



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 58 OF 2021

Harpreet Kaur & Darshan Kaur

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

COMPLAINT NO. 74 OF 2021

Prem Nath Sharma & Jitender Sharma

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

4

COMPLAINT NO. 86 OF 2021

Uttam Chand Giri & Gurbir Singh Hundal

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 05.04.2022

Hearing: 14th in Complaint No. 58 of 2021.

11th in Complaint No. 74 of 2021.

11th in Complaint No. 86 of 2021.

Present: - Mr. Robin Bansal, Ld. Counsel for complainant through VC.

(In Complaint No. 58 of 2021).

Ms. Priyanka Aggarwal, Ld. Counsel for complainants through

VC. (In Complaint No. 74 & 86 of 2021).

Mr. Shubhnit Hans, Ld. LD. Counsel for respondent through

VC. (In all the Complaints.)

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Since complainants have sought relief of refund of the amount already paid to the respondent for purchase of their shops 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. Present case has been transferred to Authority from Ld. Adjudicating Officer and is listed today for first time after its transfer from Ld. Adjudicating Officer.

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. 'Park Street-TDI City' Kundli, Sonapat. Facts of **Complaint case no. 58 of 2021 titled Harpreet Kaur & Darshan Kaur vs TDI Infrastructure Ltd.** are being taken into consideration for disposal of all the cases.

5. Case of the complainants is that they had booked a shop in the project named "Park Street" of the respondent situated at Sonipat in January, 2007. Shop No. LG-175 measuring 546.03 sq. fts. was allotted to them on 21.02.2007. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. Complainants have paid Rs. 20,14,928/- against basic sale price Rs. 20,45,428/- till date. In certain similar cases

respondent had assured allottees to deliver possession of shop within three years from the date of booking. After taking almost 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 complainants pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of shop should be taken as three years from the date of booking, meaning thereby that complainant's shop should have been delivered to them by Jan, 2010.

Grouse of the complainants is that despite lapse of approximately fifteen years from booking, respondent has failed to deliver them possession of the shop till date. Therefore, complainants are seeking refund of Rs. 20,14,928/- along with interest.

5. Learned counsel for the respondent has stated that respondent company had applied for grant of Occupation Certificate but the same has not been granted to them by the Department of Town & Country Planning till date. He further stated construction of shop is going on and will be completed within one year. Respondent will deliver possession of the shop to the complainants after completion along with Occupation Certificate. On a query put by the Authority that said project has been registered under RERA Act, 2016, learned counsel for respondent stated that though application for the same is pending before Authority for consideration, same has not been granted to them.



6. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly despite lapse of approximately fifteen years from the date of booking, construction of shops of all the complainants is incomplete and as per his statement it will take at least one more year to complete them. Learned counsel for the respondent has also admitted the fact that respondent has not received Occupation Certificate from the Department of Town & Country Planning till date. Thus, even the project seems to be incomplete.

Extraordinary delay has been caused by respondent in completion and in delivery of possession of booked shops which amounts to breach of terms of registration. Already more than fifteen years have lapsed from the date of booking. Delivery of possession of shops with Occupation Certificate does not seem possible in foreseeable future. Therefore, complainants cannot be forced to wait for indefinite time to get delivery of possession of their booked shops. Even the project has not yet been registered under RERA ACT, 2016.

In view of above facts, Authority is of the considered opinion that construction of shops is incomplete even after fifteen years of booking and the respondent has been using the amount deposited by the complainants since last fifteen years without any reasonable justification. After such extraordinary delay in completion of booked shops, complainants cannot be

compelled to continue with the booking of their shops and wait for more time to get their possession.

In these circumstances, the Authority finds these to be a fit cases for allowing refund of the amount paid by the complainants and directs the respondent to refund amount paid by the complainants 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. In Complaint no. 58 of 2021, total amount paid by complainants as per receipts/statement of accounts attached by them is Rs. 16,64,928/- and same has been admitted by respondent. Therefore, complainants are entitled to refund of Rs. 16,64,928/- paid by them along with interest. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 30,75,488/- (Rs. 16,64,928/- + Rs. 14,10,560/-). Therefore, Authority directs the respondent to refund Rs. 30,75,488/-.

8. In Complaint No. 74 of 2021, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 43,09,993/- (Rs. 21,54,340/- + Rs. 21,55,653/-). Therefore, Authority directs the respondent to refund Rs. 43,09,993/-.



9. In Complaint No. 86 of 2021, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 48,52,592/- (Rs. 22,54,021/- + Rs. 25,98,571/-). Therefore, Authority directs the respondent to refund Rs. 48,52,592/-.

10. The respondent shall pay entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority.

Disposed of in these terms.

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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]