



Complaint no. 315 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 315 OF 2018

Sarita Sethi

....COMPLAINANT(S)

VERSUS

M/s Aarcity Builders Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 03.02.2022

Hearing: 27th

Present through:- Mr Himanshu Raj, Learned counsel for the complainant
Video conferencing Ms Rupali Verma, Learned counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

While perusing record file, it is observed that in this case, a unit measuring 1030 sq. ft. in respondent's project namely "Regency Park", Sector 11A, 17, Hisar, Haryana was booked by one original allottee in the year 2011. Said unit was purchased by complainants from the original allottee on 09.06.2012. Flat buyer's agreement cum allotment letter was executed between both the parties on 18.01.2013 and complainants were allotted unit no. 0204 in

Tower C2 of said project. As per agreement, possession of unit was to be delivered by 18.04.2016. Total sale consideration of the flat is Rs 24,34,500/- against which complainant has made a payment of Rs 17,52,095/- by 2014. It is alleged by the complainants that Tower C2 in which complainants have been allotted said unit is in a bad shape and no development works have been carried out in the project. In this background, complainants have filed this complaint seeking refund of the entire amount paid by them along with interest.

2. This matter was taken up together for hearing with a bunch of complaints as major facts and grievances alleged therein were directed against the same project of the respondent. In said complaints, complainants were allottees of apartments in Towers A,B,C,D,E and G of the respondent's project namely "Regency park". Their grievance was that respondent had stopped construction and only a concrete structure stood on the land with raw materials scattered around. It was alleged that no further development or construction work was being carried out for the completion of the project. Some of the complainants had prayed for refund of the paid amount alongwith interest while others prayed for issuance of direction to the respondent for delivery of possession within a fixed period.

3. On the other hand, respondent in his written submission averred that more than sixty percent work has been completed in the project. Project consists of seven towers besides villas and EWS. Villas have already been completed and occupation certificate has been applied for the same. It is

submitted that respondent company despite having invested huge sum of money was unable to complete the project within aforesaid period due to various factors including lack of funds due to non payment of instalments. At present, an amount of Rs 20 crore is due from various buyers including complainant themselves. Initially, respondent company had received funds from the complainants on raising demands, but many allottees including complainants had stopped making payments which has adversely affected construction of this project. Since the year 2012, respondent company has invested an amount of Rs 35,19,69,387/- from its own sources besides investing an amount of Rs 62,23,76,437/- received from the allottees. It is further submitted that respondent company is making all endeavours to complete the whole project and order of refund shall jeopardise the project. Hence, refund should not be allowed.

4. Since, complainants in present complaint were seeking relief of refund, matter was not taken up separately. Further, on account of issue pertaining to jurisdiction of Authority for adjudicating upon the complaints where relief of refund is sought, Authority decided not to hear such matters awaiting decision of appeal pending before Hon'ble Supreme Court of India. 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 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. Ms. Rupali Verma, learned counsel for respondent submitted that phase 1 of the project is at advanced stage of completion. She referred to the submissions made by learned counsel for the respondent in orders dated 16.03.2021 & 07.09.2021 whereby it has been recorded that Towers B, D and G of the project are 95 % complete and Tower C2 of the project is complete upto 5th floor an possession of units will be handed over as soon as construction work is complete. She further submitted that respondent promoter had also given options to allottees of remaining towers to relocate their booked unit to towers B,D and G which are likely to be completed and available for possession.

Rebutting submissions of respondent's counsel, learned counsel for complainant argued that complainant's booked unit is located in Tower C2 of the project which as per submission's of respondent is still only partially

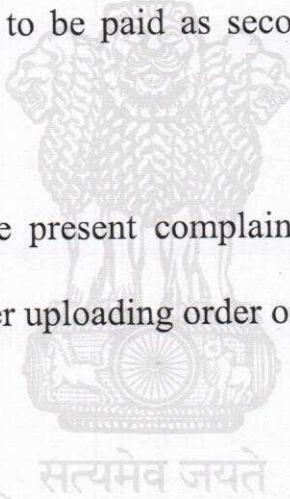
completed. Complainants who have already waited for more than 10 years is not interested to wait any further for possession of unit neither the request of the respondent for reallocation of his booked to unit to another tower is suitable to them. He again reiterated his prayer that complainants in present complaint are insisting on refund of paid amount with interest, therefore, their request may accordingly be granted.

6. In view of above submissions of both the parties, Authority observes that complainants in present complaint had booked a unit in Tower C2 of the project of the respondent in 2011 and by the year 2014, had paid an amount of Rs 17,52,095/- in lieu of booked unit which is 59 % of total sale consideration of the flat. Possession of flat should have been delivered by 18.04.2016. However, it is more than 5 years and the project of the respondent is yet to be completed. As per the submissions of respondent, tower in which the unit of the complainants is situated is only partially completed upto 5th floor. Further, request of the respondent promoter to relocate their unit to phase 1 of the project which will be initially completed was also not suitable to the complainants. Possession of the unit was supposed to be delivered by the year 2016 and tower in which the unit of the complainants is situated will not be ready for possession in the foreseeable future. In these circumstances, complainants cannot be forced to wait for another uncertain amount of time to avail possession of their booked unit. Since, complainants are insisting on



refund of their paid amount, Authority deems it fit to issue directions to respondent to refund amount of Rs 17,52,095/- paid by complainants alongwith delay interest calculated in terms of Rule 15 of HRERA Rules 2017. The amount of interest payable to the complainant has been calculated at the rate of 9.30% and same works out to Rs 14,42,285/-. Therefore, respondent is directed to pay an amount of Rs31,94,380/- as refund of deposited money alongwith interest to the complainant. Amount shall be paid in two instalments, first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

7. In these terms, the present complaint stands disposed of. File be consigned to record room, after uploading order on website of Authority.




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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]