

**164.06 Follow up actions to be taken by Authority on judgment dated 13.01.2022 pronounced by Hon'ble Punjab and Haryana High Court in CWP No. 6688 of 2021 and other connected bunch of petitions with lead case titled as "Ramprastha Promoters and Developers Pvt. Ltd. Versus Union of India and others.**

1. Background of the matter is as follows:-

- i. The State Government of Haryana amended the Haryana Real Estate (Development and Regulations) Rules, 2017 by issuing a notification No. Misc-862/1/83/2019/ITCP dated 12.09.2019, vide which procedure for invoking powers and jurisdiction of Authority, and of Adjudicating Officer appointed by Authority under Section 71 of the Act was clearly demarcated. The amended Rules further clarified the provisions of the Act that it is the Authority only which has powers and jurisdiction to deal with all kinds of complaints including complaints in which relief of refund is sought. The amended rules also clarified the position of the Act that Adjudicating Officer has powers and jurisdiction to adjudicate the question of quantum of compensation claimed by allottees.

The notification dated 12.09.2019 vide which Rules were amended was stayed by Hon'ble Punjab and Haryana High Court in CWP No. 34244 of 2019 - titled as "Wg. Cdr. Sukhbir Kaur Minhas Versus State of Haryana and others" vide order dated 25.11.2019. This stay was, however, vacated by Hon'ble Division Bench of High Court vide its order dated 11.09.2020.

- ii. A bunch of 166 writ petitions was disposed of by Hon'ble Punjab and Haryana High Court vide its judgment dated 16.10.2020 in lead CWP No. 38144 of 2018 titled as "Experion Developers Pvt. Ltd. Versus State of Haryana and others" In this bunch of writ petitions, a question of jurisdiction of Authority to deal with complaints in which relief of refund and compensation was sought had been raised by the petitioners. Another question of constitutionally validity of proviso of Sub Section-5 of Section 43 of the RERA Act was also raised.

In the said judgment dated 16.10.2020 in CWP No. 38144 of 2018, Hon'ble Punjab and Haryana High Court has upheld the jurisdiction of Authority to deal with all kinds of complaints including complaints in which relief of refund is sought. It was further upheld that relief of compensation only can be pressed before the Adjudicating Officer. Further, proviso of Section 43(5) of the RERA Act was held to be constitutionally valid.

- iii. Large number of SLPs have been filed before Hon'ble Supreme Court of India against above judgment dated 16.10.2020 passed by Hon'ble Punjab and Haryana High Court. Hon'ble Apex Court vide its order dated 05.11.2020 passed in lead SLP No. 13005 of 2020 - titled as "M/s Sana Realtors Pvt. Ltd. Versus Union of India and others" has stayed the operation of judgment dated 16.10.2020 of Hon'ble High Court passed in bunch of writ petitions with lead Writ Petition No. 38144 of 2018 - titled as Experion Developers Pvt. Ltd. Versus State of Haryana and others.

Subsequent to order dated 05.11.2020 of Hon'ble Apex Court, many more builders/promoters have approached the Hon'ble Court and have obtained stay orders against execution of certain orders passed by this Authority.

- iv. Several writ petitions/civil appeals were filed before Hon'ble Supreme Court by promoters of Real Estate Projects belonging to State of Uttar Pradesh. Similar questions of law had been raised in these SLPs as have been raised in the SLPs pertaining to State of Haryana. Hon'ble Apex Court heard all the matters at length over many days when arguments were addressed by Ld. counsels in Uttar Pradesh matters as well as State of Haryana and Punjab matters. Hon'ble Apex Court decided to first deal with matter pertaining to Uttar Pradesh and answer various questions of law in those petitions/appeals.
- v. Hon'ble Supreme Court disposed of the bunch of civil appeals/SLPs relating to Uttar Pradesh matters vide its order dated 11.11.2021 in lead

Civil Appeal No(s) 6745-6749 of 2021- titled as "M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.". Hon'ble Apex Court has maintained the same view as had been held by Hon'ble Punjab and Haryana High Court in its order dated 16.10.2020 in CWP No. 38411 of 2018. Jurisdiction of Authority to deal with all kinds of complaints including the complaints in which relief of refund is sought has been upheld by Hon'ble Apex Court. Jurisdiction of Adjudicating Officer was held to the extent of awarding compensation only, if claimed. Further, constitutional validity of proviso of Section 43(5) was also upheld.

vi. Now law on the subject has become amply clear and obstacles in the way of Authority to deal with various complaints has been removed. Hon'ble Apex Court, however, is yet to pronounce its judgment in Haryana matters. It is yet to vacate the stay granted in several individual cases in which promoters have approached Hon'ble Apex Court against the judgment of Hon'ble Punjab and Haryana High Court.

2. The order dated 11.11.2021 of Hon'ble Supreme Court passed in Civil Appeal No(s) 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. was considered by the Authority on several occasions and Authority held the view that even though law on the question of jurisdiction of Authority to deal with complaints in which relief of refund was sought has been clearly and unambiguously interpreted that it is only the Authority which has jurisdiction to deal with all such matters including the relief matters, however, since technically speaking, judgment of the Hon'ble Punjab and Haryana High Court passed in CWP No. 38144 of 2018 is still under stay, therefore, by way of abundant caution Authority decided not to deal with such matters for the time being and decided to await outcome of the SLPs relating to Haryana matters pending before Hon'ble Apex Court, accordingly, till now, complaints in which relief of refund has been sought are neither been dealt by the Authority nor by the Adjudicating Officer and such complaints are being adjourned to await decision of Hon'ble Apex Court.

3. Simultaneously, another bunch of writ petitions had been filed before Hon'ble High Court in which similar questions of law were raised. Hon'ble High Court has delivered its judgment dated 13.01.2022 vide which it has disposed of a bunch of 86 writ petitions with lead CWP No. 6688 of 2021 - titled as Ramprastha Promoters and Developers Pvt. Ltd. Versus Union of India and others. Paras 23, 25 and 26 of the said judgment are relevant, which are reproduced hereunder:-

*"...23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

*25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief*

*is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer.*

*26) Hence, in view of the authoritative pronouncement of the Supreme Court in the matter of M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc, as recorded in Para 86 thereof, the Authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such matters would not be with the Adjudicating Officer."*

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.

A copy of this resolution be sent to Adjudicating Officer for taking further action.

This resolution be posted on web portal of the Authority for information for all concerns.