clearly states to decide on complainant's surrender application dated 22.07.2015, whereas speaking order has no mention of surrender application dated 22.07.2015. Therefore, the speaking order passed by the Estate Officer is irrelevant and not maintainable. Furthermore, the complainant alleged that he had never sent any surrender application dated 03.09.2015 to the Estate Officer as stated in the speaking order. On the contrary, the letter dated 03.09.2015 was just a reminder letter



to expedite the complainant's refund after the complainant had surrendered the plot on 22.07.2015. Respondents, with malicious intention, mentioned the wrong date of the complainant's surrender application in speaking order to deny the High Court judgment dated 11.01.2017 for a refund on the grounds that the surrender application was made after the cancellation of the plot. However, it is proved in annexure 7-10 that the surrender application was made much before the cancellation of the plot.

15. Captioned complainant is very well maintainable before the Real Estate (Regulation & Development) Act, 2016 as only the projects that have been issued completion certificates before the commencement of the Real Estate (Regulation & Development) Act, 2016 have been taken out of the prior registration requirement but not out of the ambit of the Real Estate (Regulation & Development) Act, 2016. Moreover, in the year 2021, complainant received HSVP memo no. 1162 dated 28.01.2021 demanding ₹19,82,800/- for fresh transaction in the name of development charges and extension fees for the project after the commencement of the Real Estate (Regulation & Development) Act, 2016 means that the said project is ongoing project and is retroactive and falls within the purview of the Real Estate (Regulation & Development) Act, 2016.



F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT
AND RESPONDENTS

16. Learned counsel for the complainant reiterated the basic facts of the case and requested the Authority to give directions to the respondents to refund his paid amount.
17. Whereas, learned counsel for respondents invited attention of the Authority on Para no. 3 of page no. 2 of the reply, wherein it mentions details of six plots which were got allotted by the complainant under the defence category fraudulently. Therefore, plots booked by complainant were cancelled and show cause notice was issued by the Estate Officer, HSVP, Hisar to complainant. Further, on 02.05.2017, speaking order was passed by the Estate Officer, HSVP, Hisar. Complainant did not challenge same, therefore it can be concluded that complainant has agreed to the said speaking order passed by the Estate Officer. A copy of the same is annexed as "Annexure R-1". To which the complainant replied that the said speaking order dated 02.05.2017 was challenged by the complainant before Hon'ble High Court, Chandigarh, through Civil Writ Petition no. 10449 of 2017.



G. ISSUES FOR ADJUDICATION

18. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. The Authority has gone through the rival contention and the documents placed on record. It is admitted by both the parties that the complainant was allotted a residential plot no. 3138, sector 4, part II, Hisar being developed by respondent promoter namely; "Haryana Shehri Vikas Pradhikaran." Complainant had paid an amount of ₹41,91,482/- against the total sale consideration. Physical possession of the booked plot was handed over to the complainant on 23.02.2015. However, allotment of the booked plot was eventually cancelled by the Estate Officer, HSVP, Hisar on 06.08.2015 as the complainant had taken allotment of multiple plots under the reserved category, i.e., Defence.
20. Respondents have challenged maintainability of the case, firstly on the ground that the allotment of land and plots by Haryana Shehri Vikas Pradhikaran is governed by HSVP (Disposal of Land and Building) Regulations, 1978, which has been enacted under section 54 of the HSVP Act, 1977. Therefore,



the jurisdiction of the Real Estate (Regulation & Development) Act, 2016 is barred.

