



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 167 OF 2018

Saurabh Kapoor and Anr.

....COMPLAINANT/S

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.03.2022

Hearing: 7th

Present: Mr. Sandeep Dahiya, Ld. Counsel or the complainant through VC.

Mr. Shobit Phutela & Mr. Shubhnit Hans, Ld. Counsels for the respondent through VC.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned complaint was initially filed before this Authority by the complainant-allottee seeking refund of paid amount along with interest. It was disposed of by the Authority vide order dated 21.11.2018 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-allottee filed the Appeal no. 160 of 2019 before Hon'ble Real Estate Appellate Tribunal against the order passed by the Authority. It was disposed of vide order dated 06.05.2019 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. The orders passed by Hon'ble Appellate Tribunal is reproduced below:

"3. So, in view of our order reproduced above, the present appeal has to be allowed. Consequently, the present appeal is hereby allowed. The impugned order dated 21.11.2018 is hereby set aside. The complaints filed by the respondent/allottee stands transferred to the adjudicating officer, Panchkula for adjudication in accordance with law. The adjudicating officer will allow the respondent/allottee to amend their complaint in order to bring it in the parameter of Form 'CAO' as provided in rule 29 of the Rules."

2. 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 first before Hon'ble High Court and then before Hon'ble Supreme Court.

3. Hon'ble High Court while disposing of a bunch of writ petitions with lead Civil Writ Petition No 38144 of 2018 M/S Experion Developers Pvt. Ltd. v/s State of Haryana and others had upheld jurisdiction of the Authority to deal with complaints in which relief of refund was sought. Thereafter said judgement of the Hon'ble High Court in aforesaid matter was stayed by the Hon'ble Supreme Court in SLP No. 13005 of 2020 titled M/s Sana Realtors Pvt. Ltd. v. Union of India & Ors. and SLP No. 13238 – 13256 of 2020 which is pending before Hon'ble Apex Court. The matter could not be perused further on account of the fact that matter being subjudice before Hon'ble Apex Court.

4. Now the position of law has changed on account of verdict of Hon'ble Supreme Court passed 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 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. dated 13.01.2022.

5. 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.

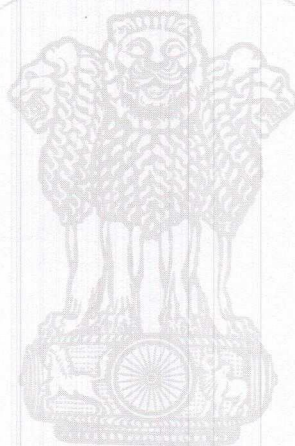
6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters 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."

6. This matter has come up for hearing before the Authority in view of the aforesaid Resolution No.164.06. The Authority has examined facts of the case in the light of the above quoted Resolution.

7. Authority observes that it has already passed its order dated 21.11.2018 in the present complaint. It further observes that the only reason for which Hon'ble Appellate Tribunal had remanded this case to learned Adjudicating Officer was the dispute relating to jurisdiction of the Authority to deal with complaints in which relief of refund had been sought. Now the question of jurisdiction of Authority stands finally settled both by Hon'ble Supreme Court as well as by Hon'ble High Court. Gist of the orders passed by Hon'ble Supreme Court as well as by Hon'ble High Court have been captured in the above quoted Resolution No. 164.06.

8. In view of above, Authority observes that orders dated 06.05.2019 passed by Hon'ble Appellate Tribunal now has become infructuous. Accordingly, the original order dated 21.11.2018 passed by Authority stands revived. The Authority cannot decide the same matter again once it had disposed it of by giving its final order. Accordingly, the Authority decides to dispose of the captioned complaint in terms of the same order dated 21.11.2018.

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



सत्यमेव जयते

.....
RAJAN GUPTA
[CHAIRMAN]

.....
DILBAG SINGH SIHAG
[MEMBER]