



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1242 OF 2020

ShakutlaCOMPLAINANT

VERSUS

Aerenes Gold Souk Projects Pvt LtdRESPONDENT

2. COMPLAINT NO. 1244 OF 2020

Naveen NagpalCOMPLAINANT

VERSUS

Aerenes Gold Souk Projects Pvt LtdRESPONDENT

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

Date of Hearing: 01.04.2022

Hearing: 3rd

Present: - Mr. Kunal Thapa, learned counsel for the complainant
 None for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that Complainants have sought relief of refund of the amount paid by them to the respondents along

with applicable interest. Initially 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 sub-judice first before the Hon'ble High Court and later before the Hon'ble Supreme Court.

2. Now the position of law has changed on account of verdict of Hon'ble Supreme Court delivered in 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 also 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."

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

5. Above captioned complaints are taken up together as grievances involved therein are more or less identical and pertains to same project of the respondent. So, Complaint no. 1244 of 2020 titled "Naveen Nagpal Versus Aerens Gold Souk Projects Pvt Ltd" is taken as lead case. Case of the complainant is that he had booked a shop in respondent's project named 'Gold Souk Cannaught Place' Sector 25 Hisar, Haryana, on 30.12.2012 by paying an amount of Rs. 2,13,150/- as earnest money. Agreement was executed on 29.08.2013 by which complainant was allotted a commercial space bearing no. D-125 admeasuring 203 sq. ft. Complainant alleges that he

has so far paid an amount of Rs.5,27,316/- against basic sale price of Rs. 8,52,600/-. In support of the payment proof, complainant has annexed receipts issued by respondent at pages 35-39 of the compliant copy. 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 paid by him along with permissible interest as respondents have failed to complete the project.

6. Learned counsel for complainant further pleaded that matter in question in these complaints against the same respondent had already been disposed as allowed in complaint no. 44 of 2018 titled "Rameshwar v. Aerens Gold Souk Projects ltd. and anr.". In concerned complaint no. 44 of 2018, Authority had directed the respondent to refund the money to the complainant within 90 days.

7. Authority while perusing the case file observes that the matter in question in these captioned has already been discussed in detail and adjudicated in complaint no. 44 of 2018 titled "Rameshwar v. Aerens Gold Souk Projects ltd. and anr.". Vide order dated 22.01.2019, relief of refund to the complainants has been allowed along with permissible interest rate as per Rule 15, RERA Rules, 2017. Therefore, these cases are also disposed off in similar terms as that of complaint no. 44 of 2018. Relevant order is reproduced below:

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8. After consideration of the facts of the matter, reply of the Department and statements made by learned Director, the Authority orders as follows: -

- i) This project is at standstill for last many years and its finances are in disarray. Huge liabilities in respect of the project remains to be discharge by the developers. Licence of the project has been cancelled and the project has been taken over by the State Government and, importantly, State Government is not in a position to complete the project after taking it over.

In the circumstances, there is no other option but to allow refund of the money paid by the complainant to the respondent company. Accordingly, the Respondent no. 1 shall refund the amount of Rs.24,30,099/- which admittedly has been paid by the complainant by way of cheques to the respondent no. 1. This money shall be refunded along with interest at the rate prescribed in Rule 15 of HRERA Rules, 2017.

With regard to the alleged payment by cash, in the absence of any proof thereof this claim cannot be admitted at this stage. The complainant may prove the payment of this money to the respondent no. 2 before an appropriate court of law where-after file a separate petition to get this money refunded.

The respondent no. 1 shall pay Rs. 24,30,099/- within a period of 90 days, 50% in first 45 days from the date of uploading this order on the website of this Authority and remaining 50% within next 45 days. The complainant shall be entitled to satisfy this order against the assets of the project or any other assets of the respondent company. In this regard, this Authority has laid down a law relating to the rights of the allottees in **Complaint no. 383 of 2018 Gurbaksh Singh & Anr. Versus ABW Infrastructure Pvt. Ltd.** The complainant of this case shall be entitled to similar rights and may file a suitable petition for grant of those rights before the relevant Authority or Court of Law.

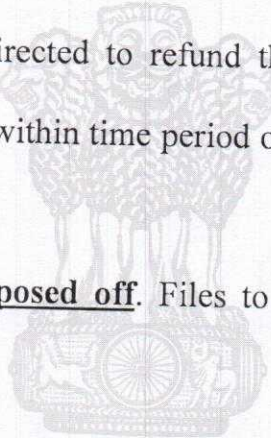


8. Authority accordingly hereby orders refund of the amount paid along with interest in accordance with Rule 15 of the RERA Rules, 2017. The principal amount and interest thereon payable to each of the complainants is tabulated below:-

S.No	Complaint No.	Date of Agreement	Amount Paid	Interest	Total
1.	1242/2020	23.09.2014	Rs. 11,76,453/-	Rs. 9,86,985/-	Rs. 21,63,438/-
2.	1244/2020	29.08.2013	Rs. 5,27,316/-	Rs. 4,38,281/-	Rs. 9,65,597/-

9. Respondents are directed to refund the amount along with interest shown in the table above within time period of 90 days as prescribed in Rule 16 of RERA Rules, 2017.

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





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]