



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 505 OF 2019

Vineet Gupta

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 22.03.2022

Hearing: 7th

Present: - Ms. Anisha Mathur , Ld. Counsel for the complainant through VC and Mr. Vineet Gupat, complainant.

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.



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 November, 2005. Plot No. L-589 measuring 500 sq. yds. was allotted to him on 10.10.2005. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 15.03.2007. No due date of delivery of possession of plot is mentioned in the BBA. 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 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 due date of handover of possession of plot is mentioned agreement, the deemed date of delivery of unit should be taken as three years from the date of booking, meaning thereby that complainant's plot should have been delivered to him by Nov, 2008. Complainant has paid Rs. 32,98,713 /- till date against total sale consideration of Rs. 31,11,875/-.

Grouse of the complainant is that admittedly booked plot is not available. Thus, respondent has failed to perform his contractual obligation to deliver possession of the plot to him. Complainant has sought alternate reliefs in his prayer clause i.e. to deliver possession of plot along with interest for delay in delivery of possession or in case of inability of respondent to offer originally allotted plot, alternate remedy of refund amount deposited by him



along with interest. Since learned counsel for respondent vide order dated 22.08.2019 and 11.12.2019 has admitted that originally allotted plot is not available and complainant does not want an alternate plot, therefore, complainant is seeking refund of Rs. 32,98,713 /- 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, original plot is not available due to unavoidable reasons. Learned counsel for respondent vide order dated 22.08.2019 and 11.12.2019 has admitted that originally allotted plot is not available and they are willing to offer an alternative plot to the complainant. Despite several efforts of settlement made by respondent by way of offering alternate plots, no settlement could take place.

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 admitted by learned counsel for respondent as observed in orders dated 22.08.2019 and 11.12.2019. Thus, respondent company is unable to handover the possession of originally booked plot to the complainant. Respondent has also tried to settle dispute by offering alternate plots to the complainant. In such



circumstances, complainant can 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. Learned counsel for the complainant has informed Authority that alternate plots offered by respondent are not acceptable to the complainant. Respondent is duty bound to either deliver originally allotted plot to the complainant and 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.

Accordingly, 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. 32,98,713 /- 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. 79,35,589/- (Rs. 32,98,713 /- + Rs. 46,36,876/-). Calculations have been made as per receipts attached by the complainant and details of amounts



paid filed by him on 19.08.2019. Therefore, Authority directs the respondent to refund Rs. 79,35,589/-.

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]