



Complaint No. 730 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 730 OF 2018

Ritu Aggarwal

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 03.03.2022

Hearing: 6th

Present: - Mr. Vikas Deep, Ld. Counsel for complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that the captioned complaint was initially filed before this Authority by the complainant-allotee seeking refund of paid amount along with interest. It was disposed of by the Authority vide order dated 15.01.2019 with a direction to respondent to refund the amount already paid by complainant along with interest at the rate stipulated under Rule 15 of HRERA, Rules 2017. Thereafter, complainant-allotee filed the Appeal no. 474 of 2019 before Hon'ble Real Estate Appellate Tribunal against the order passed by the Authority. It was disposed of vide order dated 23.07.2019 with a direction/observation that complaint stands transferred to the Adjudicating Officer, Panchkula for fresh decision in accordance with law. Accordingly, case was listed for hearing before Learned Adjudicating Officer. Since complainant has sought relief of refund of the amount already paid to the respondent for purchase of unit in respondent's project under section 18 of The RERA Act, 2016, present case was being adjourned by Adjudicating officer on the ground that question of jurisdiction of appropriate forum to adjudicate upon relief of refund sought by complainant was subjudice before Hon'ble Supreme Court in SLP No. 13005 of 2020 titled as M/S. SANA Realtors Pvt. Ltd. vs. Union of India, SLP No. 13093 of 2020 and SLP No. 13238 – 13256 of 2020.



2. Now, law laid down 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 other matters vide its order dated 11.11.2021, has been further clarified by Hon'ble Punjab and Haryana High Court in CWP No. 6688 of 2021 and other connected matters vide its order dated 13.01.2022, thereafter, Authority has passed a Resolution no. 164.06 dated 31.01.2022 in view of above orders of Hon'ble Apex Court and Hon'ble Punjab and Haryana High Court, which has been hosted on the website of the Authority. Relevant part of aforesaid resolution is reproduced as 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.

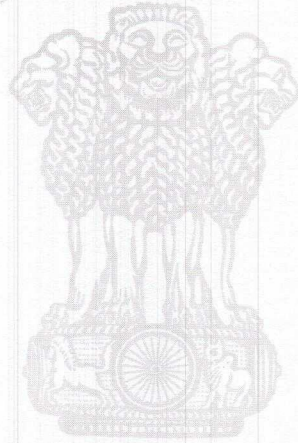
6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters 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. In view of above resolution, this file is to be dealt with by Hon'ble Real Estate Regulatory Authority, Panchkula, so the present case has been transferred to the Authority from the Court of Adjudicating Officer.

Authority decides to proceed for further adjudication of the captioned complaint.

4. Since the Authority has already heard and decided the present complaint on merits and passed final order dated 15.01.2019, therefore, the Authority upholds its order dated 15.01.2019. Both parties are directed to comply with order dated 15.01.2019.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]