21. Regarding the same, Authority has made it very clear in *Complaint no. 1323 of 2021 titled as "Aditi Singh versus Estate Officer, HUDA (now HSVP)"* that HSVP is a promoter and there exist a allottee-promoter relationship between the parties, and the matter is related to real estate project, therefore, by virtue of section 89 of the Act, *"the provision of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force"*. The Real Estate (Regulation & Development) Act, 2016 is a law made by the parliament and will prevail over law made by the legislature of the State by virtue of Article 254 of the Constitution.
22. Secondly, respondents have challenged maintainability of the case, stating that the jurisdiction of the Real Estate Regulatory Authority, Panchkula, is barred because the project was completed before the Real Estate (Regulation & Development) Act, 2016 came into force. In support, respondent referred to the issue as to whether project shall be considered as "on-going project" which has already been dealt with and settled by the Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd. versus State of UP and Others Civil Appeal no. 6745-6749 of 2021**, wherein Hon'ble Apex Court



held that the projects in which completion certificate has not been granted by the competent authority, only such projects are within the ambit of the definition of on-going projects and the provisions of the Real Estate (Regulation & Development) Act, 2016 shall be applicable to such real estate projects. Moreover, complainant himself in his rejoinder dated 21.09.2023 has admitted that respondent no.1 had already received completion certificate before commencement of the Real Estate (Regulation & Development) Act, 2016.

23. With regard to the above issue, Authority observes that in view of averment made by the respondent and admission of complainant there is no denying of the fact that the project is not an on-going project. Nevertheless, mere fact that project in question is not an ongoing project, only absolves the respondent from his obligation of registering the project as provided in the section 3 of the Real Estate (Regulation & Development) Act, 2016. The Real Estate (Regulation & Development) Act, 2016 also provides for the fulfilment of other obligations between promoter and allottee as per agreement for sale executed between them. The judgment of Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. nowhere provides that if the obligations as per agreement to sale remain unfulfilled in a completed project, the allottee



shall not have any right to claim any remedy under Real Estate (Regulation & Development) Act, 2016. Meaning thereby, even if the project stands completed and completion certificate is received by the promoter, if any obligation of the promoter towards allottee remains unfulfilled there is reoccurring cause of action and the allottee is well within his right to avail relief/remedy under the Real Estate (Regulation & Development) Act, 2016. Now issue arises herein, is whether any obligation towards complainant as per agreement to sale remains unfulfilled or whether all the obligations towards him were discharged by the respondent promoter after the Real Estate (Regulation & Development) Act, 2016 coming into force. Perusal of file reveals that all the occurrences such as booking of the plot, possession taken by the complainant, surrender made by the complainant, grant of completion certificate to the respondent have taken place before the Real Estate (Regulation & Development) Act, 2016 came into force. Therefore, it can be concluded that the project where complainant's booked plot is not an "ongoing project". The project was completed before commencement of the Real Estate (Regulation & Development) Act, 2016 and no obligations after handing over actual possession to the allottee remain unfulfilled on the part of respondent towards allottee.



24. Question arises that whether complaint is entitled to the relief sought or not under the provisions of the Real Estate (Regulation & Development) Act, 2016?
25. On merits, factual position of the case is that complainant was allotted a residential plot no. 3138 vide allotment letter dated 08.12.2009 and as per account statement issued by the HSVP, Hisar dated 07.12.2015 to complainant, possession of the booked plot was offered to complainant on 26.04.2010. Subsequent to that offer of possession, complainant took possession of his booked plot vide possession certificate memo no. S-3404 dated 23.02.2015. Thereafter, due to financial constraints, complainant decided to surrender his plot on 22.07.2015 by giving a reason that "*I hereby surrender my plot no. 3138, sector 4 part II, Hisar as per provisions contained in HUDA Act and rules/ regulations due to financial crisis/ emergency/ SOS*". Later, it came to the knowledge of the Estate Officer, HUDA, Hisar that complainant had availed an illegal benefit of multiple plots in various Urban Estates being developed by HSVP under the reserve category "Defence". Therefore, a show cause notice dated 06.07.2015 was issued to the complainant by the Estate Officer, HUDA, Hisar and directed the complainant to appear before officer of Estate Officer on



29.07.2015. Subsequently, an order deciding the show cause notice was passed by the Estate Officer, Hisar on 06.08.2015. Relevant part of the show cause notice is reproduced below:

