HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No. 3120 of 2019

Ram Narain Rawal ...Complainant.

Versus

M/S Astrum Value Homes Pvt Ltd.
M/S Stanza Developers and Infrastructure Pvt. Ltd ...Respondent.

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of hearing: 24.03.2022

Hearing: 5th

Present: - Mr. Satyam Aneja, Learned counsel for the complainant
Mr. Shobit Phutela, Learned counsel for the respondent

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. In this case, complainants have sought relief of refund of the amount paid by him to the respondents along with applicable interest. Initially Authority was not hearing this matter in which relief of refund was sought due to jurisdiction dispute was sub-judice first before 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 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.

3. 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.
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> 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."

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. Case of the complainant is that he had booked an apartment in respondent's project named 'La Regencia Phase II', sector-19, Panipat, on 28.07.2012 by paying an amount of Rs. 5 lacs.. Builder Buyer Agreement (BBA) was executed on 12.05.2016 by which complainant was allotted a 4 BHK apartment no. I-201 having an approximate super area of 2279 sq. ft.. In terms of clause 4.1 of the BBA, possession was supposed to be delivered within 30 months from the date of execution of BBA, which comes to 12.11.2018. Complainants alleged that they have so far paid an amount of Rs.27,25,328/- against basic sale price of Rs. 66,09,100/-. In support of the contention that complainants have paid an amount of Rs. Rs.27,25,328/- complainant referred to page 17 of the complaint which is a statement of account dated 04.05.2016 issued by the respondents admitting the said amount

6. The complainant further alleged that project has not completed. Rather it is far from completion in foreseeable future. Therefore, ccomplainant has prayed for refund of the amount paid by him along with permissible interest on the ground that respondents have failed to even start the construction of the

Tower I of the said project and have even failed to complete the construction by December 2019 that is the date when the present complaint was filed.

7. On the other hand, respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by the complainant while submitting their reply in following manner:-

i) That this Authority does not have jurisdiction to deal with the complaints in which relief of refund has been sought.

ii) That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

iii) Respondents have broadly referred to certain payment reminders dated 07.05.2015, 15.05.2015, 04.09.2015, 22.01.2015 having been issued.

iv) Completion of the project has been delayed on account of certain force majeure conditions.

v) That the unit of the complainant had already been cancelled once vide cancellation notice dated 19.03.2014 due to regular defaults made by complainant towards clearing dues. Vide that cancellation notice, respondent also requested the complainant to take the refund of the amounts deposited by the complainant.

8. Both parties have argued their case at length. Complainant reiterated that project is nowhere near completion and there is no hope of its completion in near future, therefore, they do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them along with interest as applicable under the Rules.

9. Respondents on the other hand argue that construction is going on in full swing and an offer of possession will be made soon after completion of the project. Annexure R-5 of the reply at page 32 shows that I tower is already 46% complete.

10. Authority has gone through respective written submissions apart from noting verbal arguments put forth by both the sides. It issues following orders:-

i) Respondents first of all have challenged the jurisdiction of this Authority to deal with complaints in which relief of refund has been sought. This issue has been adequately dealt with and forgoing Para No.s 2 and 3 of this order. Accordingly, this objection of the respondents is no longer sustainable.

ii) There is no denial to the fact of Rs.27,25,328/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the statement of accounts dated 04.05.2016 issued by the respondents to the complainant. The said statement is annexed as Annexure C-1 at page 17 with the complaint.

iii) Respondents admited that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion. Complainant has paid only Rs. 27,25,328/- against total sale consideration of Rs. 75,74,775/- which constitute about 25% of the total consideration. Declared policy of this Authority in all such cases where projects are neither complete nor likely to be completed within foreseeable future and extraordinary delay has already been caused from the due date of offer of possession and only a small portion of the total sale consideration had been paid, the complainant would not be made to pay the remaining amount. Thus in such cases complainant would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.

iv) Arguments in respect of force majeure conditions also cannot be accepted and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now has been shown to have happened.

v) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the

agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

The Authority in numerous cases has passed the following order dealing with such arguments. The order dated 16.07.2018 passed by Authority in complaint No. 113/2018 are reproduced below which is as such will be applicable in the present case also :-

> "(ii) Regarding re-opening of the agreement that was executed prior to coming into force of the RERA Act. Sub Section 2 of Section 13(1) provides that the promoter will not accept a sum more than 10% of the cost of apartment without first entering into an agreement for sale. Further, Sub Section 2 of the Section 13 of the Act provides that the agreement for sale referred to Sub Section 1 shall be in such format as may be prescribed. The definition of the expression "prescribed" in the Act is that "prescribed means prescribed by Rules made under this Act". The State Government accordingly has prescribed the format for entering into agreements by the parties. Clause (a) of the explanation of the draft agreement prescribed in the Rules is reproduced below:
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> "(a) The promoter shall disclose the existing Agreement for Sale entered between Promoter and the Allottee in respect of on-going project along with the application for registration of such on-going project. However, such disclosure shall not affect the validity of such existing agreement(s) for sale between Promoter and Allottee in respect of apartment, building or plot, as the case may be, executed prior to the stipulated date of due registration under Section 3(1) of the Act.
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> (iii) Accordingly, as per explanation (a) quoted above, the agreements executed prior to the stipulated due date of registration under Section 3(1) of the Act cannot be reopened. Further, it is a general principle of law that unless an Act specifically provides for its coming into force with

retrospective affects it is to be ordinarily construed to be effective with prospective effect. The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act save the provisions of the agreements made between the buyers and seller."

vi) The complainants being entitled to refund of the entire amount of Rs.27,25,328/- paid by them, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order.

vii) The total interest payable by the respondents to the complainants works out to Rs. 19,05,637/- calculated in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % which is 9.30% p.a. simple interest. Details are as follows:

S. No	Principal Amount	Date of Payment	Interest Accrued till 24.03.2022	Total
1.	Rs. 5,00,000/-	28.07.2012	Rs. 4,49,075/-	Rs. 9,49,075/-
2.	Rs.4,00,000/-	25.09.2014	Rs. 2,78,847/-	Rs. 6,78,847/-

3.	Rs.4,00,000/-	12.11.2014	Rs. 2,73,955/-	Rs. 6,73,955/-
4.	Rs. 4,00,000/-	19.11.2014	Rs. 2,73,242/-	Rs. 6,73,242/-
5.	Rs. 4,00,000/-	20.11.2014	Rs. 2,73,140/-	Rs. 6,73,140/-
6.	Rs. 6,25,328/-	31.03.2016	Rs. 3,57,378/-	Rs. 9,82,706/-
Total	**Rs. 27,25,328/-**		**Rs. 19,05,637/-**	**Rs. 46,30,965/-**

vii) The Authority hereby orders that the respondents shall refund the principal amount of Rs.27,25,328/- plus interest amount of Rs. 19,05,637/- which works out to be Rs. 46,30,965/- to the complainant, within a period of 90 days i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.

11. **Disposed of** in above terms. File be consigned to record room.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]