



Complaint No. 1110, 2606,
& 1539 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1110 OF 2019

Kiran MehtaCOMPLAINANT
VERSUS
TDI Infrastructure Ltd.RESPONDENT

2. COMPLAINT NO. 2606 OF 2019

Ankur DhullCOMPLAINANT
VERSUS
TDI Infrastructure Ltd.RESPONDENT

3. COMPLAINT NO. 1539 OF 2019

Satish SardanaCOMPLAINANT
VERSUS
TDI Infrastructure Ltd.RESPONDENT

CORAM: Rajan Gupta

Dilbag Singh Sihag

Chairman

Member

Date of Hearing: 03.03.2022

Hearing: 5th in Complaint No. 1110 of 2019.

4th in Complaint No. 2606 of 2019.

8th in Complaint No. 1539 of 2019.

Present: - Mr. Vikas Deep, Ld. Counsel for complainant through VC.
(In Complaint No. 1110, 1539 of 2019).
Mr. Neeraj Gupta, Ld. Counsel for complainant through VC.
(In Complaint No. 2606 of 2019).
Mr. Shubhnit Hans, Ld. Counsel for respondent through VC.
(In all the Complaints.)

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Above captioned complaints are disposed of through this common order on the ground that core issue involved in all cases are identical. Moreover, all these cases pertain to the same project of the respondent i.e. 'Park Street' at Kamaspur, Sonapat. This order is being passed in view of the facts of lead **Complaint case no. 1110 of 2019 Kiran Mehta vs TDI Infrastructure Ltd.** Important details in Complaint No.s 2606 of 2019, 1539 of 2019 and 1500 of 2019 are tabulated below:



Complaint No.	Booking	Allotment	Agreement	Deemed Date of Delivery	Cost (in Lacs)	Paid (in Lacs)	Offer
2606-2019	17.05.06	-----	01.09.11	10.09.09*	21.43	21.94	None
1539-2019	20.03.14	-----	None	None	14.00	06.00	None

* To be delivered within 30 months from sanctioning of building plans so building plan presumed to be sanctioned on 10.03.2007 at start of excavation.

2. Since complainants have sought relief of refund of the amount already paid to the respondent for purchase of their shops in respondent's project, present cases were being adjourned on the ground that jurisdiction of this Authority to adjudicate upon relief of refund sought by complainants 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. Now the 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, has been further clarified by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, therefore, the Authority has passed a Resolution No. 164.06 dated 31.01.2022 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, Authority decides to proceed further for adjudication of all the captioned complaints.
4. Case of the complainant is that she had booked a shop in the project named "Park Street" of the respondent situated at Sonipat on 25.05.2006. Shop No. GF-26, Ground Floor, measuring 648.97 was allotted to her on 20.02.2007. No builder buyer agreement has been executed between the parties. Complainant in her complaint has stated that she has paid about Rs.15,57,178/- till 02.02.2012 against the Basic Sale Price of Rs. 22,50,000/. Complainant has stated that amount of Rs. 15,875/- paid by her on 31.08.2010 is not reflected in respondent's statement of accounts. Respondent company has admitted payment of Rs. 15,41,303/- vide statement of accounts dated 28.05.2019.

Grouse of the complainant is that despite lapse of approximately sixteen years from booking and payment of seventy percent of sale consideration, respondent has failed to deliver her possession of the shop till date. Therefore, she has sought refund of Rs. 15,57,178/- along with interest.

5. Learned counsel for the respondent has stated that respondent company had applied for grant of Occupation Certificate on 28.07.2017 but the same has not been granted to them by the Department of Town & Country Planning till date. He further stated construction of shop is going on and will be completed within one year. Respondent will deliver possession of the shop to the complainant after completion along with Occupation Certificate.

6. Authority has considered written as well as oral pleadings of both the parties. Admittedly, booking was made in May, 2006 and despite lapse of approximately sixteen years of booking, respondent has not yet executed any Shop Buyer's Agreement. Project is still incomplete and Occupation Certificate has not been granted to the respondent by the Department of Town & Country Planning till date.

Extraordinary delay caused by respondent in completing the project and in delivering shop within reasonable time period amounts to breach of terms of the Shop Buyer's Agreement. Already more than sixteen years have lapsed from the date of booking in May, 2006. Delivery of possession of shop with Occupation Certificate does not seem possible in foreseeable future.

Therefore, complainant cannot be made to wait for indefinite time to get delivery of possession of the booked shop.

In view of above, Authority is of the considered opinion that project has not been developed till date even after sixteen years of booking and will not be developed in foreseeable future and the respondent has been using the amount deposited by the complainant since sixteen years without any reasonable justification. Thus, after such extraordinary delay in completion of project, complainant cannot be compelled to continue with the booking of her shop and wait for more time to get its possession.

Therefore, Authority finds it to be a fit case for refund of the amount paid by the complainant and directs the respondent to refund amount already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. Since complainant has not attached all the receipts of Rs. 15,57,148/- paid by him to the respondent, same were sought by Authority via email dated 03.03.2022. Learned counsel in his reply via email dated 04.03.2022 to aforesaid email has stated that the amount of Rs. 15,41,303/- as admitted by respondent in his statement of accounts be taken as amount paid by complainant for calculation of amount to be refunded by respondent along with interest.

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7. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest in Complaint No. 1110 of 2019 has been worked out to Rs. 34,47,764/- (Rs. 15,41,303/- + Rs. 19,06,461/-). Therefore, Authority directs the respondent to refund Rs. 34,47,764/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

8. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest in Complaint No. 2606 of 2019 has been worked out to Rs. 44,91,088/- (Rs. 21,94,538/- + Rs. 22,96,550/-). Therefore, Authority directs the respondent to refund Rs. 44,91,088/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

9. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest in Complaint No. 1539 of 2019 has been worked out to Rs. 44,91,088/- (Rs. 6,00,000/- + Rs. 4,39,776/-). Therefore, Authority directs the respondent to refund Rs. 10,39,776/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

10. The respondent shall pay the entire amount in all complaints within 90 days in two instalments of which first instalment will be payable within 45 days and the next within 45 days thereafter. The period of paying

such instalments will start from the day the order is uploaded on the website of the Authority.

Disposed of accordingly. Files be consigned to the record room and the order be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]