



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. Complaint no. 529 OF 2018 (15th hearing)

Kapil Jain and Anu JainCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

2. Complaint no. 755 OF 2018 (13th hearing)

Jyoti BerryCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

3. Complaint no. 1068 OF 2018 (12th hearing)

Rajiv Kochhar and Sharda KochharCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

4. Complaint no. 1069 OF 2018 (12th hearing)

Ashish Kumar KochharCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

5. Complaint no. 2144 OF 2019 (8th hearing)

Babita Yadav and Attar SinghCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

6. Complaint no. 3052 OF 2019 (5th hearing)

Manish VashistCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

7. Complaint no. 220 OF 2020 (4th hearing)

Vinod SharmaCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

8. Complaint no. 274 OF 2020 (4th hearing)

MA RathorCOMPLAINANT(S)

VERSUS

Raheja Developers Ltd.RESPONDENT(S)

9. Complaint no. 1104 OF 2020 (3rd hearing)

Tarun Khurana and Komal KhuranaCOMPLAINANT(S)

VERSUS



Complaint No. 529, 755, 1068, 1069 of 2018
Complaint No. 2144, 3052 of 2019
Complaint No. 220, 274, 1104, 1298, 1321, 1324, 1454 of 2020
Complaint No. 370, 1108 of 2021

Raheja Developers Ltd.

....RESPONDENT(S)

10. Complaint no. 1298 OF 2020 (2nd hearing)

Bhuvnesh Kumar Gupta

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

11. Complaint no. 1321 OF 2020 (2nd hearing)

Geeta Sudan

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

12. Complaint no.1324 OF 2020 (2nd hearing)

Yogesh Kumar

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

13. Complaint no. 1454 OF 2020 (2nd hearing)

Sanjeev Punj

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

14. Complaint no. 370 OF 2021 (8th hearing)

Avinash Chandra

....COMPLAINANT(S)



Complaint No. 529, 755, 1068, 1069 of 2018
Complaint No. 2144, 3052 of 2019
Complaint No. 220, 274, 1104, 1298, 1321, 1324, 1454 of 2020
Complaint No. 370, 1108 of 2021

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

15. Complaint no. 1108 OF 2021 (2nd hearing)

Pankaj Singh Yadav and Prithvi Singh Yadav

....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 01.04.2022

Present: -

Mr. Himanshu Raj, learned counsel for the complainants in complaint no. 529/2018 and 3052/2019 through Video Conference.

Mr. Vishal Madan, learned counsel for the complainant in complaint no. 220/2020 through Video Conference.

Mr. Yogesh Kumar, learned counsel for the complainant in complaint no. 1324/2020 through Video Conference.

Mr. Sanjeev Punj, learned counsel for the complainant in complaint no. 1454/2020 through Video Conference.

Mr. Neeraj Goel, learned counsel for the complainant in complaint no. 274/2020 through Video Conference.

Ms. Jasneet Kaur, learned counsel for the complainant in complaint no. 1104/2021 through Video Conference.

Mr. Subhnit Hans, learned counsel for the complainant in complaint no. 370/2021 through Video Conference.

None present for complaint no. 755/18, 1068/18, 1069/18, 1298/2020, 1321/2020, 2144/2019, 1108/21

Mr. Kamaljeet Dahiya, learned counsel for the respondent through Video Conference



ORDER (DILBAG SINGH SIHAG-MEMBER)

1. All captioned matters were filed before this Authority in the year 2018, 2019, 2020 and 2021. In all the cases relief of refund has been sought. These matters were not being heard for last nearly 2 years on account of jurisdiction of Authority to deal with the complaints in which relief of refund had been sought having been challenged firstly before Hon'ble High Court and then before Hon'ble Supreme Court of India.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered 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 have further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. Vide order dated 13.01.2022.

Consequent upon above judgment 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 were 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."

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

3. A detailed order in all the captioned complaints was passed by Authority vide its order dated 27.10.2020. The said order in its entirety is reproduced below:-

1. All the above captioned complaints are taken up together as the grievances involved therein are pertaining to the same respondent. Facts of Complaint no. 332 of 2018 titled as Shashank Versus Raheja Developers Ltd. is taken as lead case.

2. In present complaints, the complainants are seeking refund of the amount already paid to the respondent for



purchase of apartments due to non-completion of the project till date. However, learned counsel for respondent seeks adjournment as he is not ready for arguments due to his personal difficulty.

