



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 703 of 2019

Chakrapani Kajla

...COMPLAINANT(S)

VERSUS

Suman Villas Pvt. Ltd.

...RESPONDENT(S)

2. COMPLAINT NO. 727 of 2020

Neeraj Verma

...COMPLAINANTS

VERSUS

Suman Villas Pvt. Ltd.

...RESPONDENT(S)

3. COMPLAINT NO. 875 of 2019

Smt. Phoola Rani

....COMPLAINANT(S)

VERSUS

Suman Villas Pvt. Ltd.

...RESPONDENT(S)

4. COMPLAINT NO. 1097 of 2021

Anita

....COMPLAINANT(S)

VERSUS

Suman Villas Pvt. Ltd.

...RESPONDENT(S)

5. COMPLAINT NO. 1408 OF 2019

Sunil Yadav

....COMPLAINANT(S)

VERSUS

Suman Villas Pvt. Ltd.

...RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.06.2022

Hearing: 8th in sr. no.1
4th in sr. no. 2
9th in sr. no. 3
7th in sr. no. 4
11th in sr. no. 5

Present: - Mr. Jagdeep Singh, Ld. Counsel for the Complainant in sr. no.1 through VC.
Mr. Amit Aggarwal, Ld. Counsel for the Complainant in sr. no.2 through VC.
None for the Complainant in sr. no.3 through VC.
Mr. Vivek Sethi, Ld. Counsel for the Complainant in sr. no.4 through VC.
Mr. Akshat Mittal, Ld. Counsel for the Complainant in sr. no.5 through VC.
Mr. Karan Gandhi, on behalf of the resolution professional through VC.
None for the respondent

ORDER (DILBAG SINGH SIHAG - MEMBER)

Perusal of record reveals that all the complaints are of identical in nature and against the same project of the respondent Suman Villa Pvt. Ltd, Jhajjar, Haryana. Main grievance and relief sought are almost similar i.e. non



delivery of the booked units as per terms of Builder Buyer agreement and relief of refund. Complaint no. 703 of 2019 titled Chakrapani Kajla vs Suman Villas Pvt. Ltd. was taken as lead case.

2. In nutshell, facts of the complaint are that, complainant had booked a unit bearing D-417 of tower D, in the respondent project Jhajjar One of Suman Villas Pvt. Ltd on 30.10.2012. Both parties executed Flat Buyer agreement on 15.06.2013 and as per terms of agreement, due date of possession arrives at 15.06.2016. Basic sale price for the same was fixed Rs. 30,75,000/- against which complainant has claimed to have paid more than 20 Lakhs. Grievance of the complainant is that, respondent has failed to deliver possession of the unit even after lapse of more than six years from the deemed date of possession and aggrieved by the same has sought relief of refund.

3. Respondent on the other hand has filed a reply whereas he has submitted that the project could not be completed on time due to force majeure circumstances and events, which includes non-availability of raw material due to various orders of Hon'ble Punjab and Haryana High Court and National Green Tribunal regulating the mining activities, brick kilns, regulation of construction and development activities . Further in the written submissions respondent has also submitted that there were two towers in the project of the respondent, tower B and tower D. Complainants have booked their units in tower D and the same is under construction, and upto seventy percent work has been done.

Respondent in the last hearing dated 17.03.2022 had requested the Authority for requesting an opportunity for amicable settlement pleading that he would accommodate the complainants in tower B. Since tower D could not be completed due to force majeure circumstances, respondent had offered to the complainant/allottees possession in tower B. However, no such settlement could be arrived at.

4. Mr. Karan Gandhi, appeared on behalf of Resolution Professional and apprised the Authority that insolvency proceedings are pending against the respondent/ promoter company. He also showed a copy of the orders of Hon'ble NCLT by way of screen sharing during the proceedings. None appeared on behalf of the respondent to submit or substantiate any claim by them in previous hearings.

