



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 2979 OF 2019

Jasvinder Singh

....COMPLAINANTS(S)

VERSUS

M/s Jagran Developers Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 19.07.2022**

**Hearing: 5<sup>th</sup>**

**Present: None for complainant.**

Mr. Drupad Sangwan, Counsel for the respondent through VC.

Mr. Rajesh Garg, Authorized Representative of respondent.

**ORDER: (RAJAN GUPTA-CHAIRMAN)**

In this case, complainant has sought relief of refund of the amount paid by her to respondent alongwith applicable interest. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction to deal with such matters was subjudice before Hon'ble Supreme Court.

2. Now the 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 have been dismissed with an observation that relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. 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 matters.

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

4. Case of the complainant is that he had booked a shop cum office space (hereinafter referred as SCO) in respondent's project named 'The Galleria,



Kurukshetra Global City', Kurukshetra, on 22.06.2011 by paying an amount of Rs.1,10,000/-. Builder buyer agreement for SCO no. GF-2 with area of 354.91 sq ft was executed between the parties on 29.01.2014. In terms of clause 27(a), possession was supposed to be delivered upto 29.07.2017 (36+6 months). It has been alleged by the complainant that respondent has failed to offer possession of booked unit despite receiving payment of Rs 12,44,563/- against basic sale price of Rs 22,97,599/-.

5. Further facts of the matter are that complainant after waiting for 2 years from deemed date of possession had sent a legal notice dated 13.11.2019 through calling upon respondent to refund entire paid amount with interest, but in vain. Feeling aggrieved, present complaint has been filed by the complainant seeking refund of paid amount of Rs 12,44,563/- alongwith interest.

6. On the other hand, respondent in his written reply has stated that after completing construction work of the unit they had applied for occupation certificate to the department concerned on 22.04.2019. Thereafter, offer of possession of unit in question was made to complainant on 22.01.2020 alongwith demand of Rs 25,20,301/-. Occupation certificate was received on 17.03.2020.. Further, it has been submitted that only an amount of Rs 12,03,339/- (on account of BSP) + Rs 41,224/- (service tax) has been received from the complainant.

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Ld. counsel for respondent argued that relief of refund sought by complainant does not deserves to be granted as unit is ready in all respects for possession and project is complete but it is the complainant who is at fault by not coming forward to take possession.

7. Sh. Narender Singh Kamboj has filed an application dated 03.08.2022 stating that on the date of hearing i.e. 19.07.2022 he was available online but due to technical problem at the time of hearing he could not get his presence marked. His application has been taken on record.

8. After hearing submissions of both parties and perusing relevant record, Authority observes and orders as follows:

(i) Respondent admits allotment of SCO and execution of builder buyer agreement dated 29.01.2014. There is no denial to the fact of Rs. 12,44,563/- having been paid by complainant to respondent. Payment of this amount is adequately proved from receipts attached as Annexure C-2 of complaint.

(ii) Complainant herein is seeking relief of refund of paid amount with interest. However, fact remains that project has been completed by the respondent and occupation certificate has also been received. In which due to variety of factors it is difficult to execute real estate



projects, delay of 2-3 years is expected and it is presumed that allottees who become part of an under construction project are aware of it. Authority has to strike a balance between the interest of the allottees and that of the project. Therefore, when the project is completed, it will be deemed that promoter has invested the money received from the allottees on the project. Therefore, refund in such situation is not justified.

(iii) As per provision and terms of BBA executed between the parties, the respondent was supposed to deliver possession latest upto 29.07.2017. Undisputedly, the respondent sent an offer of possession to complainant on 22.01.2020 when it had not obtained an occupation certificate. The occupation certificate was rather received 2 months thereafter on 17.03.2020. So, the offer of possession can be deemed valid only with effect from 17.03.2020 and complainant deserves to be awarded delay interest from the deemed date of possession i.e. 29.07.2017 till the date of receipt of occupation certificate i.e. 17.03.2020 in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.80%).

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(iv) In respect of statement of receivables and payables issued by respondent it is observed that respondent has charged holding charges to the tune of Rs 49,500/-. Regarding holding charges, it is observed that present complaint was filed on 18.12.2019 seeking relief of refund of Rs 12,44,563/- for the reason that respondent has not offered possession of booked unit till filing of present complaint. At that time plea of respondent was that they had applied for occupation certificate after completing construction work of the unit. Further, possession of booked unit was offered on 22.01.2020 during pendency of this complaint though occupation certificate was received on 17.03.2020. Therefore, issue/dispute involved between the parties was pending adjudication before this Authority. Equit demands that respondent cannot charge holding charges for that period.

(v) Another issue is in regard to calculations of delay interest of Rs 2,92,717.48/- for the period ranging from deemed date of possession to date of offer of possession. Said calculations made by respondent are not correct. Factual position remains that possession was offered by respondent on 22.01.2020 but occupation certificate was received on 17.03.2020. Therefore, valid offer of possession

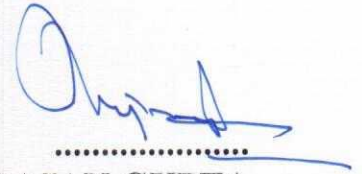
duly supported with Occupation certificate can only be deemed w.e.f from date of receipt of Occupation Certificate as stated above. Therefore, complainant is entitled for delay interest from 29.07.2017 to 17.03.2020. The admissible delay interest works out to Rs 3,11,134/- as per provisions of Rules 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.8%).

(vi) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 12,03,339/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of service tax amounting to Rs 41,224/- from total paid amount of Rs 12,44,563/-. The amount of such taxes are not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.

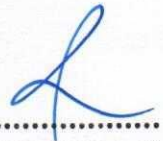
(vii) Respondent is directed to issue fresh statement of accounts of receivables and payables incorporating therein delay interest of Rs

3,11,134/- in terms of principles laid down in this order to the complainant within 45 days of uploading of this order and complainant is also directed to take possession of unit after making payment of balance dues within 45 days of receipt of said statement of accounts.

9. **Disposed of** in above terms. File be consigned to record room after uploading order on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