3. This is the 14th hearing of the case. Certain observations were made in the order dated 26.03.2019 which are reproduced as below:

This bunch of 9 complaints was taken up together for disposal. In some of the cases today is the 8th hearing. Other matters also have been heard 3,4 and 6 times earlier depending upon their date of institution. Brief facts of the matter have already been captured in the earlier orders of the Authority. A specific reference, however, is made to the orders dated 15.1.2019, 30.01.2019 and 26.2.2019.

2. Ms Rupali Verma appeared as counsel in eight cases and Shri Himanshu Raj appeared in respect in one complaint. Ms. Rupali Verma appeared for all the complainants who have been allotted apartments in low rise buildings whereas Shri Himanshu Raj appeared in respect of the complainant who has been allotted apartment in the high-rise building.

3. In furtherance of the orders dated 26.02.2019 of this Authority the arguments of Shri Kamal Dahiya, learned counsel for the respondent No.1 were heard. There-after arguments of Shri Eklavya Gupta learned counsel for the respondent No.2 were heard. It is important to first discuss the arguments put forward by both the Ld. Counsels.

4. Shri Kamal Dahiya learned counsel for the respondent No.1 made following submissions:

- (i) Respondents are keen to complete the colony but on account of hindrances being created by the respondent No.2, who are land owner's licensee of the project, the project is not progressing and the development is halted. He also stated that respondent no. 2 had

executed a sale deed for the sale of the land of the project in favour of the developer. The said sale deed was duly registered with the Revenue Department. Now respondent No.2 has filed a Civil Suit against the respondent No.1 challenging the said sale deed as being void because of lack of consideration. This has stalled the development of the project and all construction activities have come to a standstill.

(ii) That the respondent No.2 had approached the National Consumer Dispute Redressal Commission, New Delhi. After hearing the matter Hon'ble NCDRC has passed the following orders:

"Considering all the facts and circumstances of the case, the complainant is disposed of with the following directions:

The opposite party shall complete the construction of the residential area allotted/allocated to the complainants, in the project 'Raheja Oma', in all respects and obtain the requisite occupancy certificate thereof on or before 30.6.2020.

The opposite party, after completing the construction and obtaining the requisite occupancy certificate place the said area at the disposal of the complainants on or before 30.9.2020.

The opposite party shall pay compensation calculated @ Rs.7/- per sq. ft. per month of the super area allotted/allocated to the complainants with effect from 17.4.2016 till the date on which the said residential area in the project 'Raheja Oma' is placed at the disposal of the complainants.

The compensation shall be paid at the time the constructed area in terms of this



order is placed at the disposal of the complainants.”

Shri Dahiya argued that by virtue of the orders of Hon'ble NCDRC the respondent No.2 has become an allottee of the project. Now they have no locus standi to challenge the said sale deed executed by the respondent no.2.

(iii) That the respondent No.2 are using strong armed tactics and are denying them access to the project land. They are turning their trucks back, as a result, it is not possible for respondent no.1 to recommence the construction work of the project.

5. The arguments put forth by the learned counsels for the complainants are as follows: -

- (i) That the respondent No.1 has deliberately stopped the construction work for the reasons best known to him. There is no bar on them from any court of law or any other authority against starting the construction activities. The arguments of the respondent No.1 is that respondent No.2 is using strong arm tactics and is denying them access to the project land are nothing but lame excuses only to justify the inaction on their part.
- (ii) Regarding the civil suit pending between both the respondents in the civil court relating to the alleged sale deed, there is no stay order granted by the court against any of the parties. The pendency of civil suit is no bar against the Respondent No.1 in commencing the construction of the project.
- (iii) The orders passed by Hon'ble NCDRC is also not a hindrance in any manner against the Respondent No.1. It merely re-defines the relationship between both the respondents. Both the respondents had entered into a collaboration agreement which is the basic document defining the relationships between

the two. The allottees have nothing to do with their internal dispute if any. Complainants have entered into builder-buyer agreement with the Respondent No.1 who is now failing to discharge his responsibilities by putting forth such lame excuse and is unnecessarily trying to shift the blame of Respondent No.2. Even if there is a legitimate dispute, the Respondent No.1 and 2 should settle it at the earliest. Their internal dispute cannot adversely affect legitimate rights of the allottees.

