



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 772 OF 2019

Rakesh Bangay

....COMPLAINANT

VERSUS

Heritage Cottages Private Limited

....RESPONDENT

Hearing : 10th

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.07.2022

Present : Mr. Vikasdeep , learned counsel for complainant through video conferencing

None for the respondent

ORDER (DILBAG SINGH SIHAG – MEMBER)

1. Captioned complaint has been filed by the complainant seeking relief of refund of his money along with interest as applicable as per Rule 15 of HRERA Rules, 2017 on account of delay in offering possession.
2. Brief facts as averred by the complainant are that he booked an apartment in the project “Ozone Square” promoted by the respondents, on 03.03.2007. An allotment letter dated 17.12.2007 was issued vide which a 2BHK with flat No. 404, Tower Block-B with 500 sq. ft. super area, on 4th floor was allotted to the

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complainant. Later, it was converted to 3BHK on request of complainants by making an additional payment of Rs. 3,00,000/-. Flat Buyer Agreement was executed on 28.11.2011. In terms of Clause 28 of the FBA, possession was to be delivered within a period of 36 months. Therefore, deemed date of possession works out to 28.11.2014. Complainant claims to have already paid Rs. 30,60,000/- against basic sale price of Rs. 24,00,000/- and total sale consideration of Rs. 30,60,000/-. The fact of basic sale price of Rs. 24,00,000/- having been agreed between the parties is supported by the Flat Buyer Agreement executed between the parties which has been annexed as Annexure C-15 to the complaint.

It is pertinent to mention here that receipts only to extent of Rs. 28,59,279/- have been placed on record as Annexures C-1 to C-14 of the complaint book. An e-mail dated 19.07.2022 was sent to Mr. Vikasdeep, counsel for complainant to place on record receipts with respect to the remaining amount. In reply to the same, learned counsel for the complainant submitted that they have no other receipts and Authority should rely on receipts placed on record. Therefore, for the purpose granting any relief, amount paid by complainant is considered to be Rs. 28,59,279/-.

3. Main grouse of the complainant is that despite lapse of about fifteen years from the date of booking, respondent has failed to deliver possession of the apartment to the complainant. Complainant had visited the project site but there were no signs of its completion and project was lying abandoned. Learned counsel for the complainant stated that after lapse of about fifteen years from the

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date of booking, purpose of booking the flat has been totally frustrated. Now, complainant no longer needs the booked apartment. Therefore, complainant is seeking refund of paid amount along with interest as per Rule 15 of the HRERA, Rules 2017.

4. On the other hand, learned counsel for the respondent vide his reply dated 18.04.2019 argued that they have not been able to complete the project due to force majeure circumstances, which inter-alia includes non-development of internal and external services like road, sewerage, water supply system, electricity sub-station etc. M/s Triveni Infrastructure Pvt. Ltd. being the principal licensee, respondent had paid his entire share of EDC and IDC to it, but the same was not paid to concerned authorities. Licence no.'s 34-36 of 2007 was also not renewed after its expiry in the year 2009-2015 due to failure on part of M/s Triveni Infrastructure Pvt. Ltd. to comply with conditions for renewal of licence including payment of EDC and IDC. The external development charges were deposited by the year 2008 by M/s Heritage Cottages Pvt. Ltd., accordingly, reasonable expectation of the respondents were that all external services would be provided within a reasonable time thereafter. It has also been averred by the respondents that their project has got stalled on account of non-provisioning of external services despite having paid full external development charges to M/s Triveni Infrastructure Pvt. Ltd. Respondents have argued that M/s Triveni Infrastructure Pvt. Ltd. (now, Maximal Infrastructure Pvt. Ltd.) should be made a party in this

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case, therefore, this complaint is not maintainable for the reasons of non-joinder of necessary parties.

5. Respondents have further argued that they have completed 80 percent construction and photographs of towers with complete construction awaiting renewal of licence and completion of external and internal development works by principal licensee M/s Triveni Infrastructure Pvt. Ltd. and government, annexed as Annexure R-3 to the reply book. Respondents have argued that it is due to such force majeure circumstances that they have not been able to complete their project for no fault of theirs. It is M/s Triveni Infrastructure Pvt. Ltd. which is severely defaulting in discharging its responsibilities due to which not only the respondent promoter, but also allottees of the project are suffering badly.