“In compliance of the directions of the Hon'ble High Court in CRM No. M-26292 of 2013 titled as Dharam Singh Yadav Vs. State of Haryana, to ascertain those allottees who have illegally obtained allotment of more than one plot under a reserve category, the record of various Urban Estates was scrutinized and the scrutiny revealed that original allottee has obtained more than one plot under various reserve categories by submitting false, misleading and incomplete affidavits. A list of such allottees was conveyed to this office by the Chief Administrator, HUDA, Panchkula vide his office memo No. UB-A-4-2014/243 dated 07.01.2015. Accordingly, a notice was issued vide this office memo No, 12611 dated 06.07.2015 to Col. Vijay Kumar S/o Sh. Laxman Sarup R/o DDA-SFS Flat No. 605, Sector 22 Pkt-1 Dwarka New Delhi-110077 to show cause as to why the allotment of plot No. 12P, Sector-21, Ambala (Defence) obtained by her under reserve category may not be cancelled and FIR lodged for having been obtained fraudulently by submitting false, misleading and incomplete affidavit and he was also asked to appear in this office on 29.07.2015 alongwith written reply/documents and ID proof. It was also intimated through this notice that if she fails to appear on the above said date, it will be presumed that he has nothing to say and exparte action will be taken.

In compliance of show cause notice issued by this office the original allottee (Col. Vijay Kumar S/o Sh. Laxman Sarup) appeared in this office on 29.07.2015 also given the statement vide her application dated 29.07.2015 no condition mentioned at the time of flotation of said scheme (sector 4P-II, Hisar) that "Only those applicants are eligible to apply



who do not own a residential plot/house in any Urban Estate in Haryana in his/her name or spouse's name or in the name of any dependent family member". He has also stated that he was eligible for allotment of plot under reserve category (Defence) in this scheme. The allottee further requested further any action in the matter may not be taken against him.

In this regard it is submitted that as per condition given on the last page of the brochure submitted by allottee in important note (B) for all reserved categories (ii) it is mentioned clearly "**Application under any reserved categories entitled to avail of the benefit of allotment only once in his/her life time in any of the Urban Estate**"

I have gone through the file and perused the concerned record and representation of the allottee. Residential Plot No. 12P, Sector-21, Ambala (defence) was originally allotted to Col. Vijay Kumar S/o Sh. Laxman Sarup on dated 06.05.2003 under reserve category i.e. Defence. As per instructions/policy of HUDA, the allottee under reserve category is entitled to avail the benefit of allotment of residential plot once in her life time in any of the Urban Estate in Haryana, but the above said allottee has availed illegal benefit of allotment of more than one plots in Urban Estate, Faridabad/Hisar (as per detail below) under reserve category Defence by producing false, misleading and incomplete affidavit: -

Sr. No.	Plot No. / Sector/ Size	Date of Allotment
1.	12P, Sector-21, Ambala (Defence)	06.05.2003
2.	44, Sector-6, Panipat (Defence)	-
3.	218, Sector 9, Gurgon (Defence)	-
4.	3138, Sector 4P-11, Hisar (Defence)	20.08.2009
5.	2986, Sector 15, Panchkula (Defence)	-
6.	1919, Sector 26, Panchkula (Defence)	-



I am of the considered view that the allottee had already availed the benefit for allotment of plot No. 12P, Sector-21, Ambala on 06.05.2003 under Defence, thus he was not eligible/entitled for allotment of subsequent plot No. 3138, Sector-4P-II, Hisar under Defence.

Now, therefore, in exercise of powers vested in me under HUDA Act, I hereby cancel the allotment of the aforesaid residential Plot No. 3138 Sector-4 P-II, Hisar and further order for forfeiture and refund to be made as per HUDA Policy."

26. Aforesaid order clearly indicates that the Estate Officer of HUDA, Hisar, had already issued directions under the HUDA Act, 2016, to cancel the allotment of plot no. 3138 of complainant and to refund the amount after forfeiture as per HUDA Policy.
27. Feeling aggrieved/dissatisfied with order dated 06.08.2015, complainant approached Hon'ble High Court of Punjab and Haryana by filing Civil Writ Petition no. 149 of 2017. Said petition was decided by Division Bench vide order dated 11.01.2017 stating that "(2) *Having heard learned counsel for the petitioner and without expressing any views on merits of the petitioner's claim, we dispose of the writ petition with a direction to the respondents to decide the petitioner's representation dated 02.04.2016 in accordance with law/policy by way of a reasoned order within three months from the date of receipt of certified copy of this order. Needless to say*



that if the petitioner is found entitled to any refund, the due amount be refunded to him within the stipulated period.”.

