

PROCEEDINGS OF THE DAY		67 and 79 to 85
Day and Date	Tuesday and 13.02.2024	
Complainant and Complaint No.	CR/7982/2022 Kanta Yadav CR/2224/2022 Mahender Singh and Geeta Singh CR/1392/2022 Neeraj Mahajan CR/1256/2022 Manmohan Arora CR/2211/2022 Rajesh Kapoor CR/1494/2023 Usha Saggi CR/1493/2023 Piyush Saggi CR/2223/2022 Abhijeet Singh	
Represented through	Shri K.K.Kohli, Advocate Shri Garvit Gupta Advocate Shri Vipul Vijay Lamba, Advocate Shri Sushil Yadav, Advocate	
Respondent	GREEN HEIGHT PROJECT PRIVATE LIMITED	
Respondent Represented	Shri Sumesh Malhotra Advocate	
Last date of hearing	08.01.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	



Proceedings

All the complainants appearing from serial no.55 to 85 were taken together.

The case had been heard extensively in earlier proceedings dated October 17, 2023, and November 6, 2023.

The counsels for the complainants have stated that the complainants are seeking refund of the deposited amount.

The counsel for the complainants further stated that the stay on construction was on Paradise System Pvt. Ltd. and not on Green Height Pvt. Ltd., as the agreement was executed between the latter one, and nowhere is the name of Green Heights mentioned in the alleged stay order of the Hon'ble Supreme Court of India.

The counsel for the complainants further stated that during the stay period, the respondent builder had collected payments in the form of a construction-linked plan from the allottees and even executed the BBA during that period. The respondent builder had sent construction updates to the allottees and also revised the builder plans during the said stay period." Moreover, the 912 acres of the project land would be required by the HSIDC if it falls under sections 4 and 6 of the Land Acquisition Act, 1894 which is not the case. Hence, no relief of zero period may be extended as claimed by the respondent.

On the contrary, the counsel for the respondent states that the land on which the Banni Centre Point Project is constructed was notified in Section 4 Notice dated August 27, 2004, and the details of this land are mentioned on page no. 5 of the Section 4 Notice of the Acquisition Act, 1894. This land is not part of the Section 6 Notification that was issued on 25.8.2005. In the judgment dated 21.7.2022, the Apex Court in Paragraph 32 specifically passed directions that the lands that were not notified in Section 6 notification and there was no transfer during the period from 27.8.2004 to 29.1.2010 were not part of the deemed award

It further states that a collaboration agreement dated March 30, 2013 was entered into between M/s Paradise Systems Ltd., the original landholder, and Green Heights Projects, the developer, for the project. Thereafter, the construction was initiated, but DTCP stopped the construction in compliance with the injunction order from the Hon'ble Supreme Court dated April 24, 2015. The respondent builder approached the Hon'ble Apex Court for clarification of the stay order as to whether it is applicable to the land and license. However, the DTCP was instructed by the Hon'ble Apex Court to clarify

The counsel for the respondent further stated that the respondent promoter approached the DTCP, but the DTCP did not take any decision as the matter was pending in the Apex Court, and it was intimated that original files in respect of 912 acres of land have been taken by the CBI, and the DTCP will not be in a position to provide clarification. Thereafter, the landowners approached the Hon'ble High Court to seek directions from the CBI to hand over the original files to the DTCP to enable examining the matter, and the Hon'ble High Court, vide orders dated 27.3.2017, passed the appropriate directions

He further states that between the period from 24.4.2015 till 12.3.2018, the Hon'ble Apex court passed the orders in respect of 912 Acres of land of 3 villages including the land of the respondent and vide orders dated 12.3.2018, the project of the respondent was not included in tainted projects which clearly meant **that respondent could construct subject to renewal of licenses and other permissions and after the stay was lifted on 12.3.2018 M/s Paradise Systems Pvt. Ltd. approached DTCP for renewal of licence to begin construction which was granted on 23.7.2018 and thereafter the respondent has developed the said project which is almost complete and was left for some finishing works and interiors and while renewing the license the entire period from 24.4.2015 to 12.3.2018 was exempted as Zero period by DTCP.**

However, later on, HSIDC filed an application in the Hon'ble Supreme Court of India dated 1.7.2019 through MA No.50 of 2019 in the matter of

Rameshwer vs. State of Harayana and others in CA No.8788 of 2015 for clarification of orders dated 12.3.2018, and the Hon'ble Apex Court, vide orders dated 13.10.2020, again granted an injunction on further construction of the projects of the parties. Finally, vide orders dated 21.7.2022, the stay on construction was cleared by the Hon'ble Supreme Court in MA No. 50 of 2019 in the matter of Rameshwar v. State of Haryana, and the complainant was informed about this system. Despite having applied for the renewal of their license and other permissions from DTCP, the response remains pending. This project has been registered with RERA under No. 187/2017, and the respondent has applied for an extension on 4.8.2022

The counsel for the complainants draws attention to para 25 of the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.(s) 6745-6749 of 2021 titled Newtech Promoters and Developers Pvt. Ltd. v. State of UP and others, etc., in which it has been decided that the promoter is under obligation to refund the amount on demand with interest at the rate prescribed by the State Government, including compensation, in the manner.

The counsel for the respondent further argued the case on merit and invited attention from the authority towards clause 9 of the BBA (FORCE MAJEURE), under which the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligations or undertakings as provided in the BBA if such performance is prevented, delayed, or hindered by court orders or any other cause not within the reasonable control of the intending seller. As such, the project "Bani Center Point" was under the stay orders of the Hon'ble Supreme Court of India for 7 years and 3 months (24.4.2015 to 21.7.2022), which was beyond the respondent's control, and no construction on the project could be carried out during this period. Hence, there is no fault of the respondent in delayed construction, which has been considered by the DTCP while considering its application of considering zero period, renewal of license, and extension of registration. Due to the above reasons, it became impossible to fulfill contractual obligations due to a particular event that was

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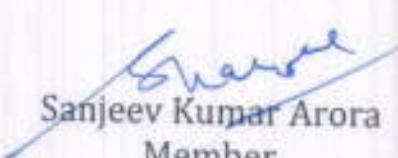
unforeseeable and unavoidable by the respondent. He further states that the stay on construction ordered by the Apex Court is clearly a force majeure event, which automatically extends the timeline for handing over possession of the unit to the complainant. He further requests that the delay in construction, if any, is attributable to reasons beyond the control of the respondent, and as such, the respondent may be granted a reasonable extension in terms of the buyer agreement. Moreover, Paragraph 25 of the Newtech Judgement is not part of the directions of the Hon'ble Supreme Court of India, as it is only an observation and hence cannot be construed as a final order or direction.

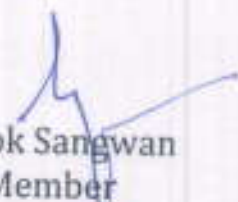
Arguments heard.

Both the parties are directed to file written submissions within a period of 15 days after supplying a copy to each other.

Order reserved.

Matter to come up on 30.4.2024 for pronouncement of orders.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman
13.02.2024