- (iv) Learned counsels for the complainants alleges serious diversion of the funds of the project collected from the allottees as well as from the various financial institutions. They allege that the Respondent No.1 had mortgaged the project with IFCI Ltd. and have raised Rs.75 crores loan against it. Another loan has of Rs.55 crore been raised from the Punjab National Bank. Shri Himanshu Raj, Ld. counsel for the complainant stated that the entire money amounting to Rs.130 crores has been disbursed in favour of the Respondent No.1 but the same has not been invested on the project. Instead, the respondent No.1 has diverted the same against the interests of the allottees.
- (v) Learned counsels for complainants allege that mala fide intention of Respondent No.1 are further proved from the fact that Respondent No.1 had made a collaboration agreement with a Japanese Firm, one of the terms of which was that the licence of the land shall be transferred in favour of Respondent No.1. An application in this regard was filed in the Town & Country Planning Department but the same was not approved on account of some dispute having arisen between both the respondents. The mala fide intension of Respondent No.2 are also exhibited from the fact



that he had issued a no objection certificate in favour of the Respondent No.1 for transfer of the licence for collaboration with a Japanese Firm.

(vi) Nearly 50% of apartments in the project, both in high rise as well as in low rise buildings have been allotted and huge sum of money has been collected from the allottees. Neither the money collected from the allottees nor raised by way of loan/mortgage has been invested in the project. This is a clear indication that Respondent No.1 has diverted the funds for their own personal gains to the detriment of the allottees.

(vii) Arguing for the complainant in Complaint No.529 of 2018 Shri Himanshu Raj stated that admittedly the construction of high-rise building has not even commenced beyond some basic excavation work at the basement. Accordingly, there is no likelihood of its completion in foreseeable future, especially in view of the facts and circumstances narrated above. He requested that in respect of his client, the orders for refund of the money paid along with interest and compensation should be passed.

6. In view of the aforesaid submissions of the both the parties the Authority observes as follows: -

(i) Admittedly, Respondent No.2 is the landowner licensee of the project. Licence No.27 of 2011 was granted in his favour. Prior to the grant of license a collaboration agreement had been made between them by virtue of which almost entire capital investment was to be made by respondent No.1 and in lieu of the construction of land, the respondent No.2 was to get 23% of the total saleable area.

The Authority observes that when under the collaboration agreement rights and responsibilities of both the parties were clearly

defined, it is not clear why was a sale deed executed by the respondent No.2 in favour of respondent No.1, and that also without citing any sale consideration in their favour.

- (ii) In so far as the orders of Hon'ble NCDRC is concerned, it only redefines/clarifies the relationship between both the respondents which has no impact on the rights of the allottees. The respondent No.1 has been directed to fulfil their obligation by certain prescribed dates. It is not understood how is respondent No.1 taking shelter behind this order of the the Hon'ble NCDRC to justify non-resumption of construction activities.
- (iii) It has been argued that an appeal has been filed by respondent No.1 in the Hon'ble Supreme Court Copy of the said appeal was not submitted to enable the Authority to understand its exact nature. On the next date a copy of it shall be submitted by respondent No.1.
- (iv) Respondent No.1 alleges that Respondent No.2 is obstructing access to the project land by using strong arm tactics. Allegedly, this is being done for last couple of years. On a question being posed by the Authority whether any FIR in this regard has been lodged or assistance of the police has been sought, Shri Dahiya could not come forward with any satisfactory reply. Accordingly, it appears that this also is a lame excuse.
- (v) No reply was given by the learned counsel for respondent No.1 regarding utilisation of funds raised from the allottees and from the financial institutions. They will have to explain how much funds have been raised from various sources where they have been deployed.

9

(vi) It appears that both the respondents are in collusion with each other. Both the parties appear to be collaborating with each other right from the beginning. They have facilitated collaboration with the Japanese firm. They have also collaborated for transfer of licence in favour of respondent No.1. There is no stay order from the civil court and there is no bar in commencing the construction activities. The argument of the respondents appears to be only a ploy to continue to deny legitimate rights of the allottees.

7. From the foregoing discussions the Authority is of prima-facie view that respondent No.1 is not deliberately completing the project. He has gathered huge amount of money by sale of nearly 50% of the project and have also raised an amount of 130 crores by way of loan/mortgage. Against such a massive collection, much less amount appears to have been invested on the project which points to the fact that respondent no.1 has siphoned away funds of the project. Now the respondent No.1 & 2 are indulging into fruitless litigation and are levelling baseless allegations and counter allegations against each other in order to buy time and to justify their inaction for non-completion of the project. They have sold nearly 50% of the high-rise building in respect of which even construction work has not begun.