28. In compliance of it, speaking order 02.05.2017 vide endorsement no. 71348 was passed by Estate Officer. Relevant part of the order is reproduced below for reference:-

“In compliance of order dated 11.01.2017 of Hon'ble High Court, letter for hearing on 05.04.2017 to the petitioner was issued vide memo No 49316 dated 20.03.2017. The petitioner appeared on 05.04.2017 before the Estate Officer, HUDA, Hisar and he has given the statement in writing at the time of hearing that the allotment of the plot has been cancelled in the double/multiple allotment and also requested to surrendered the said plot and refund the amount to him as per HUDA policy.

Matter has already been considered thoroughly at HQ level and outcome in this regard has already been received from the Chief Administrator HUDA, Panchkula vide his office memo No. A-5-UB-2016/89319 dated 10.10.2016 in which it is mentioned that:-

The matter has been got examined from HQ Legal Cell. It has been opined by them that applicant is having six plots in the different Urban Estates as mentioned vide letter under reference and FIR has also been lodged in Plot No. 3138, Sector- 4 P-II, Hisar. Therefore, at this stage surrender request made by the applicant cannot be accepted and amount cannot be refunded at this stage.

You are requested to take further action accordingly.

The above decision was informed to the petitioner vide Estate Officer, HUDA, Hisar letter No. 107162 dated 09.11.2016. The application for surrender of plot was submitted on dated 03.09.2015 which was received in this office on dated 15.09.2015 and allotment of the plot was already cancelled by Estate Officer, HUDA, Hisar vide memo No. 16114 dated 06.08.2015 due to



double/multiple benefit of reservation in allotment of plot in question. The Court case CRM No. 26292 of 2013 titled as Dharam Singh Yadav Vs. State of Haryana is pending in this Punjab and Haryana High Court, Chandigarh. Keeping in view above facts and circumstances the surrender application of the petitioner is hereby rejected consequently. Petitioner is not entitled to any refund at this stage. The resumption dated 02.04.2016 of the petitioner is decided accordingly in compliance of order dated 11.01.2017 of Hon'ble High Court."

29. In response, the complainant once again challenged the speaking order of 02.05.2017 before the Hon'ble High Court of Punjab and Haryana through Civil Writ Petition No. 10449 of 2017. This petition was dismissed on 16.05.2017 stating that *"The impugned orders have been passed by an officer in the rank of Estate Officer which are appealable before the Administrator and Chief Administrator, HUDA as well as there is revisional power with the State Government under Section-17 of the Haryana Urban Development Authority Act. 1977. The writ petition is accordingly dismissed with liberty to the writ petitioner to avail the alternative remedy."*
30. Thereafter, as per version of the complainant, he persisted the matter by filing 31 appeals to the Administrator of HSVP, Hisar, the Chief Administrator of HSVP, Panchkula, and the Chief Secretary of the Government of Haryana. Finally, on 10.11.2022, the complainant filed an appeal before the Chairman



of HSVP. Against said appeal, Administrative Officer, HSVP, Pkl had issued a letter dated 26.12.2022 vide memo no. A-5-UB-2022/216851 dated 26.12.2022 whereby refund was declined to the complainant. Relevant part of the order is reproduced for reference:-

"Subject: Rejoinder memo last Appeal against E.O.HSVP, Hisar speaking no. 77348 dated 02.05.2017 as directed by Hon'ble High Court, Chandigarh judgment dt.16.05.201: Case of refund of Rs. 42 Lacs after Surrender of HSVP Plot No. 3138, Sector-4, Part-II, Hisar.

Reference on the subject cited above.

