



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1828 OF 2019

Vijay Bhatia & Meenu Bhatia

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.03.2022

Hearing: 7th

Present: - Mr. Satish Mishra, Ld. Counsel for complainant 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 shop 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 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.

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

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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.

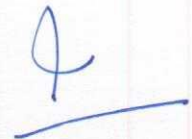
6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of



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. Present case has been transferred to Authority from Ld. Adjudicating Officer. Present case has been listed today for first time after its transfer from Ld. Adjudicating Officer.

4. Case of the complainants is that Original allottee had booked a shop in the project named "Rodeo Drive Mall-TDI City" of the respondent situated at Sonipat on 28.01.2007. Shop No. SF-159, measuring 609 sq. fts. was allotted to complainants. 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 shops within three years from the date of booking. After taking entire consideration amount, delivery of possession of the shop 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 shop should be taken as three years from the date of booking, meaning thereby that complainants' unit should have been delivered to them by Jan, 2010.



Complainant has paid Rs. 9,74,400/- till date against basic sale consideration of Rs. 24,36,000/-.

Learned counsel for the complainants stated that respondent has offered them fit out possession of the shop on 13.07.2019, after delay of fifteen years from the date of booking, accompanied with an unreasonable additional demand of Rs. 39,04,218/-. As a result of this additional demand of Rs. 39,04,218/- cost of shop has now increased from 24,36,000/- to 63,40,218/- which is more than 2.5 times of initial sale price of the shop. Learned counsel for complainants stated that complainants are unable to pay aforesaid additional demand. He further stated that the Commercial Plaza itself is incomplete. Even whole of area/ colony where complainants' shop is located is uninhabitable. Therefore on account of multiple defaults by respondent, complainants are seeking refund of Rs. 9,74,400/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Leaned counsel for the respondent has disputed the allegations made by complainants on the ground that project has been developed and Part Completion Certificate was granted by Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. Learned counsel for respondent also stated that respondent Company has already received Occupation certificate in respect of the said commercial site measuring 6.558 acres which is a part of residential plotted colony area

measuring 1097.894 acres (TDI City) vide letter dated 12.06.2019 issued by the Director, Town & Country Planning Department, Haryana. Respondent had offered fit out possession of the said shop to the complainants on 13.07.2019.

6. After hearing arguments of both the parties and perusal of record, Authority observes that respondent after delay of fifteen years from the date of booking, has offered fit out possession of the shop to the complainants on 13.07.2019 which is accompanied with additional demand of Rs. 39,04,218/- . Said additional demand of Rs. 39,04,218/- has now increased cost of the shop from 24,36,000/- to 63,40,218/- which is more than 2.5 times of initial sale price of the shop. Complainants have stated that they are unable to pay aforesaid additional demand. Learned counsel for the complainants have informed the Authority that even whole of the area/colony where complainants' shop is located is uninhabitable.

Already extraordinary delay has been caused by respondent to complete and deliver the shop to the complainants. The respondent has been using the amount deposited by complainants for the last fifteen years without any reasonable justification. Now, respondent has increased cost of the shop from 24,36,000/- to 63,40,218/ by raising additional demand of Rs. 39,04,218/-. Respondent cannot unilaterally make such a huge increase in the cost of the shop.



Although no BBA was executed between the parties but Annexure-2 of the complaint reflects that respondent had agreed total sale consideration as 24,36,000/-. Thus, increase in sale consideration of the shop from 24,36,000/- to 63,40,218/ amounts to material change of the agreed terms between the parties and frustrates the purpose of the whole transaction. Complainants cannot be compelled to shell out about 54 lakh of rupees after delay of 15 years caused by the respondent. Therefore, 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. 9,74,400/- 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.

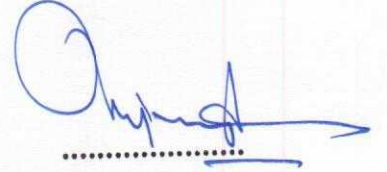
7. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 23,33,688/- (Rs. 9,74,400/- + Rs. 13,59,288/-). Therefore, Authority directs the respondent to refund Rs. 23,33,688/- already paid by the complainants along 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]