8. Before passing final verdict in the matter the Authority would like to understand the status of the project. The respondent No.1 is now ordered to furnish following information one week to the prior next date of hearing and also send its copy to all the complainants: -

- (i) The number of apartments in the project, separately in the low-rise building and the high-rise building.
- (ii) The number of apartments sold in both types of buildings.
- (iii) The total amount collected in respect of both types of towers. Details of the amounts collected from each allottee should also be prepared and brought in the court.
- (iv) The amount raised by way of loans, mortgage or any other means for the project. The documents vide which the said loans were raised be furnished to the Authority.
- (v) The amount spent on the project so far.
- (vi) A certificate of the Chartered Accountant showing the amounts received from various resources including as stated above, and the amount spent on the construction of the project.
- (vii) If less amount has been spent than collected, then an affidavit as to where remainder of money is lying at present.
- (viii) Status of redemption of the mortgage deed.

The Authority also observes that this project of the respondents has been registered with the Authority vide Registration No.30 of 2017(Akash Tower) and Registration No.29 of 2017(Sansara Residency). Since disputes are pending between the respondent No.1 and 2 relating to the ownership of the land, Authority deems it appropriate to re-open and review the registration certificate to the respondents. The Law Associate concerned shall send a copy of this order to the Project Section for initiating a Suo-Motu complaint against the respondents. A copy of this order shall



be sent to the respondent to show cause as to why
their registration certificate be not cancelled.

Adjourned to 24.04.2019.

4. In furtherance of the above said order a sou motu complaint bearing no. 1083 of 2019 was registered and the matter had been dealt in detail. The operative portions of the order are reproduced as below:

"2. The Case of the respondent M/s Raheja Developers Ltd. is that they have invested more money on the project than has been collected from the allottees. Further, they have raised only Rs. 35 crores as loan and not Rs. 130 crores as observed in the order dated 26.3.2019. They are serious about completing the project but are facing difficulties from the land owner Shri Pawan Kumar who is using strong arm tactics to obstruct the construction work. It is because of the activities of Shri Pawan Kumar, the original land owner, due to which the project has not been completed.

Shri Raheja argued that the land owners had executed a sale deed of the land of the project in their favour on the basis of which they had applied for transfer of license in their name. The consideration for the sale of the land was that 23% of built up apartments shall be given to the original land owners. Further, now this 23% developed apartments have been reduced to 18% for the reason of adjustment of due amount of EDC and other charges. The original land owners now are entitled to only 18% of built up apartments.

Shri Raheja further stated that despite clear and unambiguous agreement between the earlier land owners and the developers, the land owners



instituted civil litigation in which the registered sale deed of the land of the project has been challenged for the reason of lack of consideration which could make the agreement void Shri Raheja stated that pending civil litigation has put a question mark on the future of the project. Till the civil litigation is cleared, further investment in the project will be very risky because in case the civil court decides against them, their huge investment in the project could be jeopardised.

Shri Raheja stated that they require support of this Authority in directing the land owners to withdraw the litigation and not use strong arm tactics against them and allow them to resume construction work.

3. During arguments it was admitted by Shri Raheja that the high rise building in the project is meant to be a 40 storeys building of which only two storeys have been construction work is almost complete and finishing work could be completed over a period of next one year or so, provided hurdles being create in their way by the original land owners are removed.

4. On the other hand, the case of the original land owners Shri Pawan Kumar and Shri Praveen Kumar is that earlier 23% and now 18% fully developed apartments have to be given to them by the developers. Now they should be treated as allottees of the project in the respect of the apartments which will come into their share. They cited a decision of Hon'ble NCDRC in which an order has been given to the respondent M/s Raheja developers for completing their apartments within two years.

The principle thrust of the arguments of the landowners is that while they are entitled to pursue their civil litigation as per their rights, at the same time they should be treated as allottees of the extent of 18% of the total apartments of the project.

