



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 82 OF 2018

Ram Prakash Sharma and Ambika Sharma

....COMPLAINANT(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Dilbag Singh Sihag

Chairman

Member

Date of Hearing: 17.03.2022

Re-Hearing: 1st

Present: - None for the complainant.
Mr. Hemant Saini, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

Captioned complaint was disposed of vide order dated 18.12.2018. Vide this complaint, complainant has sought relief of refund but request for refund was declined and instead relief of possession was granted on account of the fact that the project had been completed and the possession was likely to be offered. It was further directed that respondent would issue a fresh statement of accounts in terms of principles laid down in complaint no. 113/2018 Madhu Sareen vs BPTP Ltd to the complainants stating therein the amount to be paid by

complainants after making suitable adjustment on account of delay compensation to be paid to the complainants by the respondents in accordance with directions issued in said order.

2. As gathered from the order dated 27.10.2020 passed by learned Adjudicating Officer, appeal no. 159 of 2019 against order dated 18.12.2018 was filed before Hon'ble Real Estate Appellate Tribunal, Haryana. Hon'ble Appellate Tribunal had disposed of said appeal vide their orders dated 02.05.2019 with a direction that complaint stand transferred to the Adjudicating Officer, Panchkula for fresh decision in accordance with law. The orders passed by Hon'ble Appellate Tribunal is reproduced below:

"49. In all the aforesaid appeals the appellants are still insisting/pressing their claim for the refund of the amount deposited by them alongwith interest. Ld. Regulatory Authority, in view of our aforesaid discussions had no jurisdiction to adjudicate upon the issue regarding refund. So, the impugned orders passed by the Ld. Authority declining the refund is without jurisdiction and cannot be sustained in the eyes of the law. Thus all these appeals stand allowed accordingly. So, the impugned orders passed in all the appeals are hereby set-aside.

50. The complaints filed by the appellants/allottees stand transferred to the adjudicating officer of the respective authorities for adjudication in accordance with law. The adjudicating officer will allow the appellant/allottee to amend their complaint in order to bring it in the parameter of Form 'CAO' as provided in rule 29 of the Rules."



3. Thereafter matter remained adjourned for the reason that jurisdiction of the Authority to decide the complaints in which relief of refund had been sought was sub-judice first before Hon'ble High Court and then before Hon'ble Supreme Court.

4. 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.

5. 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.

6. 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."

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

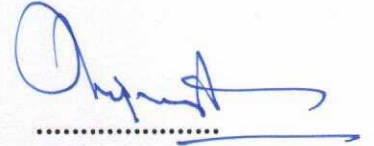
9. Authority observes that it has already passed its final order dated 18.12.2018 in captioned complaint. It further observes that only reason for which Hon'ble Appellate Tribunal had remanded this case to learned Adjudicating Officer was the dispute relating to jurisdiction of the Authority to deal with complaints in wherein relief of refund had been sought. Now 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.

10. In view of above, Authority observes that orders dated 02.05.2019 passed by Hon'ble Appellate Tribunal has now become infructuous. Accordingly,



the original order dated 18.12.2018 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 18.12.2018.

10. With aforesaid observations, complaint stands **disposed of**. File be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH MEMBER
[MEMBER]