HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. Complaint no. 924 OF 2019 (8th hearing)

Shashi Suresh ....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd. ....RESPONDENT(S)

2. Complaint no. 1022 OF 2019 (8th hearing)

Harsh Gupta And Anshuman Gupta ....COMPLAINANT(S)

VERSUS

Raheja Developers Ltd. ....RESPONDENT(S)

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

Date of Hearing: 01.04.2022

Present: - Mr. Himanshu Raj, learned counsel for the complainants
Mr. Kamaljeet Dahiya, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Both captioned matters were filed before this Authority in the year of 2019. In these cases relief of refund has been sought. These matters were not being heard for last nearly two years on account of dispute over the jurisdiction of Authority to deal with those complaints in which relief of

refund had been sought and been under consideration firstly before Hon'ble High Court and then before Hon'ble Supreme Court of India.

2. Now 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 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."

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. In both these complaints, application for withdrawal of complaint had been filed by ld. counsel Himanshu Raj on 21.02.2022 and 08.03.2022 which was subsequently withdrawn by him during hearing on 01.04.2022. As the application for withdrawal now stands revoked, Authority decides to hear this matter and adjudicate it on its merits. These matters related to Project 'Raheja's Oma' of respondent situated in sector 2A Dharuhera, Rewari and are also covered by the decision of the Authority passed in complaint no. 529 of 2018 titled 'Kapil Jain and Anu Jain v Raheja Developers' on 01.04.2022 wherein relief of refund was allowed to the complainants. Relevant part of the order is reproduced as below:

> 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 averment 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 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.

4. Based on identical grounds and pleadings submitted by the ld. Counsel of the complainant, these cases are also disposed off in terms of the decision given in complaint no. 529 of 2018. Authority accordingly hereby orders refund of the amount paid by the complainants 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 are tabulated below:-

S.No	Complaint No.	Date of Agreement	Amount Paid	Interest	Total
1.	**924/2019**	14.09.2013	Rs. 64,70,406/-	Rs. 49,20,035/-	Rs. 1,13,90,441/-
2.	**1022/2019**	09.10.2013	Rs. 67,75,621/-	Rs. 50,88,956/-	Rs. 1,18,64,577/-

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.

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

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]