



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1212 OF 2020

Sanjeev Khokhar

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 03.03.2022

Hearing: 4th

Present: -

Mr. Vishal Madaan, learned counsel for the complainant through video conference

None for the respondent

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. While initiating his pleadings, learned counsel for the complainant submitted that complainant had booked a villa bearing no. B-

152 admeasuring 2250 sq. ft. in the year 2008 in respondent's project named 'Parsvnath City, Dharuhera, Rewari' and had paid a sum of ₹50,16,986/- to the respondent till 22.08.2008 against basic sale price of ₹58,43,512.50/-. As per villa buyer agreement executed between the parties on 04.08.2008, respondent was supposed to hand over possession of the booked villa by 04.08.2010 but respondent failed to do so.

2. Further, complainant had submitted in the written complaint that respondent has stopped construction for last ten years or so and the structure already raised is also in dilapidated condition. There is no hope for completion of the project even after lapse of several years. Complainant has also given complaint dated 01.11.2016 before The Economic Offence Wing, New Delhi against respondent promoter in which FIR against the builder has been lodged. Therefore, complainant intends to withdraw from the project. Hence present complaint has been filed seeking refund of the amount deposited with the respondent along with interest and cost of legal expenses.

3. On the other hand, respondent in his reply has admitted the payment made by the complainant. It has been contended that licence no. 129 to 132 and 134 to 138 of 2007 were granted to respondent for project in question and respondent company has applied for renewal of said licences which are pending with competent authority. Respondent has contended that there is no intentional delay on his part and project has been delayed for the reasons beyond his control. It has further been contended that superstructure

and brick work of ground floor of complainant's unit has already been completed and simultaneously pillar of first floor has also been casted. Respondent company intends to complete the finishing work of the unit shortly and hand over the final possession to the complainant. Respondent is however willing to offer an alternate property to complainants subject to mutual negotiations.

4. This Authority had kept sine die all refund cases for more than a year or so on the account of disputes regarding jurisdiction of Authority to deal with such cases. Now law on the question has been settled by Hon'ble High Court and by Hon'ble Supreme Court as well. Besides, same has been endorsed by Hon'ble High Court again vide its orders dated 13.01.2022. This Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority 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.”

5. Since, the basic issue of jurisdiction stands settled, therefore, Authority has started hearing those complaints relating to refund which were kept sine die.

6. In the captioned complaint, booking was made in the year 2008 and possession of the villa has not been offered to the complainant till date, therefore complainant is interested in withdrawal from the project and wants refund of the amount deposited by him. Besides, respondent is interested to offer alternate unit in his other projects which clearly indicates that respondent is not in a position to complete the project in question and hand over the possession of the villa to the complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority tentatively proposes to grant relief of refund to the complainant along with permissible interest as per Rule 15 of HRERA Rules, 2017. Since this refund matter has been taken up for the first time after adjournments sine-die, matter will be disposed of on next date after affording another opportunity to the respondents to argue their case if they so desire.



7.

Case is adjourned to 30.03.2022.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