It is intimated that the Deputy District Attorney, (HQ) HSVP, Panchkula vide endst no. 174966 dated 12.10.2022 has reported that in compliance of High Court order dated 11.01.2017 in CWP No. 149 of 2017, the Estate Officer, HSVP, Hisar after considering all facts has already passed the speaking order on 02.05.2017 and rejected the claim of the allottee/petitioner as surrender application was made after cancellation of plot. Hence not entitled for any refund at this stage. This for your information please."

31. Feeling aggrieved, complainant had filed present complaint on 14.02.2023 for seeking relief of refund as per 'HSVP policy'. It is pertinent to mention here that claim of respondent, i.e., relief of refund as per HSVP policy has already been decided by Estate Officer vide speaking order dated 06.08.2015. Against said order, complainant has already approached Hon'ble High Court of Punjab and Haryana which got dismissed by stating that order under challenge is appealable and complainant accordingly shall avail alternate



remedy. Accordingly, appeal was made by complainant to the Chairman HSVP, which got decided on 26.12.2022 stating that '*Estate Officer, HSVP, Hisar after considering all facts has already passed the speaking order on 02.05.2017 and rejected the claim of the allottee/petitioner as surrender application was made after cancellation of plot. Hence not entitled for any refund at this stage*'.

32. Essentially, cause of action arose in favour of complainant when he had applied for surrender of unit and requested for refund of paid amount and claim (refund of paid amount) in respect of said cause of action has already been decided by the competent authority; Estate Officer, Hisar by passing a detailed speaking order. Complainant had already availed legal remedy available to him. It is not the case that the complainant's grievance remained unaddressed by the authorities/forums. At this stage complainant cannot be allowed to file a fresh complaint on the cause of action against which legal remedy has already been availed and said remedies duly decided the claim of refund. Through present complaint, complainant wants to emphasize the fact that he had paid ₹41,91,482/- against unit and as such he has not been refunded any amount by respondent till date. However, fact remains that complainant's claim for refund of paid amount has already been decided on



merits by the Estate officer. Against appeal to said speaking order, the Appellate Authority had upheld the order passed by Estate officer. As on date, grievance/issues of complainant already stands adjudicated by way of the speaking order dated 06.08.2015 passed by Estate Officer and said order still hold merits as same is not under challenge before any authority. In these circumstances, claim of complainant cannot be decided afresh by this Authority.

33. As a result, there is nothing left for this Authority to decide in this complaint for the reason that claim of complainant already stands adjudicated on merits by the competent authority. Grievance of the complainant herein is that he is not satisfied by decision of Estate Officer. Said grievance cannot be decided/addressed before this Authority. No fresh cause of action has arisen in favour of complainant that would warrant the intervention of the Real Estate Regulatory Authority (RERA) under the Real Estate (Regulation & Development) Act, 2016. The complainant's attempt to approach the RERA Authority constitutes forum shopping, where a party seeks to obtain a different outcome by bringing the same issue before multiple forums, hoping for a more favorable decision. This practice is not permissible under the law, as it undermines the finality of decisions made by competent authorities.



Doing so would lead to unnecessary duplication of legal proceedings and could potentially result in conflicting judgments. Hence, at this stage the complaint filed by the complainant is not maintainable.

34. Further, the complainant is seeking compensation of ₹10,00,000/- on account of mental cruelty, harassment and torture to a septuagenarian for the past years, reimbursement of ₹4,00,000/- as legal fees for two civil writ petition in the Hon'ble High Court, Chandigarh and for complaint in HRERA, Panchkula and a reasonable penalty may also be imposed against EO, HSVP Hisar for acting like a dictator with complete disregard for the Hon'ble High Court Judgment dated 11.01.2017 and its policy/rule of law as mentioned in Para 10 (iii, iv, v) of the order. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. &Ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation



& legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

35. In view of above, Authority concludes that present complaint is not maintainable under the Real Estate (Regulation & Development) Act, 2016 and accordingly, captioned **complaint is dismissed**. The complainant is at liberty to avail any other appropriate remedy under law.
36. **Disposed of**. File be consigned to record room after uploading of the order on the website of the Authority.



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Dr. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]