

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY  
AUTHORITY, PUNJAB**

Complaint No.GC1854 of  
2020

Date of Institution :22.12.2020

Date of Decision: 31.03.2022

Ayisha Ramesh Wadhwa w/o Shri Deepak C Wadhwa, resident of K-  
533, Maxheights Apartment, Sector 62, Sonipat, Haryana-131209

.... Complainant

Versus

Hero Realty Pvt. Ltd. Ground Floor, 264, Okhla Industrial Estate,  
Phase-3, New Delhi-110020

.... Respondent

Present : Shri Mohd. Sartaj Khan, Advocate for the complainant  
None for the respondent

**ORDER**

This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) seeks refund of the amount deposited by the complainant along with interest thereon, on account of delay in delivery of possession of the apartment booked by the complainant in the project "Hero Homes" developed by the respondent at Mohali.

2. It is noted that this file has been referred by the Adjudicating Officer vide order dated 03.02.2022 in view of the judgment of the Supreme Court in "M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. and Ors."(Civil Appeal No.6745-6749 of 2021), with a direction to the parties to appear before this Bench of the Authority for

deciding the claim of refund and interest. It is made clear in this order that the question of refund, and interest thereon claimed by the complainant will be decided by this Bench while the question of compensation will be dealt with by the Adjudicating Officer.

3. The averments in the complaint are that apartment no.1403 in Tower-4, in the above project was allotted to the complainant vide letter dated 30.04.2018. The carpet area of the apartment was 824 square feet and the total price was Rs.56,11,495/-. The agreement for sale was executed on 10.05.2018, and the due date for delivery of possession thereunder was 13.01.2020. The complainant had paid almost the entire amount and only the instalment left to be paid at the time of possession was pending. However, possession of the apartment had not been offered within the stipulated time, and even till the filing of the complaint. The relief sought accordingly is the refund of the amount deposited along with interest thereon.

4. Notice of the complaint was served on the respondent who has filed a reply in the matter. It is submitted therein that possession of the apartment had been offered to the complainant on 13.01.2021, and would be handed over on payment of the balance amount of nearly Rs.6.00 lakhs which was due from the complainant. The judgement of the Supreme Court in "IREO Gracetech Pvt. Ltd. Vs Abhishek Khanna and ors." (Civil Appeal No.5785 of 2019), has been cited to contend that once possession of the unit had been offered the allottee was not entitled to withdraw from the project and claim refund. The delay in construction caused by the lockdown imposed on account of Covid-19 pandemic has also been cited to justify the delay in delivery of possession.

5. The above contentions were reiterated by both Counsel for the parties when the matter was taken up for arguments on 21.02.2022. Shri Luv Malhotra, Counsel for the complainant, also contended that as per the agreement, the due date for possession was 13.01.2020 whereas the extension granted on account of Covid-19 was for obligations arising after 15.03.2020. Hence in this case Circular No.RERA/ENF-2020/20 dated 13.05.2020 would not be applicable. He also relied upon the judgement of the Supreme Court in the matter of "M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. and Ors." (Civil Appeal No.6745-6749 of 2021), to highlight that the allottee had an unqualified right to seek refund of the deposited amount if delivery of possession was not done as per the agreed date. On the other hand, Shri Dhruv Kapur, on behalf of the respondent, stressed that an allottee could not be allowed to claim refund once the possession had been offered. He submitted that in the matter of "M/s Newtech Promoters and Developers Pvt. Ltd.", the Supreme Court was only considering the following 5 questions:-

1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?
2. Whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

3. Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?
4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?
5. Whether the authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?

He contended that the right to claim refund in case of delay in delivery of possession was not an issue before the Supreme Court in the matter of M/s Newtech Promoters and Developers Pvt. Ltd., and hence the judgement of "IREO Gracetech Pvt. Ltd. Vs Abhishek Khanna and ors." (Civil Appeal No.5785 of 2019), was the law on the point. He also submitted that as per the agreement the promoter was entitled to extension of time for delivery of possession in case of 'force majeure' conditions. The Covid-19 situation was one of 'force majeure' and hence there was no delay in delivery of possession.

6. I have considered the rival contentions carefully. Regarding the right to claim refund, the judgement cited in "IREO Gracetech Pvt. Ltd. Vs Abhishek Khanna and ors." (supra) is a matter of record. It may however be noted that the judgement was passed in an appeal filed under Section 23 of the Consumers Protection Act, 1986 and not under the provisions of the Act. Further, the right of the allottee to seek refund in case of delay in handing over possession under the Act of 2016 has been expressly recognized by the Supreme Court itself in

"M/s Imperia Structures Ltd. Vs. Anil Patni and Anr." (Civil Appeal No.3581-3590 of 2020). The relevant extract of para 23 of the judgement reads as follows:

*"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed...."*

This view has again been upheld in the recent landmark decision of "M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and ors" (Civil Appeal No.6745-6749 of 2021). Para 25 of this judgement reads as follows:-

*"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an*

*obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed".*

To my mind the latest decision of the Supreme Court clearly settles the issue regarding the right of an aggrieved allottee such as the present one to seek refund of the amount deposited in case of delay in delivery of possession; and had to be followed. Next, the respondent's contention that the complainant had delayed the payment of 2 installments has to be considered. This delay is only in relation to the last 2 installments, one of which was anyway to be paid at the time of offer of possession. However, since the complainant in any case seeks to withdraw from the project this delay is of no consequence. This is so since interest to the complainant would be admissible only from the date of actual payment, and not from the date on which payment was due to be made. Finally, the contention regarding '*force majeure*' has to be considered. No doubt the Covid-19 situation has been declared as one of '*force majeure*' by various agencies including this Authority. However it has been declared so with effect from 15.03.2020. This Authority has held in GC No.1835 of 2020 (Arun Premdhar Dubey and Anr. Vs. M/s Hero Realty Pvt. Ltd.) that the relief on account of *force majeure* is allowed for obligations that arose or became due after 15.03.2020, whereas in this case the date of delivery of possession was 13.01.2020. Hence the delay in delivery of possession is

established on the record and the complainant is held entitled to refund of the amount deposited.

7. As a result of the above discussion this complaint is accepted and the respondent is directed to refund the amount deposited by the complainant along with interest as prescribed under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%). The payment should be made within the time stipulated in Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

Announced  
31.03.2022

  
(Navreet Singh Kang)  
Chairperson  
Real Estate Regulatory Authority  
Punjab