



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 244 OF 2021

Amit Kumar Saraf & Deepak Saraf

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.03.2022

Hearing: 2nd

Present: - Mr. Pranjal P. Choudhary, Ld. counsel for the complainants through VC.

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

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Since complainants have sought relief of refund of the amount already paid to the respondent for purchase of their unit in respondent's

project, captioned case was being adjourned on the ground that jurisdiction of this Authority 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 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 captioned complaint.

4. Case of the complainants is that Original allottee had booked two units in the project named "Kingsbury" of the respondent situated at Sonipat in April, 2006. Booked units were purchased by complainants in Feb, 2007. Later in 2011 complainants consolidated the payments made for two units into one unit and shifted their booking to project named "Tuscan Heights" of the respondent situated at Sonipat. Unit No. T-15/0502, measuring 1520 sq. ft. was allotted to them. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. In certain similar cases respondent had assured allottees to deliver possession of units within three years from the date of booking. After taking entire consideration amount, delivery of possession should have been given within reasonable period of time which in such cases is three years. Thus, learned counsel for the complainants pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of unit should be taken as three years from the date of booking, meaning thereby that complainants' unit should have been delivered to them by April, 2009. Complainant has paid Rs. 22,74,680/- till date against total sale consideration of Rs. 38,44,177/-.



Grouse of the complainant is that construction of their unit is incomplete as reflected in photographs appended with complaint at Annexure-P-5. Learned counsel for the complainants stated that the tower T in which the unit is located was never commenced. Thus, respondent has failed to perform his contractual obligation to deliver possession of the unit to them. Complainants cannot be compelled to wait further for indefinite time to get possession of his allotted unit. Therefore, complainants are seeking refund of Rs. 22,74,680/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for the respondent has admitted that construction was completed only till Tower 13 and it stopped thereafter. Admittedly, construction of Tower-17 did not even commence and at present no definite time/date can be given for delivery of the unit. Learned counsel for the respondent stated that they have offered an alternate unit to the complainants vide letter dated 10.09.2019 and as per his instructions from the respondent company, they are willing to allot an alternate unit to the complainants. Complainants may visit respondent's office to choose alternate unit of their choice. Learned counsel for the respondent also informed the Authority that respondent had applied for grant of Occupation Certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning.



6. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver possession of originally allotted unit to the complainants since till date respondent has failed to even start the construction of Tower T and same appears to have been abandoned by the respondent. Therefore, respondent is not in a position to deliver unit originally allotted to the complainants. Complainants do not want to relocate to alternate unit. Respondent is duty bound to deliver originally allotted unit to the complainants. An alternate unit can be offered only with written consent of the allottee. Authority cannot force an allottee to accept alternate unit when originally booked unit cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

In these circumstances, when construction of Tower-T in which complainant's unit was booked has been abandoned by the respondent and he has been using the amount deposited by complainant for the last sixteen years without any reasonable justification, the Authority finds it to be a fit case for allowing refund of the amount paid by the complainants and directs the respondent to refund Rs. 22,74,680/- paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

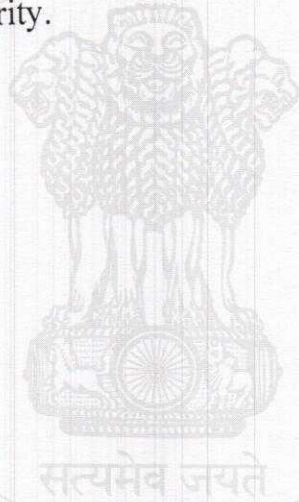
7. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out

to Rs. 44,58,649/- (Rs. 22,74,680/- + Rs. 21,83,969/-). Therefore, Authority directs the respondent to refund Rs. 44,58,649/- i.e. amount already paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

8. The respondent shall pay the entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority.

Disposed of in these terms.

File 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]