



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 910 OF 2019

Saviya

....COMPLAINANT

VERSUS

Ansal Landmark Township Pvt. Ltd.

....RESPONDENT

Hearing: 8th

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 04.08.2022

Present through Video call: - Sh. Dilip, representative for the complainant

Sh. Aditya Pratap Singh, learned counsel for
the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings, complainant stated during the hearing that decision dated 05.05.2022 taken by the Authority in Complaint No. 2681 of 2019 titled as Parmod Kumar & Anr Versus Ansal Landmark Townships Private Limited. squarely covers the controversy involved in the present complaint. To support his contention he briefly averred facts of the case that vide allotment letter dated 07.02.2011, a flat bearing no. F-304 measuring 1761 sq.ft. was allotted to him for total sale consideration of Rs. 28,17,600. Complainant had paid an amount of Rs. 12,31,680/- to the respondent-promoter till April 2012. As evidence of said paid amounts, receipts issued by respondent has been submitted by complainant along with an application dated 14.07.2022. He argued that even after receiving substantial amount from complainant, respondent has failed to execute builder buyer agreement with him. However, as per clause 12 of the allotment letter, builder was under an obligation to handover possession of booked flat within a reasonable period of time. But till date neither refund of the paid amount nor possession of booked flat has been handed over to complainant. Aggrieved by the action of the respondent, complainant sought refund of paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016. Hence, this

complaint be disposed of in the same manner. Operative part of said order dated 05.05.2022 is reproduced below for ready references:

“ 2. Complainant in this case had booked a flat in respondent project named "Sushant Royal" situated at Sector 36, Karnal and was allotted flat No.K 304. He had already paid Rs. 12,50,563/- against total sale consideration of Rs 28,60,800/. In support of his contention of amount paid, he annexed receipt of ₹ 12,50,563/- at page no 15-22 of the complaint. Authority observes that neither builder buyer agreement date is mentioned nor any record is annexed with the complaint. However in complaint, it is mentioned that almost 10 years have lapsed since complainant had paid booking amount of Rs. 1,50,000/- on 20.01.2011 to the respondent but promoter had miserably failed to deliver possession to the complainant till date. Aggrieved by the action of the respondent, complainant sought refund of paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.

3. 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 of hearing the complaint; complaint has not been filed on proper format etc. From a reading of para- VII-VIII of the reply submitted by the respondent, it could be clearly made out that respondent had conceded that they were not in a position to complete the project and construction of the tower K in which complainant flat was situated since the same has not even commenced. Further, respondent was ready to consider allotment of an alternate flat to the complainants in tower B,I,G of the same project.

5. Since Vide captioned complaint, complainant has sought relief of refund but the same was kept Sinedie 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, position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh 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. Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. vide order dated 13. 01.2022. Consequent upon above judgment passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

6. In conclusion Authority observed that admittedly, booked flat of complainant was nowhere near completion as respondent had failed to even start construction of the project. That is why respondents have offered to re-allot unit of the complainant in same project, but the same was not acceptable to the complainant. Authority has laid down a principle that an alternate unit can be offered to an allottee only with his express written consent. Allottees have a right to get of only the apartment booked by them. As per law they cannot be forced to relocate themselves to an alternate unit. Respondent have failed to show any progress of project in question nor they are in a position to commit any time line to complete it.

In view of above findings, relief claimed by the complainants i.e. refund of the amount paid by them to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 deserves to be granted from the respective dates of making payment till the actual realization of the amount. ”


2. Authority is satisfied that the issues and controversies involved in present complaint is of similar nature as in Complaint No. 2681 of 2019 titled as Parmod Kumar & Anr Versus Ansal Landmark Townships Private Limited. Therefore, this complaint is disposed of in terms of the order passed by Authority in Complaint no. 2681 of 2019.

3. In furtherance of above mentioned observation, Authority would dispose of this complaint with the order that refund of the amount paid by complainant to the respondent 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 respondent, additional interest will also be payable.

4. Respondent are directed to refund an amount of ₹ 12,31,680/- 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 ₹ 13,01,451/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 04.08.2022 at the rate of 7.80 plus 2%= 9.8%. Respondent shall pay ₹ 25,33,131/- (12,31,680/-+ ₹ 13,01,451/-) 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]