



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 363 OF 2021

Prem Singh

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited

....RESPONDENT(S)

CORAM: **Rajan Gupta**
 Dilbag Singh Sihag

Member
Member

Date of Hearing: 22.03.2022

Hearing: 3rd

Present: - Ms. Alka Sharma, Ld. Counsel for the complainant through VC.
 Mr. Ajay Ghangas, Ld. Counsel for the respondent through VC.

ORDER (RAJAN GUPTA- CHAIRMAN)

1. Since complainant has sought relief of refund of the amount already paid to the respondent for purchase of his flat 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

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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."

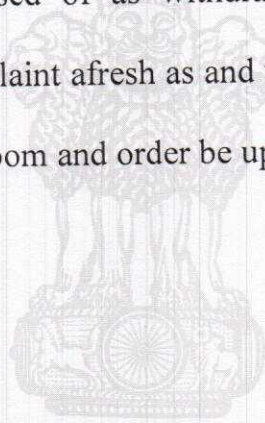
3. In view of above resolution, Authority decides to proceed further for adjudication of the captioned complaint.

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4. On perusal of the record, it is observed that Flat Buyer Agreement was entered between parties on 04.02.2019. As per clause 28 of the agreement respondent has to deliver the possession of the unit within forty two months from the date of execution of the agreement, therefore, the delivery of possession of flat will be due in August, 2022. Hence, the present complaint is pre-mature.

5. Learned counsel for the complainant wishes to withdraw the present complaint.

6. In view of the statement of the counsel of the complainant, the present complaint is disposed of as withdrawn. Liberty is granted to the complainant to file his complaint afresh as and when cause of action arises. File be consigned to the record room and order be uploaded on the official website.



RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]