



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 674 OF 2021

Kiran Capital Services Limited

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 24.03.2022

Hearing: 4th

Present: - Mr. Sukesh K. Jindal, Ld. counsel for the complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Since complainant has sought relief of refund of the amount already paid to the respondent for purchase of his shop in respondent's project, captioned case was 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. Facts of the case of the complainant is that complainant had booked a shop in the project named "Rodeo Drive-TDI City" of the respondent situated at Sonipat in May, 2006. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 22.06.2007. Shop no. FF-4 measuring 800 sq. fts. was allotted to complainant. As per BBA, delivery of the shop was to be made within 30 months from the date of sanctioning of building plan. Building plan is presumed to be sanctioned on or before 07.07.2007 i.e. at start of excavation thus deemed date of delivery comes to be 06.01.2010. Complainant has paid Rs. 28,82,000/- against basic sale consideration of Rs. 36,00,000/- till date.

Learned counsel for the complainant further stated that respondent has offered him fit out possession of the shop on 18.03.2019 sans Occupation Certificate. Said offer has been made after delay of twelve years from the due date of delivery accompanied with an unreasonable additional demand of Rs. 13,27,971/-. Learned counsel for the complainant also apprised the Court that on account of delay caused by respondent in delivery of shop, complainant has bought some other shop and he no longer needs the present shop. Thus, since purpose of contract has been frustrated complainant may be allowed refund of Rs. 28,82,000/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. On the other hand, learned counsel for the respondent has disputed the allegations made by complainant 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 complainant on 27.04.2018 and 18.03.2019. He stated that the shop of the complainant is complete and ready for usage and complainant is not coming forward to take possession of shop after payment of outstanding amount.

6. At this stage, learned counsel for the complainant stated that since respondent has received Occupation Certificate for the shop, complainant is willing to accept delivery of possession of shop along with permissible interest as per Rule 15 of the HRERA, Rules 2017. He requested that respondent may be directed to issue fresh statement of accounts showing receivables/payables. Said statement of accounts shall be made as per principles laid down by Authority.

7. After hearing arguments of both the parties and perusal of record, Authority observes that respondent has received Part Completion Certificate for the said project was obtained on on 23.01.2008, 18.11.2013 and 22.09.2017. Occupation Certificate for the said shop was also granted by Department of Town

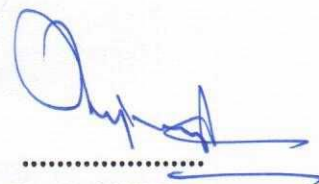
& Country Planning, Haryana on 12.06.2019. Respondent has offered possession to the respondent on 18.03.2019. Complainant is also willing to accept handover of possession of shop along with permissible interest as per Rule 15 of the HRERA, Rules 2017. In such scenario, Authority decides that date of receipt of Occupation Certificate Department of Town & Country Planning, Haryana i.e. 12.06.2019 shall be taken as valid offer of possession. Accordingly, complainant shall be entitled to delay interest for the delay caused by respondent in offering possession at the rate prescribed in Rule 15 of HRERA Rules, 2017 for the period from the deemed date of possession i.e. 06.01.2010 upto the date of receipt of occupation certificate i.e. 12.06.2019. Respondent is also entitled to same rate of interest for the period of delay, if any, caused by the complainant in payment of the outstanding amounts. It is further directed that period between date of receipt of occupation certificate i.e. 12.06.2019 and date of order i.e. 24.03.2022 shall be treated as zero period for both parties for purposes of no charges/interest would be receivable/payable for said period.

Respondent shall issue fresh statement of accounts within 30 days of uploading of this order. Respondent is directed to issue said statement of accounts strictly as per provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles laid down by the Authority. In case, respondent fails to follow provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles formulated

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by the Authority. In case, respondent fails to follow provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles formulated by the Authority and the complainant is aggrieved by said statement of accounts, he will be at liberty to approach this Authority for resolution of the same.

As per calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the shop up to date of receipt of Occupation Certificate i.e. 12.06.2019 has been worked out to Rs. 26,70,627/- .The Authority orders that payment of Rs. 26,70,627/- will be made to complainant on account of delay caused in offering possession within 90 days of uploading of 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]