5. In the light of facts and averments, Authority observes and order as follow:

i) Complainant's grievance is that no offer of possession has been made by the respondent till date even after lapse of more than six years from the deemed date of possession. Therefore, complainants in all the complaints have sought relief of refund.

(ii) Authority has gone through the facts and details of the matter. Apartments of complainants are located in tower-D. Admittedly, tower-D is not being constructed. Furthermore, respondent company

itself is facing proceedings under Insolvency and Bankruptcy Code,2016 and the matter is before Hon'ble NCLT. An IRP/RP has also been appointed. Now, the fate of the project is uncertain. As such, complainants are entitled to the relief claimed i.e. refund of the money paid by them to the respondent company along with interest.

(iii) Authority had in similar facts and circumstances disposed of a bunch of complaints with lead complaint No.383 of 2018 titled Gurbaksh Singh vs ABW Infrastructure Pvt. Ltd on 30.10.2018. In that complaint, Authority had ruled that allottee of a project should have superior right over the project compared with the other secured creditors. Relevant part of the orders passed by Authority is reproduced below:

13. We are of the considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction of their claims against the promoters/debtors.

However, we are of the further view that the rights guaranteed by the RERA Act, 2016 for protection of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para 10 above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets of the project, and their rights cannot be alienated by way of an agreement made between the promoter and

the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction of the claim of the allottees, and in addition they are free to set their claim satisfied from other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.

14. The aforesaid conclusion that the rights of the allottees should be treated superior to those of other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments it is observed as follows:-

(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and creditworthiness of the promoters. They have capability to understand risk factors involved Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending.

Lending institutions are also supposed to monitor progress of the project in order

to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.

(ii) On the other hand, an allottee typically is a middle-class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis.

The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.

(iii) It is relevant to quote here the provisions of Section 18(1), Section 19(3) and (4), Section 79 and Section 89 of the Real Estate (Regulation & Development) Act, 2016.

Section 18: Return of amount and compensation- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due

to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section 19(3): Rights and Duties of allottees- The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Section 79: Bar of Jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be

granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 89: Act to have over-riding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

It is observed that Section 89 explicitly mandates that provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, Section 18 guarantees that in the event of a project not being completed he shall have a right to seek refund of his money along with interest without prejudice to any other remedy available. Similarly Sub Section 3 and Sub Section 4 of Section 19 assure the allottee that he will be given refund of the money deposited by him in the event of default in completion of the project by the promoters.

This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions.

14. It has been discussed in detail in foregoing paras that when complex legal proceedings are going on against a project and against the promoters of the project, it may take long time for it to get resolved. Accordingly, it is ordered that whenever such resolution happens, the rights of the allottees shall be treated superior most. The money paid by the allottees shall be refunded

before entertaining claim, if any, of the commercial creditor.

(v) Accordingly, Authority orders refund of the money paid by each the complainant along with interest calculated in accordance with Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017. The prevalent MCLR on the date of passing orders i.e.9.70% (7.70+ 2%). Accordingly the amount refundable to each of the complainants has been shown in the table below:

<u>Complaint No.</u>	<u>Principal Amount Paid by complainant (in Rs.)</u>	<u>Interest on principal amount (in Rs.)</u>	<u>Final Amount to be paid by the respondent to the complainant (in Rs.)</u>
703 of 2019	20,13,908/-	17,41,926/-	37,55,834/-
727 of 2020	29,90,582/-	23,49,882/-	53,40,464/-
875 of 2019	12,92,500/-	10,74,516/-	23,67,016/-
1408 of 2019	31,67,346/-	25,70,663/-	57,38,009/-

In complaint no. 1097 of 2021 complainant has not submitted proof of payment of receipts. Therefore, the interest as per RERA Rules could not be calculated in this matter. He is directed to place his claim before the Resolution Professional.

6. Cases are **Disposed of** accordingly. File be consigned to the record room and these orders be uploaded on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]

