



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 800 OF 2019

Satbir

....COMPLAINANT(S)

VERSUS

TDI Infracorp Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 801 OF 2019

Jai Kumar Rana

....COMPLAINANT(S)

VERSUS

TDI Infracorp Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.03.2022

Hearing: 9th

Present: - Mr. Anil Bidhan, Ld. Counsel for the complainants in both cases through VC.

Mr. Ajay Ghangas, Ld. Counsel for the respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Since complainants have sought relief of refund of the amount already paid to the respondent for purchase of their flats in respondent's project, present cases were 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 both captioned complaints.

4. Both the captioned complaints are being disposed of through this common order because core issue involved in these cases are identical, and pertain to same project of the respondent i.e. 'Water Side Floors-TDI Lake Grove City' at Kundli, Sonapat. Facts of **Complaint case no. 800 of 2019 Satbir vs TDI Infracorp Ltd.** are being taken into consideration for disposal of both the cases.

5. Case of the complainant is that he had booked a floor bearing unit no. WF-126 having area of 1400 sq. fts. in the project of respondent namely "Waterside Floors" in TDI Lake Grove City, Kundli, Sonapat. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on



09.12.2013. As per the BBA, possession of booked floor was to be handed over within 30 months from the date of agreement, thus deemed date of delivery was in June, 2016. Complainant has paid Rs. 31,45,415/- till date against basic sale consideration of Rs. 56,00,000/-. As per complainant averment in his complaint assured monthly return of Rs. 7000/- per moth till delivery of possession of the floor was promised to him. Respondent is yet to pay Rs. 2,73,000/- on account of assured monthly return.

Grouse of the complainant is that despite lapse of approximately six years from deemed date of delivery of floor respondent has failed to deliver him possession of the floor, therefore, the complainant is seeking refund of Rs. 31,45,415/- along with interest as per Rule 15 of the HRERA, Rules 2017. He is also seeking payment of Rs. 2,73,000/- accrued in his favour on account of assured monthly return.

6. Learned counsel for respondent stated that the project is complete and both floors are ready for delivery of possession to complainants. Learned counsel for the respondent verbally informed the Authority that Occupation Certificate has been applied for by the respondent and possession of floors will be handed over on receipt of Occupation Certificate. He further stated that respondent had not promised to pay any assured monthly return to complainants and no clause to this effect has been incorporated in the BBA therefore, respondent is not liable to pay any assured monthly return in both cases.

7. At this stage, learned counsel for the complainants stated that complainants are willing to take delivery of possession of the floors on receipt of Occupation Certificate.

8. Upon hearing of both parties and perusal of records, Authority observes that no information regarding application filed for grant of Occupation Certificate has been placed on record by the respondent, except an oral submission through the learned counsel that Occupation Certificate has been applied for and will be received soon. Learned counsel for complainants states that complainants in both cases are willing to take delivery of floors on receipt of Occupation Certificate subject to payment of upfront interest on account of delay caused in delivery of possession.

In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made by the respondent. Accordingly, respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the deemed date of possession till actual delivery of possession of booked floors is made to the complainants after obtaining Occupation Certificate.

Further as per provisions of section 18 of The RERA Act, 2016, the accrued interest up to the date of passing this order shall be paid upfront within 90 days in both cases. Said amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.



9. On question of entitlement of alleged assured monthly return Authority observes that complainants have cited clause 28 of the BBA which states that in the case of delay caused in delivery of possession of floors beyond a period of 30 months from the date of execution of the BBA, respondent company will be liable to pay monthly compensation @ Rs. 5 per sq. ft. of the total super area of the floors. Thus, complainants have alleged that as per said clause respondent is liable to pay Rs. 2,73,000/- to them in each case on account of assured monthly return.

It is observed that said clause does not amounts to an assurance for payment of 'Assured Monthly Return'. It only speaks of monthly payment @ Rs. 5 per sq. ft. to complainants as compensation. The Authority has already held in para 8 that complainants are entitled to interest on account of delay caused in handing over of possession from the deemed date of possession till actual valid delivery of possession of booked floors after obtaining Occupation Certificate as per provisions of section 18 of The RERA Act, 2016 and accrued interest up to the date of passing this order shall be paid upfront within 90 days in both cases. Same has been awarded after calculation as per Rule 15 of the HRERA Rules, 2017 in paras 10 & 11.

10. In Complaint No. 800-2019, the complainant has paid total amount of Rs 31,45,415/- which includes the amount of Rs. 1,99,640/- towards EDC/IDC. The amount of EDC/IDC is collected by the promoter for payment to the

department/authorities concerned for carrying out their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder therefore is not liable to pay delay interest to the allottee on the amounts collected for passing over to state govt. department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 29,45,775/- (Rs 31,45,415/- – Rs. 1,99,640/-).

As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handing over of possession of the unit up to the date of passing of this order has been worked out to Rs. 15,66,132/- .The Authority orders that upfront payment of Rs. 15,66,132/- will be made to complainant on account of delay caused in offering possession within 90 days of uploading of this order on web portal of the Authority.

11. In Complaint No. 801-2019, complainant has paid total amount of Rs 31,65,959/- which includes the amount of Rs. 3,99,280/- towards EDC/IDC. The amount of EDC/IDC is collected by the promoter for payment to the department/authorities concerned for carrying out their statutory obligations. If a builder does not pass on this amount to the department concerned, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A

builder therefore is not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 27,66,679/- (Rs 31,65,959/- – Rs. 3,99,280/-).

As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handing over of possession of the unit up to the date of passing of this order has been worked out to Rs. 14,73,480/- .The Authority orders that upfront payment of Rs. 14,73,480/- will be made to complainant on account of delay caused in offering possession within 90 days of uploading of this order on web portal of the Authority.

12. Respondent is directed to make fresh legal offer of possession after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing lawful payables and receivables as provisions of RERA Act, 2016 and principles laid down by the Authority. Since complainants wish to wait for delivery of possession till offer of possession is made after obtaining Occupation Certificate by the respondent, therefore, they shall be entitled to a further amount of delay interest from the date of order till a legally valid possession is offered after obtaining Occupation Certificate from department concerned. Said further interest shall be adjusted in statement of accounts issued by respondent at time of delivery of possession of floors along with Occupation Certificate. Both complaints are **disposed off** in these terms.

Files be consigned to record room and order be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

