



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 499 OF 2019

Devender Kumar Saini

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 26.07.2022

Hearing: 13th

Present through video calling: - Sh. Devender Kumar, complainant
Adv. Ajay Ghangas, learned counsel
for the respondent

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his arguments, complainant submitted that initially he had booked a flat/ Apartment bearing no.504, in Tower B admeasuring 975 sq. ft. in respondent's project "THE EUROPA RESIDENCY", Sonapat in year of 2009. Complainant had paid an amount of Rs. 18,30,303.75/- till

2015. Both parties signed flat buyer agreement dated 06.11.2009. As per Clause 10.1.a of the agreement, possession of booked property was to be delivered within 36 months with an additional grace period of 3 months from signing of agreement. Therefore, deemed date of possession in this case was 07.02.2013. Complainant has further stated that respondent changed his allotment flat/apartment from no. B- 504 to no. C-901, and also area of flat was increased from 975 sq. ft. to 1281.713 sq.ft.

Learned counsel for the complainant stated that construction of the project is at mere rudimentary level and further would take years for completion of project. There is no possibility of getting the project completed in near future. For the reason of inordinate delay of over nine years and no hope of its completion in near future, complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that total paid amount of ₹ 18,30,303.75/- to the respondent may be refunded along with permissible interest calculated from the date of payment till the payment of the entire amount of principal and accrued delay interest thereon.

2. On the other hand, respondent in their reply have raised by and large technical objections like complaint is not maintainable; RERA Act cannot be implemented with retrospective effect; Authority does not have jurisdiction to hear the complaint; complaint has not been filed on proper format etc. Further in para-9 of the reply submitted by the respondents, he stated that

project got delayed due to reasons beyond their control. Further, respondents are ready to consider allotment of an alternate flat to the complainant in other ready to move project of the respondent.

3. Sh. Devender Kumar, complainant stated that he do not wish to have an alternate apartment rather press for relief of refund along with interest and compensation. Respondent counsel Sh. Ajay Ghangas, had also made a statement during course of hearing that respondent would not in a position to complete the project, therefore, possession to complainant cannot be delivered.

4. Since, vide captioned complaints complainants have sought relief of refund but the same was kept by Authority due to disputes of jurisdiction of the Authority to deal with complaints in which relief of refund was sought was subjudice before Hon'ble High Court and Hon'ble Supreme Court.

Now, the position of law has changed, in view of Judgment passed by Hon'ble Supreme Court in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. plea raised against the maintainability of the complaint is no more tenable. Since the issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with all the matter on their merits.



5. After going through record, considering statement given by respondent counsel in court proceeding today and reply of respondent captured in para no. 2 that due to reasons beyond their control, project cannot be developed in time, Authority comes to conclusion that respondent have failed to develop the project on time and admittedly it is not being developed. Accordingly, booked flat of complainant cannot be completed in foreseeable future. Authority has laid down a principle that alternate unit can be offered to an allottee only with his express written consent. Allottees have a right to get possession of the apartment booked by them. As per law they cannot be forced to relocate themselves to an alternate unit. Respondent have not failed to show any progress of towers nor are they in a position to commit any time line to complete the project. Delay of nearly nine year has already been caused.

For the foregoing reasons relief claimed by complainants i.e. refund of the amount paid by them to the respondents along with interest in terms of Rule 15 of RERA, Rules, 2017 deserves to be granted from respective dates of making payments till passing of this order. If delay is caused further by the respondents, additional interest will also be payable.

6. Respondent are directed to refund the amount of ₹ 18,30,303.75/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payments till passing of this order. Authority has got the interest calculated, which works out to ₹

17,10,655/- . This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 26.07.2022 at the rate of 7.80 plus 2%= 9.8%. Respondent shall pay ₹ 35,40,958.75/- (18,30,303.75/-+ ₹ 17,10,655/-) to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.

Disposed of. Files be consigned to the record room after uploading of order.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]