



Complaint No. 2309 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2309 OF 2019

Poonam Mehta

....COMPLAINANT(S)

VERSUS

TDI Infracorp(India) Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 08.03.2022**

**Hearing: 8<sup>th</sup>**

**Present: -** Mr. Sanjiv Gupta, 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 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 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 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. 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 complainant is that complainant had booked an apartment in the project named "Waterside Floors in Lake City Grove" of the respondent situated in Kundli, Sonapat on 16.04.2013. Apartment No. WF-52TF, measuring 1500 sq. fts. was allotted to complainant. Complainant has attached a blank unsigned copy of agreement which cannot be termed as a bilateral agreement between parties. Thus, 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 units within three years from the date of booking. After taking entire consideration amount, delivery of possession should have been given within reasonable period of time which in such cases is three years. Thus, learned counsel for the complainant pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of unit should be taken as three years from the date of booking, meaning thereby that complainants' unit should have been delivered to them by April, 2016. At time booking, respondent has informed the complainant sale price of the apartment as 52 lakhs. Complainant has paid Rs. 18,86,399/- till date against total sale consideration of Rs. 60,36,206/- as reflected in Annexure- P-7 i.e. statement of accounts dated 21.08.2019.





Learned counsel for the complainant stated that apartment is incomplete. Thus, even after lapse of about six years after the deemed date of delivery, respondent has failed to offer possession of apartment to the complainant. Therefore, the complainant is seeking refund of Rs. 18,86,399/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for the respondent stated that construction of apartment is going on at an advanced stage. Respondent in his reply has stated that he had cancelled allotment of the apartment of the complainant on 15.03.2019 on account of default in payment of instalments towards cost of the apartment. He also stated that respondent has applied for Occupation Certificate for the apartment as well as for the project. Learned counsel for respondent informed the Authority that respondent has offered fit out possession to the complainant on 07.02.2022.

6. After hearing arguments of both the parties and perusal of record, Authority observes that respondent has failed on multiple accounts namely failure to execute BBA despite lapse of nine years from date of booking; failure to offer possession of apartment to complainant; and failure to obtain Occupation Certificate from the concerned department. Although respondent has stated in his reply that he has cancelled allotment of the apartment of the complainant on 15.03.2019 on account of default in payment of instalments towards cost of the apartment but no document to that effect has been attached by him. Admittedly



respondent has offered unit to the complainant in Feb,2022, thus earlier cancellation of unit stands infructuous. Respondent has even failed to place aforesaid offer letter on record.

In such circumstances, when there is no offer for possession letter on record; status of Occupation Certificate of the unit is unknown and respondent has failed to deliver a valid possession of the unit to the complainant even after lapse of about six years after the deemed date of delivery; complainant cannot be compelled to wait for indefinite period to get possession of the apartment. Furthermore, complainant has paid only an amount of about Rs. 18.86 lacs against sale consideration of Rs. 60,36,206/-. Now, after so much delay it is not correct to ask the complainant to arrange huge amount of remaining consideration amount. Further, purpose of buying the apartment has got totally frustrated due to inordinate delay. 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. 18,86,399/- 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. 33,69,381/- ( Rs. 18,86,399/- + Rs. 14,82,982/-). Therefore, Authority directs



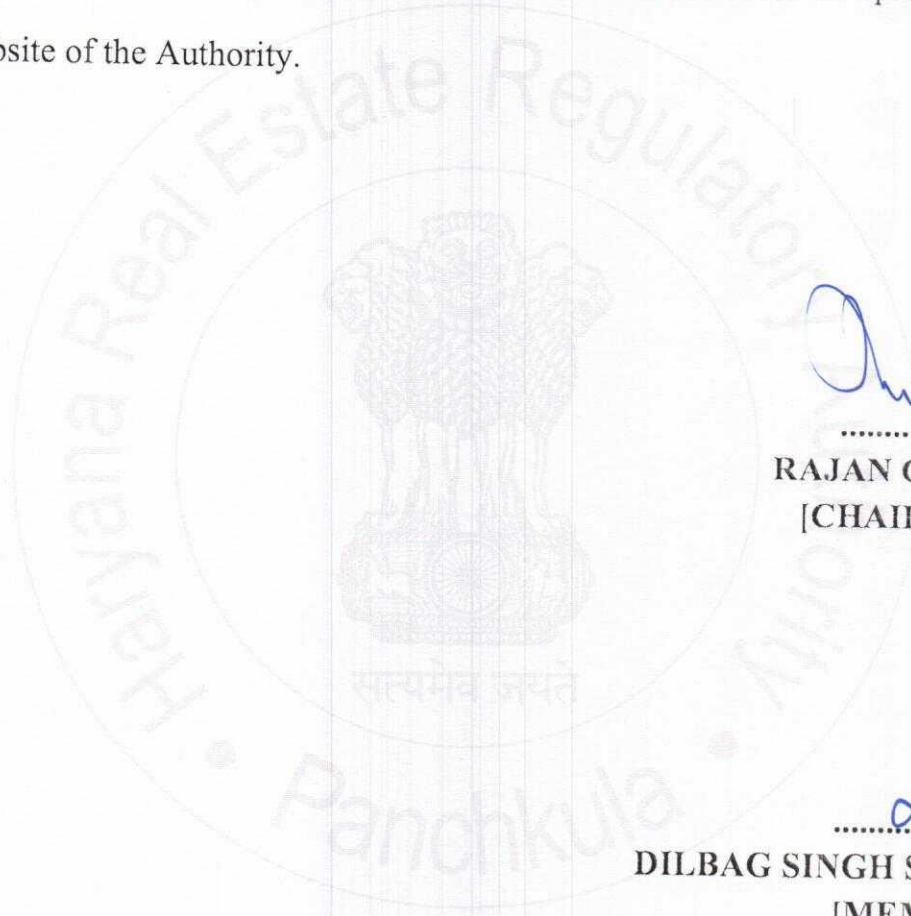


the respondent to refund Rs. 33,69,381/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

8. The respondent shall pay the entire amount to the complainant within 90 days 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.



RAJAN GUPTA  
[CHAIRMAN]

DILBAG SINGH SIHAG  
[MEMBER]