



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 799 OF 2019

Smt. Sheetal

....COMPLAINANT

VERSUS

TDI Infrastructure

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 22.03.2022**

**Hearing: 8<sup>th</sup>**

**Present: -** Mr. Vikas Deep, 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 her 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 she had booked a commercial plot in the project named "TDI City" of the respondent situated at Sonipat in Dec, 2005. Commercial Plot No. KC-1/27, measuring 204 sq.yds. was allotted to her vide allotment letter dated 21.09.2006. 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 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 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 them by December, 2008. Complainant has paid Rs. 31,40,376/- against basic sale consideration of Rs. 26,00,000/-.

Grouse of the complainant is that respondent after lapse of about seventeen years from the date of booking, respondent vide offer letter dated 22.08.2017 has offered possession of Plot No. LC -2/35 instead of originally





booked Plot No. KC-1/27. Complainant does not want delivery of Plot No. LC -2/35. She wants delivery of originally allotted plot i.e. Plot No. KC-1/27. Thus, respondent has failed to perform his contractual obligation to deliver possession of the originally booked plot to complainant. Therefore, complainant is seeking refund of Rs. 31,40,376/-/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for respondent stated that 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. Learned counsel for the respondent stated that allotment of plot was changed from originally booked plot No. KC-1/27 to Plot No. LC -2/35 with the consent of the complainant and a fresh allotment letter dated 24.05.2017 was also issued to the complainant. Thereafter, respondent issued offer of possession of Plot No. LC-2/35 vide letter dated 22.08.2017.

6. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent changed plot of complainant from originally booked plot No. KC-1/27 to Plot No. LC -2/35 and also issued a fresh allotment letter dated 24.05.2017. Learned counsel for the respondent stated that respondent had issued offer of possession of Plot No. LC-2/35 vide letter dated 22.08.2017.



Learned counsel for the complainant stated that complainant had no knowledge of change of allotment of plot i.e. from originally booked plot No. KC-1/27 to Plot No. LC -2/35 till receipt of offer letter dated 22.08.2017 and same was changed without her consent. She also denies receipt of fresh allotment letter dated 24.05.2017.

Authority observes that respondent has not placed any evidence on record showing consent/ approval of complainant for change of allotment from originally booked plot No. KC-1/27 to Plot No. LC -2/35 , thus, he has failed to prove that fresh allotment of Plot No. LC-2/35 was made with consent of the complainant. Even no evidence has been placed on record by respondent to prove due delivery of fresh allotment letter dated 24.05.2017 to the complainant. Infact, after receipt of offer letter dated 22.08.2017, complainant sent a legal notice dated 18.09.2017 to the respondent objecting to unilateral change of allotment of plot from originally booked plot No. KC-1/27 to Plot No. LC -2/35 and offer of delivery of Plot No. LC-2/35 by respondent and sought refund of amount deposited by her along with interest. Therefore, change of allotment of plot of the complainant from originally booked plot No. KC-1/27 to Plot No. LC -2/35 is held to be without consent of the complainant, thus, illegal. Accordingly, letter of fresh allotment dated 24.05.2017 and offer letter dated 22.08.2017 are hereby quashed. Since, complainant does not want to take delivery of Plot no. LC-2/35, and





possession of originally allotted plot is not possible to be granted to complainant, therefore, relief of refund sought by complainant deserves to be granted. An alternate plot can be offered only with written consent of the allottee. Authority cannot force an allottee to accept plot different from one originally booked. 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, 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. 31,40,376/- 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. 71,43,355/- (Rs. 31,40,376/- + Rs. 40,02,979/-). Therefore, Authority directs the respondent to refund Rs. 71,43,355/-.

8. The respondent shall pay the 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.



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**RAJAN GUPTA**  
**[CHAIRMAN]**



.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**

