



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2814 OF 2019

Subhash Aggarwal & Anr.

...COMPLAINANT(S)

VERSUS

Global Land Masters Infratech Pvt. Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 22.04.2022

Hearing: 6th

Present: Mr. Nitin Sherwal, ld. counsel for the complainant.

None for the respondent.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. In this case, complainants have sought relief of refund of the amount paid by them to respondents along with 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 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 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.

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."

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 complainant is that he had booked a residential unit in the project "Amazon Defence County" of respondent situated in Sector 30, Panchkula on 04.03.2010. Flat No. 501, Type A, 5th floor measuring 1915 sq. ft. was allotted to him on 08.03.2010. No Flat - Buyers Agreement was executed. Complainant has made payment of Rs. 15,32,202/- against total sale consideration of Rs. 52,66,250/- till date. Complainant alleged in his complaint

on page 11 para 2 that executives of the respondent company gave him assurance that possession would be delivered within a period of 36 months from the date of booking, therefore deemed date of delivery of possession comes to 03.03.2013, however, no proof to substantiate the same is placed on record by the complainant.

6. Ld. counsel for complainant submitted that complainant had booked the unit by filling up booking application dated 04.03.2010 and had deposited Rs. 7,50,297/-. Respondents issued a provisional allotment letter on 08.03.2010. Complainant made another payment of Rs. 6,07,916/- on 06.05.2010 to respondent. Representatives of respondent assured the complainants that he will deliver the possession to the complainants in the month of May 2014. Upon this complainant made another payment of Rs. 1,73,989/- on 02.06.2011. Receipts of the abovementioned payments have been annexed with complaint as Annexure C-2, C-4 and C-6. Complainants again visited the site in March 2014 and found construction work at the project site is standing still. Complainants being aggrieved decided to withdraw from the project and signed the withdrawal letter dated 13.03.2014. and asked respondent to refund the paid amount. Complainant further signed a surrender deed dated 20.02.2016 as demanded by respondent before releasing paid amount. Thereafter, complainants made several requests to respondent to refund the said amount but respondent did not pay any heed to the requests of complainants, therefore, complainant sent a legal notice dated 13.09.2019 to respondent.

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7. The complainant further alleges that project is still not complete. In fact, it is far from completion and there is no sign of its completion in foreseeable future. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have inordinately delayed completion of project and even now there is no hope of its completion in near future.

8. This is the sixth hearing in the matter. Respondents have not filed their reply even after availing numerous opportunities. Notice was delivered to the respondent on 03.12.2019. More than four opportunities have already been given to the respondent to submit their reply and vide order dated 20.10.2020 cost of Rs. 10,000/- was also imposed on the respondent for not filing reply. Accordingly, Authority decides to proceed ex-parte against the respondent.


9. Factual position reveals that possession has not been yet offered by respondent even after of delay of 6-7 years from deemed date of possession respondent has not provided any specific timeline for handing over of possession. Complainants are not interested in waiting for possession endlessly and are insisting upon refund. Complainants have even signed withdrawal letter dated 13.03.2014 which is annexed with complaint as Annexure C-7 on page no. 46. and surrender deed dated 20.02.2016 which is annexed with the complaint as annexure C-9 from page no. 48 to 50 on the insistence of respondent as a condition for refund. In these circumstances, it is observed by the Authority that by virtue of section 18 of RERA Act,2016 allottee is within his right to ask for refund when unit is not ready and no timeline is committed by respondent for

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handing over of possession, allottee cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.40%) from the respective dates of making payment till the actual realization of the amount.

Authority directs the respondent to refund entire principal amount of Rs. 15,32,202/- to the complainant. The Authority has got the interest payable to the complainant calculated from its Accounts Branch which works out to Rs. 17,18,937. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order at the rate of 9.40%. Now, respondent has to pay total amount of Rs. 15,32,202/- + Rs. 17,18,937 which comes out to be Rs. 32,51,139/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

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]