



Complaint no. 157 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 157 OF 2021

Ram Kanwar Sharma

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 08.03.2022

Hearing: 1st

Present through:- Mr. Amit Kaushik, Counsel for the complainant

Video conferencing Mr. Anil Garg, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Complainant in present case had applied for a residential flat in the project of respondent situated at Sector-5, Rohtak in the year 2014 after depositing an amount of Rs 1,88,000/-. Complainant has already paid an amount of Rs 4,76,250/- for said flat against tentative price of Rs 18.80 lakh as mentioned in the prospectus annexed as Annexure P-1 of complaint file. After waiting for more than three years, complainant filed an RTI application dated 19.10.2018 seeking information in regard to status of construction of flat and the likely date of its completion. In response, vide letter dated 22.11.2018

complainant was apprised that construction of project has got delayed due to some litigation of land. In such circumstances, vide letter dated 30.12.2020 complainant requested the respondent for refund of entire amount paid alongwith interest . However, when no response was received from respondent-Housing Board, complainant filed present complaint seeking relief of refund of paid amount along with interest.

2. Respondent in its written submissions submitted that as per prospectus, flat was likely to be available for allotment by 28.02.2017, however, due to technical reasons, construction of the project could not be started. Thus, respondent authority has started refund of the deposited amount to the applicants. Complainant in present case had requested for refund of paid amount vide letter dated 30.12.2020 and subsequently complainant has been in the seniority list of 2020 for refund of mount. It has been contended that in the light of above facts, present complaint is not maintainable. It is pertinent to mention here that in the reply filed, the space where seniority no. of complainant was supposed to be entered has been left blank.

3. Since in the present complaint, complainant had sought relief of refund, Authority vide order dated 25.02.2021 had adjourned the case sine die awaiting orders of the Hon'ble Supreme Court of India with regard to jurisdiction of the Authority for adjudicating upon the complaints where in relief of refund was sought.

4

4. For adjudication of such like issues of the parties, Authority has passed its resolution no. 6705-6709 dated 14.01.2022 which is also available on 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

9

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."

5. Today, Mr. Amit Kaushik, learned counsel appearing on behalf of complainant submitted that it has been more than a year since complainant had submitted an application with the respondent board for refund of the amount deposited for the booked unit. Even though in its reply respondent has submitted that the process of refund has been started however, no communication has been made with complainant in respect of refund of deposited amount. He prayed the Authority that directions may be issued to



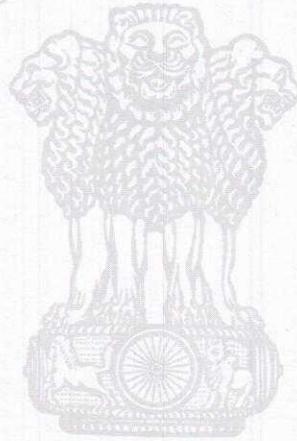
respondent to refund the amount alongwith interest without deducting anything as in this case default has been only on the part of respondent.

6. Learned counsel for respondent reiterated his averments as recorded in para 2 of this order.

7. In view of above submissions, Authority observes that complainant in present complaint had booked a flat in the project of the respondent, and against said booking had deposited an amount of Rs 4,76,250/- with the respondent by the year 2015. Even by the year 2018 construction at the site of said project could not be started due to pending litigation. As per submission of respondent, due to failure in developing the project, respondent board has started refund of paid amount to all applicants. Although it has been submitted that process of refund has been started but respondent has failed to produce on record document substantiating such claims or otherwise any document pertaining to complainant in particular from which it can be ascertained that respondent board has begun formal process for refund of paid amount. Further, by the year 2018 it had been established that this project was in difficulty due to ongoing litigation, respondent should have promptly begun a process for refund of deposited money without delay. Amount deposited by complainant on account of booked unit has been wrongfully utilised by respondent for more than seven years, therefore, in such circumstances Authority deems it fit to issue directions to respondent Housing Board Haryana to refund the amount of

Rs 4,76,250/- paid by complainant alongwith delay interest calculated in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % . The amount of interest payable to the complainant has been calculated at the rate of 9.30% and same works out to Rs 3,05,466/- Therefore, respondent is directed to pay an amount of Rs 7,81,716/- as refund of deposited money alongwith interest to the complainant.

8. Disposed off in above terms. File be consigned to record room after uploading the order on website of Authority.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]