



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1545 OF 2019

Pamil Behl ...COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 22.03.2022

Hearing: 9th

Present: - Mr. Mayank Aggarwal, Ld. Counsel for the complainant through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondent through VC.
Mr. Chirag Mehta, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Since complainant has sought relief of refund of the amount already paid to the respondent for purchase of his plot 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. 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 a plot in the project named "TDI City" of the respondent situated at Sonipat in Aug, 2005. Plot No. J-224, measuring 350 sq.yds. was allotted to complainant. 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 plots within three years from the date of booking. After taking entire consideration amount, delivery of possession should be given within reasonable period of time which in such cases is three years. Thus, learned counsel for complainant pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of plot should be taken as three years from the date of booking, meaning thereby that complainant's plot should have been delivered to him by Aug, 2008. Complainant has paid Rs. 30,23,124/- till 08.12.2009 against total sale consideration of Rs. 29,89,000/-.

Grouse of the complainant is that despite lapse of about seventeen years from the date of booking respondent has failed to deliver possession of plot to the complainant. Further, respondent vide its letter dated 10.01.2019 has admitted that original plot is not available due to unavoidable reasons, and they are willing to offer an alternative plot. Thus, respondent has failed to



perform his contractual obligation to deliver possession of the plot to complainant. Complainant does not wish to take delivery of any alternate plot. Therefore, complainant is seeking refund of Rs. 30,23,124/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for respondent stated that though the project has already been developed and Part Completion Certificate has been granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017, however, the plot originally allotted to complainant is not available due to unavoidable circumstances. Respondent vide its letter dated 10.01.2019 had informed the complainant that he was unable to deliver the originally allotted plot to him and they are willing to offer an alternative plot to the complainant. Vide said letter respondent had invited complainant to visit his office to choose any alternate plot in the same or other project of the respondent but complainant did not come forward to avail of the options offered to him. Ld. Counsel for respondent stated that respondent is still willing to allot an alternate plot to the complainant and complainant may visit respondent office to choose alternate plot of his choice.

6. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted plot to the complainant due to unavoidable reasons as per letter dated 10.01.2019. In alternative, respondent has offered the complainant to choose



alternate plot vide letter dated 10.01.2019. In such circumstances, complainant could either opt to take possession of another similarly situated alternate plot of his choice or withdraw from the project by taking refund of the amount paid by him along with interest. Relief of possession of particular allotted plot is not possible to be granted to complainant as respondent is not in a position to deliver originally allotted plot to the complainant.

Complainant does not want to relocate to alternate plot. Alternate plot can be offered only with express consent of the allottee. Authority cannot force an allottee to accept alternate plot when originally booked plot cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

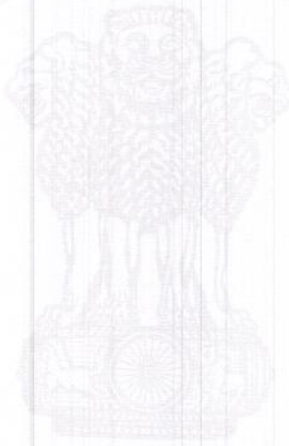
In these circumstances, when respondent is not able to deliver originally allotted plot to the complainant and he has been using the amount deposited by complainant for the last seventeen years without any reasonable justification, the Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 30,23,124/- 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. 73,94,564/- (Rs. 30,23,124/- + Rs. 43,71,440/-). Therefore, Authority directs the respondent to refund Rs. 73,94,564/-.

8. The respondent shall pay 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]