5. The Authority is to tentative view that forensic audit of the accounts of the project deserves to be conducted to determine whether promoter developers has diverted any money from the project to the prejudice of the allottees. Simultaneously, the Authority is of the considered view that the erstwhile owners Shri Pawan Kumar and Shri Praveen Kumar cannot be treated as allottees. Simultaneously, the Authority is of the considered view that the erstwhile owners Shri Pawan Kumar and Shri Praveen Kumar cannot be treated as allottees of the apartments of the projects. The facts and circumstances of the matter leads to unmistakable conclusion that Shri Pawan Kumar and Shri Praveen Kumar are partners in the project. They are original land owners and license was also granted in their favour by the Town & Country Planning Department. In fact the license still stands in their name as the same has not yet been transferred in favour of M/s Raheja Developer. Accordingly, the Authority is of the considered view that rights and liabilities of Shri Pawan Kumar and Shri Praveen Kumar shall be determined as original licensees and now partners of the respondent developer. They cannot be treated at per with ordinary allottees. Allotment of 18% of build-up apartments in lieu of land is just another form of sharing of revenue between the landowners and developers. By no stretch of

imagination landowner licenses can be treated as allottees of apartments. There is nothing available to establish promoter-allottee relationship between the two. A simple and plain interpretation of facts of the matter would dictate that landowners and the developers are joint promoters to the project and they shall be held jointly and severally liable and answerable to the allottees of the apartments. The landowners cannot be allowed to shirk from their responsibilities.

Accordingly, whatever decision is taken by the Authority in this matter both the developer as well as the land owners shall be held liable jointly and severally. The former land owners cannot be absolved of their responsibilities towards the third parties whose fate is hanging fire for the last many years. It is the disputes between the land owners license on one hand and promoter developer on the other which has led to the ugly situation of stopping the construction work of the project.

6. For the aforesaid reasons the Authority considered it appropriate to summons both the land owners i.e. Shri Pawan Kumar and Shri Praveen Kumar to appear before the Authority in person to explain their conduct and the future course of action. They cannot on one hand challenges the very sale deed of the land in respect of which they obtained the license for development of project, and at the same time plead for being treated as allottees of the project on the strength of the decision of the Hon'ble NCDRC. This stand is contradictory in nature, in fact it can be said that they are trying to misuse the process of law before the NCDRC and the civil court to stall the progress of the project.

7. At this stage the Authority would also refer to the provisions of Section 79 and Section 89 of the RERA Act to state that this special legislation has been created for resolving disputes relating to the real estate sector. The Authority has been conferred exclusive jurisdiction to deal with all the matters falling within its jurisdiction. Accordingly, all disputes relating to the real estate project in question lies within the jurisdiction of this Authority only.

8. In conclusion, before arriving at final decision in the matter, the former land owners and licenses Shri Pawan Kumar and Shri Praveen Kumar are hereby directed to appear personally before this Authority on the next date of hearing to explain their version of the problem.

9. Adjourned to 07.11.2019"

5. Arguing for the complainant Shri Himanshu Raj stated that the construction building has not even commenced beyond some basic excavation work at the basement. He requested that the orders for refund of the money paid along with interest and compensation should be passed.

6. The Authority observes that despite various directions, no justification has been given by the respondents for delay in construction of the site. The complainants are waiting for possession of their apartments since long. They cannot be made to wait endlessly. There is no likelihood of completion of the project in near future, especially in view of the facts and circumstances narrated above. Therefore, the present complaints are fit for awarding refund in favour of complainants. The money paid by the complainants deserves to be refunded to them along with interest.

However, learned counsel for respondent seeks time to file detailed reply in some cases. Learned counsel for complainant, Mr. Himanshu Raj, contended that respondent is making delay tactics because in some cases reply has already been filed. Mr. Kamaljeet Dahiya states that he wants to make certain submissions in his written statement which needs to be taken on record.

4. Further, similar orders were passed by Authority on 17.03.2022 as reproduced below:-

3. Based on the above arguments, authority observes that respondents have absolutely failed in their responsibilities. Therefore Authority is prima facie of the view that case of refund in the case is made out. On the ground of previous order of the authority and cancellation of registration of the respondent, the Authority is of prima facie view that complainants are entitled to refund, however since the counsel for the respondent has requested for an adjournment to be physically present for arguments, the case is adjourned to 31.03.2022

5. In sub-para (viii) of para 8 of the quoted order dated 27.10.2020, Authority also decided to reopen and review the registration certificate granted to the respondent-company. Accordingly, a show cause notice was decided to be issued to the respondent-company as to why their registration certificate be not cancelled.

