HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 65 OF 2018

Dr. Suresh Chand Jain & another ....COMPLAINANT

VERSUS

Intime Promoter Pvt. Ltd. & Another. ....RESPONDENTS

CORAM: Rajan Gupta **Chairman**

Dilbag Singh Sihag **Member**

Date of Hearing: 17.05.2022

Hearing: 8th (Rehearing)

Present: Mr. Kamaljeet Dhaiya, Ld. Counsel for the complainants through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondents though VC.
Mr. Ishwar Singh, Ld. counsel for the respondent.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned complaint was initially filed before this Authority by the complainant-allotees seeking refund of paid amount along with interest. It was disposed of by the Authority vide order dated 28.08.2018 with a direction to

respondents to refund the amount already paid by complainants along with interest at the rate stipulated under Rule 15 of HRERA, Rules 2017. Thereafter, complainant-allotee filed the Appeal no. 65 of 2019 before Hon'ble Real Estate Appellate Tribunal against the order passed by the Authority. It was disposed of vide order dated 23.07.2019 with a direction/observation that complaint stands transferred to the Adjudicating Officer, Panchkula for fresh decision in accordance with law. Accordingly, case was listed for hearing before Learned Adjudicating Officer.

2. Since complainants have sought relief of refund of the amount already paid to the respondents for purchase of unit in respondent's project under section 18 of The RERA Act, 2016, present case was being adjourned by Adjudicating officer on the ground that question of jurisdiction of appropriate forum to adjudicate upon relief of refund sought by complainants was sub-judice first before Hon'ble High Court and then before Hon'ble Supreme Court.

3. Hon'ble High Court while disposing of a bunch of writ petitions with lead Civil Writ Petition No 38144 of 2018 M/S Experion Developers Pvt. Ltd. v/s State of Haryana and others had upheld jurisdiction of the Authority to deal with complaints in which relief of refund was sought. Thereafter said judgement of the Hon'ble High Court in aforesaid matter was stayed by the Hon'ble Supreme Court in SLP No. 13005 of 2020 titled M/s Sana Realtors Pvt. Ltd. v. Union of India & Ors. and SLP No. 13238 – 13256 of 2020 which have

now been dismissed vide order dated 13.05.2022. The relevant portion of the judgment passed by Hon'ble Apex Court, is reproduced below:-

> "We do not see any reason to interfere in these matters. However, the relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matters. With these observations, the Special Leave Petitions are dismissed."

4. Hon'ble Apex Court vide its judgment dated 13.05.2022, has upheld jurisdiction of the Authority to deal with complaints in which relief of refund was sought in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others. Thus, in view of judgment dated 13.05.2022 passed by Hon'ble Apex Court, this matter is being taken up for hearing before the Authority.

5. Authority observes that it has already passed its order dated 28.08.2018 in the present complaint. It further observes that the only reason for which Hon'ble Appellate Tribunal had remanded this case to learned Adjudicating Officer was the dispute relating to jurisdiction of the Authority to deal with complaints in which relief of refund had been sought. Now the question of jurisdiction of Authority stands finally settled both by Hon'ble Supreme Court.

6. In view of above, Authority observes that orders dated 23.07.2019 passed by Hon'ble Appellate Tribunal now has become infructuous. Accordingly, the original order dated 28.08.2018 passed by Authority stands revived. The Authority cannot decide the same matter again once it had disposed it of by giving its final order. Accordingly, the Authority decides to dispose of the captioned complaint in terms of the same order dated 28.08.2018.

7. Learned counsel for the complainants requested Authority to direct respondents to refund amount paid by complainants along with interest calculated till date.

8. Learned counsel for the respondents in response argued that respondents are not liable to pay interest for period during which litigation was pending before Hon'ble Supreme Court and Hon'ble High Court.

9. Authority is of the considered opinion that since respondent has failed on multiple counts, therefore, Authority vide its order dated 28.08.2018 had directed respondent to refund of the amount paid to the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. Further, since respondent has been using the amount deposited by the complainants since the year 2006 till date without any reasonable justification, therefore, respondent is liable to refund Rs. 26,65,625/- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

10. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 68,72,826/- (Rs. 26,65,625/- + Rs. 42,07,201/-). Therefore, Authority directs the respondent to refund Rs. 68,72,826/-.

11. The respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority. **Disposed of** in these terms. File be consigned to the record room and the order be uploaded on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]