



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1421 OF 2020

GURMUKH SINGH

....COMPLAINANT

VERSUS

ANSAL PROPERTIES INFRASTRUCTURE LIMITED

....RESPONDENT

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 07.07.2022

Hearing: 6th

Present through video call: - Sh. Vivek Sethi, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. On the last date of hearing dated 01.02.2022 of this case a detailed and reasoned order was passed disclosing tentative view of the Authority. Said order is being reproduced for ready reference.

1. While initiating his pleadings, learned counsel for the complainant stated that complainant is a subsequent

allottee. On 22.03.2013, apartment was allotted in the name of Sh. Mukesh Kumar and Ms. Sangeeta and Builder Buyer Agreement (BBA) was executed between them on 23.02.2012 for total sale price of ₹ 31,65,730/- against which complainant has already paid an amount of ₹ 24,18,303/- . Complainant has annexed proof of having made payment to the respondent in his complaint as Annexure C-5 at page no 67-75.

2. A flat bearing No.102, 9th Floor in Tower 16 admeasuring 1694 sq.ft. was allotted to the complainant. Respondent was supposed to hand over possession of the booked apartment within 48 months from the date of execution of BBA which works out to 23.02.2016. Respondent has still not offered possession to the complainant.

3. Main averment of the complainant as made in the written complaint is that the project is nowhere near completion nor likely to be completed in near future. There is already inordinate delay of five years in completion of the project. Therefore, complainant has prayed for refund of his money along with permissible interest as per Rule 15 of HRERA Rules, 2017 and compensation on account of damage having been suffered along with cost of legal expenses.

4. On the other hand, respondents in their reply have challenged the jurisdiction of Authority to deal with this matter as this case pertains to relief of refund. Respondents have also pleaded that they were unable to commence

construction of the booked unit due to circumstances beyond their control, however agreed to offer an alternate unit to the complainant.

Today, learned counsel for the respondent has sent an email dated 31.01.2022, seeking adjournment on the ground that he has been suffering from fever. Therefore unable to attend the court proceedings.

5. Sh. Vivek Sethi, learned counsel for the complainant stated that complainant does not wish to have an alternate apartment rather pressed only for relief of refund along with permissible interest and compensation.

6. This Authority had kept sine die all refund cases for more than a year or so on the ground of disputed jurisdiction of Authority to deal with such cases. Now law, on the question has been settled by Hon'ble Supreme Court and by Hon'ble High Court as well. Recently Hon'ble Punjab and Haryana High Court has disposed of a bunch of CWPs vide its order dated 13.01.2022 passed in case no. 6688 of 2021. Considering said orders 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.

7. 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.

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

7. In nut shell, Authority is of the view that respondents have clearly conceded that they have neither completed the project nor they are in a position to complete the project for reasons beyond their control. For all practical purposes, this is a failed project and as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority proposes to grant relief of refund of paid amount of ₹ 24,18,303 /- along with permissible interest as per Rule 15 of HRERA Rules, 2017 from the

respective dates of making payment till actual realization of the amount to the complainant.”

2. On the last date of hearing, respondent was also given an opportunity to put up any additional fact having bearing on the outcome in this case. Today, learned counsel for the respondent made a statement in Court that respondent-promoter is not in a position to handover the possession of the booked unit. Therefore, Authority directs the respondent to refund the entire paid principal amount to the complainant along with interest as per Rule 15 of HRERA Rules, 2017.

On perusal of the file, it is revealed that complainant has alleged that he had paid an amount ₹ 24,18,303.42/- to the respondent-promoter. However, he had annexed receipts amounting to ₹ 14,07,307/- only. Complainant has also annexed statement of account issued by respondent at page no. 76 – 82 of complaint, wherein details of paid amount of ₹ 21,04,752/- by complainant has been provided. Further respondent in para 8 of the reply has also admitted that complainant has paid an amount of ₹ 21,04,752/-.

Further seeking clarification of the paid amount an email dated 20.07.2022 was sent to the complainant but no reply has been received. Therefore, on the basis of available records, complainant is entitled to receive interest on amount of ₹ 21,04,752/- instead of claimed amount of ₹ 24,18,303/-. Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 9.70%. Now,

respondent has to pay total amount of ₹ 38,86,597/- (₹ 21,04,752 /- + ₹ 17,81,845/-) to the complainant within a period of 90 days as prescribed under Rule 16 of HRERA Rules in two equal instalments.

3. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