Authority in its projects jurisdiction has passed an order dated 07.07.2021 vide which registration certificate granted to the project of the respondent-company was cancelled. The said order is reproduced below:-

1. This Authority had registered two real estate projects namely 'Sansara Residencies' and 'Akasha Tower' residential towers to be developed in a group housing colony on land measuring 8.531 acres in sector-2A, Dharuhera, Rewari registered vide registration nos. 29 of 2017 dated 02.08.017 and 30 of 2017 dated 02.08.017 respectively.

2. While adjudicating upon the bunch of complaints with lead complaint case no. 332 of 2018 titled as Shashank Uppal Vs Raheja Developers Ltd., the Authority has observed as follows:

"5. The arguments put forth by the learned counsels for the complainants are as follows: -

(i) That the respondent No.1 has deliberately stopped the construction work for the reasons best known to him. There is no bar on them from any court of law or any other authority against starting the construction activities. The arguments of the respondent No.1 is that respondent No.2 is using strong arm tactics and is denying them access to the project land are nothing but lame excuses only to justify the inaction on their part.

(ii) Regarding the civil suit pending between both the respondents in the civil court relating to the alleged sale deed, there is no stay order granted by the court against any of the parties. The pendency of civil suit is no bar against the Respondent No.1 in commencing the construction of the project.

(iii) The orders passed by Hon'ble NCDRC is also not a hindrance in any manner against the Respondent No. 1. It merely re-defines the relationship between both the respondents. Both the respondents had entered into a collaboration agreement which

is the basic document defining the relationships between the two. The allottees have nothing to do with their internal dispute if any. Complainants have entered into builder-buyer agreement with the Respondent No.1 who is now failing to discharge his responsibilities by putting forth such lame excuse and is unnecessarily trying to shift the blame of Respondent No.2. Even if there is a legitimate dispute, the Respondent No.1 and 2 should settle it at the earliest. Their internal dispute cannot adversely affect legitimate rights of the allottees.

(iv) Learned counsels for the complainants alleges serious diversion of the funds of the project collected from the allottees as well as from the various financial institutions. They allege that the Respondent No.1 had mortgaged the project with IFCI Ltd. and have raised Rs.75 crores loan against it. Another loan has of Rs.55 crore been raised from the Punjab National Bank. Shri Himanshu Raj, Ld. counsel for the complainant stated that the entire money amounting to Rs. 130 crores has been disbursed in favour of the Respondent No.1 but the same has not been invested on the project. Instead, the respondent No.1 has diverted the same against the interests of the allottees.

(v) Learned counsels for complainants allege that mala fide intention of Respondent No.1 are further proved from the fact that Respondent No.1 had made a collaboration agreement with a Japanese Firm, one of the



terms of which was that the license of the land shall be transferred in favor of Respondent No.1. An application in this regard was filed in the Town & Country Planning Department but the same was not approved on account of some dispute having arisen between both the respondents. The mala fide intention of Respondent No.2 are also exhibited from the fact that he had issued a no objection certificate in favor of the Respondent No.1 for transfer of the license for collaboration with a Japanese Firm.

(vi) Nearly 50% of apartments in the project, both in high rise as well as in low rise buildings have been allotted and huge sum of money has been collected from the allottees. Neither the money collected from the allottees nor raised by way of loan/mortgage has been invested in the project. This is a clear indication that Respondent No.1 has diverted the funds for their own personal gains to the detriment of the allottees.

(vii) Arguing for the complainant in Complaint No.529 of 2018. Shri Himanshu Raj stated that admittedly the construction of high rise building has not even commenced beyond some basic excavation work at the basement. Accordingly, there is no likelihood of its completion in foreseeable future, especially in view of the facts and circumstances narrated above. He requested that in respect of his client, the orders for refund of the money paid along with interest and compensation should be passed.



Complaint No. 529, 755, 1068, 1069 of 2018

Complaint No. 2144, 3052 of 2019

Complaint No. 220, 274, 1104, 1298, 1321, 1324, 1454 of 2020

Complaint No. 370, 1108 of 2021

6. In view of the aforesaid submissions of the both the parties the Authority observes as follows:

(i) Admittedly, Respondent No.2 is the landowner licensee of the project. License No.27 of 2011 was granted in his favour. Prior to the grant of license a collaboration agreement had been made between them by virtue of which almost entire capital investment was to be made by respondent No.1 and in lieu of the construction of land, the respondent No.2 was to get 23% of the total saleable area.