6. While perusing case file, it is observed that complainant has sought relief of refund of the amount of paid by him to the respondent along with applicable interest.

Initially Authority had not been hearing the matter in which relief of refund was sought on the ground of jurisdiction dispute to deal which was sub judice before Hon'ble Supreme Court.

7. Now position of law has changed on account of verdict dated 13.05.2022 passed by Hon'ble Supreme Court in SLP Civil Appeal no. 13005 of 2020 titled as M/s Sana Realtors Pvt Ltd vs Union of India & others whereby special leave petitions were dismissed with an observation that relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt.

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Ltd. v. State of UP & Others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matter.

8. Consequent upon the decision of above referred SLPs, issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

9. On the basis of submissions of the complainant and perusal of record, Authority observes that despite lapse of about fifteen years from the date of booking in 2007, no offer has been made by the respondent for handing over possession of plot to the complainant. Admittedly, respondent has been using the amount deposited by complainant for the last fifteen years without any justifiable reason. Failure on part of respondent to deliver possession of plot even after a huge delay of about fifteen years has frustrated the very purpose of booking the plot. Such inordinate delay itself is a justification for accepting the prayer for refund.

10. It has also come into the knowledge of Authority that an agreement dated 18.02.2008 was executed between Triveni Ferrous (now Maximal Infrastructure Pvt. Ltd.) in respect of land measuring 2.0643 acres which was purchased by respondent M/s Heritage Cottages Pvt. Ltd. for a total consideration of Rs. 9,20,31,356/-. Based on above DTCP, Haryana granted permission of joint development and marketing rights to M/s Heritage Cottages Pvt. Ltd. vide letter dated 07.03.2022. M/s Maximal went in appeal against the said orders before



ACS Town and Country Planning. The appeal was dismissed on 21.02.2022 by Id. ACS being devoid of any merits. Respondent thereafter, filed a CWP before the Hon'ble High Court against the orders of ACS Town and Country Planning mentioning that agreement dated 18 February, 2008 has been cancelled vide cancellation deed dated 08.06.2016 for failure on part of respondent to abide by the terms and conditions of the agreement. M/s Maximal while suspending the GPA and also development agreement, had also issued a cheque to refund the agreement amount of Rs. 9,20,31,356/- vide Cheque no. 466082 dated 08.06.2016 drawn on Corporation Bank NFC New Delhi. However, the cheque was not honoured/encashed. The matter is now pending adjudication before Hon'ble Punjab and Haryana High Court and is listed for hearing on 25.08.2022. This itself establishes that project is in legal dispute and not likely to be completed in foreseeable future.

11. In such circumstances, Authority finds it to be a fit case for allowing refund of the amount paid by complainant and directs respondent to refund amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

12. After perusal of record, Authority observes that complainant has attached receipts of payment made by him of Rs. 28,59,279/-, as Annexure C-1 to C-14 of the complaint book. Therefore, respondent shall refund Rs. 28,59,279/- paid by

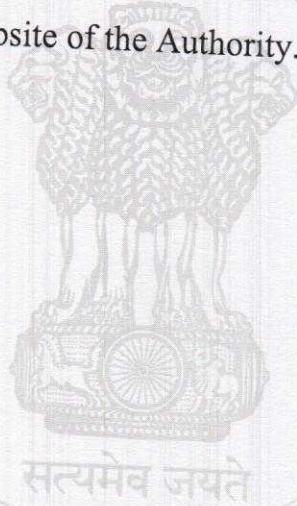


complainant along with interest calculated from date of making payments as per receipts upto the date of passing this order.

13. As per calculations, amount payable by the respondent to the complainant along with interest @ 9.7% p.a., has been worked out to Rs. 65,34,509/- (Rs.28,59,279/- + Rs.36,75,230/-). Therefore, Authority directs the respondent to refund Rs. 65,34,509/-.

Respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

14. **Disposed of** in these terms. File be consigned to the record room and the order be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]