



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2727 OF 2019

Nirmal Kumar

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.03.2022

Hearing: 4th

Present: - Mr. Vaibhav Mittal, Counsel for complainant through VC.

Mr. Shubhnit Hans, Counsel for 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 apartment 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 complainant is that Original allottee had booked a unit in the project named "Tuscan Floors" of the respondent situated at Sonipat in March, 2010. Flat No. T-59/Duplex, measuring 1434 sq. fts. was allotted to original allottee. Flat was transferred in favour of the complainant on 27.04.2012. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 08.03.2011. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 08.09.2013. Complainant has paid Rs. 27,67,990/- till date against total sale consideration of Rs. 37,00,981/-.

Grouse of the complainant is that construction of his flat is incomplete as reflected in photographs appended with his complaint at Annexure-P-5. Thus, respondent has failed to perform his contractual obligation to deliver possession of the unit to him. He cannot be compelled to wait further for indefinite time to get possession of his allotted unit. Therefore, complainant is



seeking refund of Rs. 27,67,990/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Respondent has admitted that as per his instructions from the respondent company, construction of the flat of the complainant at present is incomplete and no definite time/date can be given for delivery of the same. Learned counsel for the respondent stated 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 complainant, and admittedly at present construction of the flat is incomplete and respondent promoter is unable to specify a definite time/date for delivery of the same. Moreover, the application dated 09.05.2014 filed by the respondent promoter for issuance of Occupation Certificate would have been defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date.

In these circumstances, it is inferred that respondent is presently unable to give a proper and lawful offer of possession to the complainant as he has not yet received Occupation Certificate from the concerned department. As per FBA, delivery of the flat was to be made by 08.09.2013. Already extraordinary delay has been caused by respondent to complete and deliver



the flat to the complainant which amounts to breach of terms of the FBA. Further, delivery of possession of flat along with Occupation Certificate does not seem possible in foreseeable future. The respondent has been using the amount deposited by complainant for the last twelve years without any reasonable justification. Thus, after such a delay in completion of the flat, complainant cannot be compelled to continue with the booking of flat and wait for indefinite period of time to get its possession. Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 27,67,990/- paid by the complainant 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 complainant along with interest has been worked out to Rs. 52,36,941/- (Rs. 27,67,990/- + Rs. 24,68,951/-). Therefore, Authority directs the respondent to refund Rs. 52,36,941/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

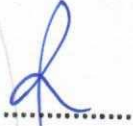
8. The respondent shall pay the entire amount to the complainant within 90 days in two instalments of which first instalment will be payable within 45 days and the next within 45 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website



of the Authority. **Disposed of** accordingly. File be consigned to the record room and the order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