The Authority observes that when under the collaboration agreement rights and responsibilities of both the parties were clearly defined, it is not clear why was a sale deed executed by the respondent No.2 in favour of respondent No.1, and that also without citing any sale consideration in their favour.

(ii) In so far as the orders of Hon'ble NCDRC is concerned, it only redefines/clarifies the relationship between both the respondents which has no impact on the rights of the allottees. The respondent No.1 has been directed to fulfill their obligation by certain prescribed dates. It is not understood how is respondent No.1 taking shelter behind this order of the Hon'ble NCDRC to justify non-resumption of construction activities.

(iii) It has been argued that an appeal has been filed by respondent No.1 in the Hon'ble Supreme Court Copy of the said appeal was not submitted to enable the Authority to understand its exact nature. On the next date a copy of it shall be submitted by respondent No.1.

(iv) Respondent No.1 alleges that Respondent No.2 is obstructing access to the project land by using strong arm tactics.



Allegedly, this is being done for last couple of years. On a question being posed by the Authority whether any FIR in this regard has been lodged or assistance of the police has been sought, Shri Dahiya could not come forward with any satisfactory reply. Accordingly, it appears that this also is a lame excuse.

(v) No reply was given by the learned counsel for respondent No.1 regarding utilization of funds raised from the allottees and from the financial institutions. They will have to explain how much funds have been raised from various sources where they have been deployed.

(vi) It appears that both the respondents are in collusion with each other. Both the parties appear to be collaborating with each other right from the beginning. They have facilitated collaboration with the Japanese firm. They have also collaborating for transfer of license in favor of respondent No.1. There is no stay order from the civil court and there is no bar in commencing the construction activities. The argument of the respondents appears to be only a ploy to continue to deny legitimate rights of the allottees.

7. From the foregoing discussions the Authority is of prima-facie view that respondent No.1 is not deliberately completing the project. He has gathered huge amount of money by sale of nearly 50% of the project and have also raised an amount of 130 crores by way of loan/mortgage. Against such a massive collection, much less amount appears to have been invested on the project which points to the fact that respondent no.1 has siphoned away funds of the project. Now the respondent No.1 & 2 are indulging into fruitless litigation and



are leveling baseless allegations and counter allegations against each other in order to buy time and to justify their inaction for non-completion of the project. They have sold nearly 50% of the high rise building in respect of which even construction work has not begun."

3. Taking cognizance of aforesaid facts received against the promoters for violating terms and conditions of the registration and provisions of the RERA Act, 2016; and also upon observing that the promoter appears to have been indulged in siphoning off the funds of the project; and there are ongoing disputes in respect of ownership of the project land between the developer and land owners, the Authority decided to issue a show cause notice to the respondent/promoter as to why their registration bearing nos. 29 of 2017 and 30 of 2017 be not cancelled.
4. Several detailed orders have been passed by the Authority in this matter. Basic reasons of non-completion of the project have been recorded in the orders dated 17.09.2019, 22.10.2019 and 22.12.2020.
5. Today, the Authority observes that since the promoter has failed to complete the project for more than a decade and no construction is taking place for the past 3-4 years due to dispute between the promoter & landowners which has put a question mark on the future of the project. The allottees of the projects are waiting for their homes even after paying their hard-earned money. It is also observed that there are several other ongoing disputes between respondent/promoter & landowners in respect of the ownership of the project land which may take time to resolve. Despite granting repeated opportunities to the promoters to resolve their disputes, no satisfactory outcome has been arrived towards completion of the project. The promoters have again failed to satisfy the Authority of their capabilities to complete the projects

within stipulated time and will hand over the possession of the units to the prospective allottees.

6. Taking serious view of the above circumstances, the Authority decides to suspend the aforesaid registration nos. 29 of 2017 and 30 of 2017 till further orders and the promoters of the projects are prohibited from making any further sale of any unit or alienate any asset of the projects in question. The fact of suspension of the registration and prohibition of further sale of the project should be hosted on the website of the Authority.

6. As is clearly made out from the above reproduced orders that project of the respondent is badly stuck. No construction activity is going on. Due date of delivery of possession of apartments to various complainants was 2017. Registration certificate of the project has been cancelled and legal disputes are still going on in regard to the land. As such, there is no hope for its completion in foreseeable future. Accordingly, complainants are entitled to the relief claimed by them i.e. refund of money paid by them along with interest on the date of making such payments upto the date of passing this order.

