



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 273 OF 2021

Dr Ajay Gupta deceased through LRs

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

COMPLAINT NO. 294 OF 2021

Suman Gupta and Another

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

COMPLAINT NO. 307 OF 2021

Suman Gupta and Another

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 22.03.2022

Hearing: 6th

Present: - Mr. Roopak Bansal, Ld. counsel for the complainants 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 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 all captioned complaints.

4. 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. 'Kingsbury-TDI City' Kundli, Sonapat. Facts of **Complaint case no. 273 of 2021 titled Dr. Ajay Gupta deceased through LR's vs TDI Infrastructure Ltd.** are being taken into consideration for disposal of all the cases.

5. Case of the complainant is that complainant had booked a flat in the project named "Kingsbury-TDI City" of the respondent situated at Sonipat in Feb, 2006. He deposited Rs. 1,00,000/- as advance against Present and Future Project for residential flat measuring 1400-1500 sq. fts. No allotment was made in his



favour. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. Complainant has paid Rs. 9,00,000/- against basic sale price Rs. 26,40,625/- till date. In certain similar cases respondent had assured the allottees to deliver possession of unit within three years from the date of booking. Therefore, delivery of possession should have been given within reasonable period of time which in such cases is three years. Thus, learned counsel for the complainants pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of unit should be taken as three years from the date of booking, meaning thereby that complainant's unit should have been delivered to them by Feb, 2009.

Learned counsel for the complainant stated that construction of the tower in which unit of complainant was booked never commenced. Thus, respondent has failed to perform his contractual obligation to deliver possession of the unit to complainant. Complainant cannot be compelled to wait further for indefinite time to get possession of his booked unit. Therefore, complainant is seeking refund of Rs. 9,00,000/- along with interest as per Rule 15 of the HRERA, Rules 2017.

6. Learned counsel for the respondent has admitted that construction of tower in which units of complainants are located could not be started and at present no definite time/date can be given for delivery of the units. Learned counsel for the respondent stated that they are willing to allot alternate units to

the complainants. He stated that in Complaint No. 307-2021, vide letters dated 05.06.2017 & 07.06.2017 they have requested complainant to visit their office to choose alternate unit but complainant did not come forward to choose the same.

7. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent has failed to deliver possession of booked units to the complainants till date and respondent has not even started the construction of tower in which units of complainants were booked and it appears that construction of said tower has been abandoned by the respondent. Thus, respondent is not in a position to deliver booked units to the complainants. Learned counsel for complainants has informed that complainants do not wish to relocate to alternate units. An alternate unit can be offered only with written consent of the allottee. Authority cannot force an allottee to accept alternate unit when booked unit cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

In these circumstances, when construction of tower in which booked units of complainants' were located has been abandoned by the respondent and he has been using the amount deposited by complainants for the last sixteen years without any reasonable justification. Furthermore, complainants have paid only an amount of about Rs. 9,00,000/- in Complaint No. 273 & 294 of 2021 and Rs. 3,05,000/- in Complaint No. 307 of 2021 against sale consideration of Rs. 26,40,625/- and Rs. 42,27,084/- respectively. Now, after so



much delay it is not correct to ask the complainants to arrange huge amount of remaining sale consideration. Even, purpose of buying the units has got totally frustrated due to inordinate delay. Therefore, the Authority finds them to be fit cases for allowing refund of the amount paid by the complainants and directs the respondent to refund Rs. 9,00,000/- paid by the complainants in Complaint No. 273-2021 and 294-2021 and Rs. 3,05,000/- in Complaint no. 307-2021 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.

8. Learned counsel for the complainants has stated that in Complaint No. 273-2021 and 294-2021 since the respondent has admitted receipt of Rs. 11,00,000/- in his reply, therefore, complainants be allowed refund of Rs.11,00,000/- in both these cases. After perusal of record, Authority observes that in Complaint No.s 273-2021 and 294-2021 since complainants have sought relief of refund of Rs. 9,00,000/- and have attached receipts amounting to Rs. 9,00,000/-, therefore, complainants are entitled to refund of Rs. 9,00,000/- paid by them. Similarly, in Complaint No.s 307-2021 complainants have sought relief of refund of Rs. 3,05,000/- and have attached receipts amounting to Rs.3,05,000/, therefore, complainants are entitled to refund of Rs. 3,05,000/- paid by them.

9. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants in Complaint No. 273-2021 and 294-2021



along with interest has been worked out to Rs. 18,09,031/- (Rs. 9,00,000/- + Rs. 9,09,031/-). Therefore, Authority directs the respondent to refund Rs. 18,09,031/.

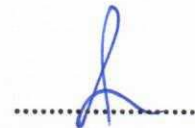
10. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant in Complaint No. 307-2021 along with interest has been worked out to Rs. 7,58,740/- (Rs. 3,05,000/- + Rs. 4,53,740/-). Therefore, Authority directs the respondent to refund Rs. 7,58,740/-.

11. The respondent shall pay the entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority. All complaints are **disposed off** in these terms.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]