



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2819 OF 2019

Sarvesh Agarwal & Shikha Agarwal

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.03.2022

Hearing: 4th

Present: - Mr. Anshul Sharma, Counsel for the complainant through VC.
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainants have sought relief of refund of amount paid by them to respondents alongwith applicable interest. Authority had not been hearing these matters for the reasons that its jurisdiction to deal with the complaints in which relief of refund have been sought was subjudiced earlier before the Hon'ble High Court and later before Hon'ble Supreme Court.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court passed in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and

Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. dated 13. 01.2022.

3. Consequent upon above judgement passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced 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.”

4. Now the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

5. Complainant's case in brief is that they had booked a unit in respondent's project 'Park Elite Floors' situated in sector- 85, Faridabad on 22.05.2009 by paying Rs 2,50,000/-. Allotment letter for unit no. P-06-03-FF having area of 1203 sq ft was issued to them on 24.12.2009. Thereafter, builder buyer agreement was executed between the parties on 26.04.2010 and in terms of clause 4.1 of it,

9

the possession was supposed to be delivered by 26.10.2012 (24+6 months). It has been alleged that respondent has not offered possession of the unit till date even after receiving Rs 35,49,789/- against basic sale price of Rs 22,37,003/-. Feeling aggrieved, present complaint has been filed by the complainant for refund of paid amount alongwith 18% interest.

2. Respondent in their reply has admitted the allotment of unit and execution of builder buyer agreement. Further it has been submitted that complainant is misleading this Authority as he has concealed the fact that offer of possession was made to them on 06.10.2018 alongwith demand of Rs 9,47,636/- and as such said demand was also honored by them on 13.11.2018 for Rs 2,10,000/- and 03.12.2018 for Rs 7,37,637/-. Regarding prayer clause it has been submitted that no case is made out for refund of paid amount when possession has already been accepted by them by making full payment including demand raised alongwith offer of possession.

3. Today, ld. counsel for complainant states that his clients are seeking delay interest for the delay caused in delivery of possession of unit because possession was supposed to be delivered upto 2012 whereas it was offered on 06.10.2018 and fact remains that possession of booked unit has already been taken by them in November,2019. In rebuttal. Ld. counsel for respondent argued that this complaint is not maintainable for the reason that complainant has not approached this Authority with clean hands as relevant facts regarding offer of

possession dated 06.10.2018 and actual taking over of possession in Novemeber,2019 has been concealed by them. This complaint was filed thereafter on 27.11.2019 with written pleadings pertaining to refund only. So, this complaint cannot be allowed to be proceeded with as complaint for delay interest. On the other hand, prayer of refund of complainants is also not acceptable for the reason that possession has already been taken by them after making due payments. Therefore, he requested to dismiss the present complaint for not being maintainable.

4. After hearing submissions of both parties and perusing relevant record, it has been observed that by the Authority that this complaint was filed on 27.11.2019 with written pleadings pertaining to refund only alleging that respondent has not offered possession till date and in prayer clause relief of refund alongwith 18% interest has been sought. Upon notice, respondent has filed his reply wherein it has been stated that offer of possession was made to complainants on 06.10.2018 alongwith demand of Rs 9,47,636/- which has already been paid by them vide receipt dated 13.11.2018 for Rs 7,37,637 and receipt dated 03.12.2018 for Rs 2,10,000/-. Copy of said offer of possession has been annexed as Annexure R-19 of reply and receipts dated 03.12.2018 and 13.11.2018 are placed on record at pg no. 92 and 93 of reply respectively. On perusal of referred annexure and pages, it is clear that complainants have made payment of demand raised alongwith offer of possessin on 06.10.2018 and as per verbal submission of complainant's counsel possession was taken thereafter in November, 2019. All



these relevant facts have not been disclosed by complainants in their complaint. Furthermore, written pleadings and prayer of complainants pertains to refund of paid mount with interest but complainants are today seeking delay interest for the delayed delivery of possession. As of today, circumstances and equities between both parties have changed after acceptance of offer of possession but relief sought of refund in complaint remains unedited without any amendment request on behalf of complainant. So, the Authority is of view that present complaint cannot be proceeded with as prayer of refund cannot be accepted after taking of possession by complainants and without any written pleadings and relief pertaining to delay interest the relief today claimed by complainants cannot be dealt with. Therefore, the present complaint is dismissed. Liberty is given to complainants to approach this Authority again for redressal of their greivances if any after filing their complaint in proper format.

5. **Dismissed** for the reasons stated above. File be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH MEMBER
[MEMBER]