7. Sh. Kamaljeet Dahiya, learned counsel for respondents argued that dispute between landowners and respondent-company is at the advanced stage of being mediated at the level of Hon'ble Supreme Court. Nothing however has been shown in support of this argument except that the matter has been listed for 08.04.2022 before the Hon'ble Conciliator. Such an

avertment made by learned counsel Sh. Dahiya on behalf of respondent-company will have no effect on the outcome of present complaints. It has already been repeatedly established before the Authority that the dispute with the landowner does not act as a hindrance in the way of the respondents from completion of the project. No efforts whatsoever has been made by the respondents in last many years for completion of the project. The dispute with the landowner is a private affair having no effect on the fate of project. In any case, complainants will have nothing at all to do in respect of the disputes between promoters and erstwhile landowner. It is the respondent-company which has executed Builder-Buyer Agreement and accepted consideration amount in respect of the apartments from the complainants. It is the respondent-company only and solely responsible and answerable to the complainants. The complainants never consented that delivery of possession of apartments will be subject to settlement of dispute between promoters and erstwhile landowners. For the purpose of complainants, said dispute is irrelevant and they are not privy to the same. Accordingly, Authority is unable to accept the argument put forth by learned counsel Sh. Kamaljeet Dahiya.

8. Authority accordingly hereby orders refund of the amount paid by the complainants along with interest in accordance with Rule 15 of the RERA

Complaint No. 529, 755, 1068, 1069 of 2018
 Complaint No. 2144, 3052 of 2019
 Complaint No. 220, 274, 1104, 1298, 1321, 1324, 1454 of 2020
 Complaint No. 370, 1108 of 2021

Rules, 2017. The principal amount and interest thereon payable to each of the complainants is tabulated below:-

S.No	Complaint No.	Date of Agreement	Amount Paid	Interest	Total
1.	529/18	22.06.2013	Rs. 18,30,454/-	Rs. 14,33,353/-	Rs. 32,63,807/-
2.	755/18	14.09.2013	Rs. 59,96,347/-	Rs. 45,20,675/-	Rs. 1,05,17,022/-
3.	1068/18	28.05.2013	Rs. 20,29,038/-	Rs. 15,74,679/-	Rs. 36,03,717/-
4.	1069/18	01.06.2013	Rs. 20,77,829/-	Rs. 16,42,091/-	Rs. 37,19,920/-
5.	2144/19	22.06.2013	Rs. 33,14,988/-	Rs. 26,25,755/-	Rs. 59,40,743/-
6.	3052/19	03.06.2013	Rs. 17,80,475/-	Rs. 14,80,607/-	Rs. 32,61,082/-
7.	220/20	26.06.2013	Rs. 21,31,404/-	Rs. 16,64,405/-	Rs. 37,95,809/-
8.	274/20	22.06.2013	Rs. 22,56,145/-	Rs. 17,83,327/-	Rs. 40,39,472/-
9.	1104/20	17.06.2013	Rs. 18,77,038/-	Rs. 14,64,485/-	Rs. 33,41,523/-
10.	1298/20	24.06.2013	Rs. 20,67,026/-	Rs. 16,40,274/-	Rs. 37,07,300/-
11.	1321/20	24.06.2013	Rs. 20,67,001/-	Rs. 16,28,165/-	Rs. 36,95,166/-
12.	1324/20	22.06.2013	Rs. 20,67,951/-	Rs. 16,40,456/-	Rs. 37,08,407/-
13.	1454/20	22.06.2013	Rs. 20,68,026/-	Rs. 16,32,322/-	Rs. 37,00,348/-
14.	370/21	25.07.2013	Rs. 44,64,907/-	Rs. 33,71,684/-	Rs. 78,36,591/-
15.	1108/21	25.07.2013	Rs. 53,19,671/-	Rs. 39,03,275/-	Rs. 92,22,946/-

9. Respondents are directed to refund above stated amounts along with interest shown in the table above within time period prescribed in Rule 16 of RERA Rules, 2017.

9

Complaint No. 529, 755, 1068, 1069 of 2018
Complaint No. 2144, 3052 of 2019
Complaint No. 220, 274, 1104, 1298, 1321, 1324, 1454 of 2020
Complaint No. 370, 1108 of 2021

10. Complaints are disposed off. Files to be consigned to record room after uploading of order.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

