



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 23 OF 2021

Sudha Rampal

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.03.2022

Hearing: 3rd

Present: - Mr. Sunil Rampal, Representative on behalf of complainant through VC.
Ms. Sudha Rampal, Complainant through VC.
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. In this case, complainant has sought relief of refund of the amount paid by them to respondents alongwith applicable interest. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its

jurisdiction to deal with such matters was subjudice 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 has 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 judgement 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.

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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."

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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 she had booked an apartment in respondent's project named 'Park Elite Floors', sector-77, Faridabad, on 25.05.2009 by paying an amount of Rs. 2 lacs. An allotment letter for Unit No. PA-240 with 1025 sq.ft. area was issued by respondents in favour of complainant on 17.10.2011. Builder Buyer Agreement (BBA) was executed on 20.01.2014. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 20.07.2016. Complainant alleges that they have so far paid an amount of Rs.19,94,055.78/- against basic sale price of Rs.19,69,323/-

6. In support of the contention that complainant has paid an amount of Rs. 19,94,055.78, the complainant refer to Annexure P-11/2 which is a statement of accounts dated 04.01.2021 issued by the respondent and ledger account dated 12.12.2016 annexed as Annexure P/3-5 issued by the respondent.

7. The complainant further alleges that project is still not complete. In fact, it is far from completion and there is no sight of its completion in foreseeable future. Complainant has prayed for refund of the amount of Rs 18,38,274/- (total paid amount Rs 19,94,055.78 – Timely payment discount of Rs 1,55,781.78) paid by him along with interest for the reason that respondents have already inordinately

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delayed in completion of project and even now there is no hope of the completion in near future.

8. The respondents had appeared after service of notice dated 28.01.2021 but has not filed reply till date. Rather an application dated 17.03.2022 was filed during the course of hearing dated 17.03.2022 for placing on record copies of post dated cheques amounting to Rs 33,43,531/- issued in favour of allottees with a prayer that his client proposes to refund the amount over a period of next one year by way of 48 post dated cheques and same may be allowed. Today, Ld. counsel for respondent Sh. Hemant Saini requested to grant some more time for out of the court settlement.

9. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes an order as follows:-

- i) There is no denial to the fact of Rs. 19,94,055.78 /- having been paid by the complainant to the respondents. Payment of this amount is further adequately proved from the statement of account dated 04.01.2021 issued by respondent which is annexed as Annexure P-11/2 of complaint.
- ii) Plea of respondent for granting some more time for out of court settlement is not acceptable because complainant is not ready for it and moreover this case was heard at length on 17.03.2022 whereby application in respect of 48 post dated cheques issued in favour of

complainant with a proposal to refund the paid amount over a period of next on year was rejected with an observation that right given by virtue of Section 18 of RERA Act,2016 cannot be denied by this Authority and it is the complainant only who could arrive at any different settlement and further the case was adjourned for today granting time to both parties for out of Court settlement on request of respondent. But settlement has not been effected between the parties therefore this case is being disposed of through this final order. Relevant part of order dated 17.03.2022 is reproduced below for reference:-

"4. The Authority observes that in the event of a project not being completed within reasonable time, a right has been given to the allottees by Section 18 of RERA Act under which the allottee has an option either to seek refund of the amount paid along with interest or to continue with the project for seeking possession, but could demand monthly interest for the entire period of delay. The Authority observes that the right given to the allottee by Section 18 cannot be denied by the Authority. It is only the complainant who by way of compromise with the respondent could arrive at a different settlement.

"5. Accordingly, request of respondent-company that Authority should order payment of amount to be refunded over a period of one year through 48 postdated cheques cannot be accepted. As per law, if refund is admissible, the Authority is duty bound to award the same and respondents are duty bound to comply with the orders of the Authority within the period prescribed in the RERA Rules which is 90 days. In other words, respondents are duty bound to comply with orders by

Authority within 90 days, failing which execution proceedings can commence against them. The respondents, however, may at their own level make an offer for settlement to complainant and if both parties arrive at such a settlement, Authority will have no objection.

6. *For these reasons, application filed by respondent-company cannot be accepted and same is hereby rejected.*

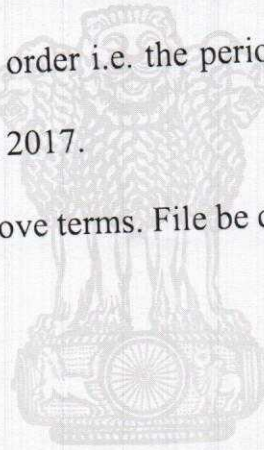
7. *For facilitating settlement between the parties one last opportunity is granted. Respondent may settle the matter, otherwise Authority will take up this matter for disposal on merits on the next date of hearing.*

8. *Adjourned to 29.3.2022."*

- iii) The complainant has prayed for refund of paid amount of Rs 18,38,274/- (total paid amount Rs 19,94,055.78 – Timely payment discount of Rs 1,55,781.78) and they are entitled to refund because as per their version unit is not complete and respondent has not disclosed anything about status of unit. Moreover, respondent is also ready to refund the amount but by way of 48 PDC cheques. Therefore, the complainant being entitled to refund of the amount of Rs. 18,38,274/- paid by her, Authority orders refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainant against the admitted payment has attached statement of accounts dated 04.01.2021 annexed as Annexure P-11/2 of complaint. and ledger account dated 12.12.2016 annexed as Annexure P/3-5 issued by the respondent. Accordingly,

the calculations have been got made from the Accounts Department of the Authority.

- iv) The total interest for the period ranging from receipt of payments to date of this final order (29.03.2022) in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.30% payable by the respondents to the complainants works out to Rs. 17,10,321/-.
- v) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 18,38,274/- plus interest amount of Rs. 17,10,321/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017.
10. **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]