



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

## COMPLAINT NO. 125 OF 2020

Tarun Chauhan

....COMPLAINANT

VERSUS

Ansal Crown Infrabuild Pvt. Ltd.

....RESPONDENT

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 26.07.2022**

**Hearing: 6<sup>th</sup>**

**Present through video calling: -**

Adv. Himanshu Raj, learned counsel  
for the complainant

Sh. Adarsh Jain, learned counsel for  
the respondent

4

**ORDER (RAJAN GUPTA-CHAIRMAN)**

1. Case of the complainant is that he had booked a flat bearing no.1102, in Tower 2, admeasuring 2850 sq. ft. in respondent's project "Ansal Crown Heights", Faridabad on 01.10.2010. Total sale consideration of the flat was Rs. 78,61,012.50/-, against which complainant has already paid an amount of Rs. 88,42,529/-. As evidence of the amount paid, annexure C-3 has been placed on record, whereby receipts issued by respondent-promoter have been attached. Both parties had signed flat buyer agreement dated 02.07.2012. As per Clause 4 of the agreement, possession of booked property was to be delivered within 36 months from the date of signing of agreement. Therefore, deemed date of possession in this case comes to 03.07.2015. Learned counsel for complainant states that a letter dated 31.10.2013 was sent by respondent to him stating that possession of their booked unit will be delivered soon. However, even at present development of project is going at very slow/pace and there is no possibility of completing the project in foreseeable future. For the reason of inordinate delay of over seven years and no hope of its completion even in near future, complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that the total paid amount of Rs. 88,42,529/- may be refunded along with permissible interest calculated from the dates of

4

payments till payment of the entire amount of principal and accrued delay interest thereon is made by respondent.

2. On the other hand, respondents in their reply have raised mostly technical objections like the complaint is not maintainable; RERA Act cannot be implemented with retrospective effect; Authority does not have jurisdiction to hear the complaint; respondent has not violated any provisions of the RERA Act, 2016. Further, it has been contended that project is registered with Authority vide registration no. HRERA- PKL-28-2018 dated 24.08.2018. As on date construction work of project is going on, in respect of 8 towers out of the 10 towers. However, construction of remaining two towers has not yet been started. Further, construction work of 4 towers out of said 8 towers i.e. Towers no. 7,8,9,10 is 90 % complete and construction works of remaining 4 towers are also nearing completion as 75 % of the work is complete. Respondent argue that allowing refund at this stage will jeopardize the whole project. Further, apartment buyer agreement dated 02.05.2012 was subject to force majeure conditions and respondent could not complete construction of project in time due to following reasons:

- I. Respondent applied for renewal of license in the office of DTCP on 21.09.17 and same was granted by the department on 30.04.18, which caused delay of about 221 days.
- II. The building plans sanctioned by DTCP were valid only

4

till 07.12. 14 and the same were renewed by the department on 26.06.15.

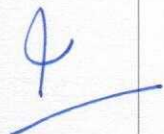
III. The construction work was hampered by lackadaisical attitude of the contractor.

IV. Number of allottees had defaulted in making timely payments. Till date Rs. 12,01,05,488/- is recoverable from defaulting allottees.

Under such circumstances, respondent prays for dismissal of present complaints.

3. Sh. Himanshu Raj, learned counsel for complainant reiterated the facts mentioned in para 1 of this order and pressed for relief of refund on the ground that project cannot be completed in near future because as on date only raw structure of project is standing at the site. Further, an inordinate delay of eight years has already been caused in handing over of possession. He also prayed that after deciding the case on merits, the case may be transferred by Authority to Adjudication officer for deciding claim of complaints for compensation.

4. On the other hand, learned counsel for the respondent Sh. Adarsh Jain also reiterated the facts mentioned in para 2 of this order. He sought time to place on record relevant documents and latest photographs to show recent developments at the site of the project.



5. Since, complainants had sought relief of refund, the matter was kept pending by Authority on account of the fact that jurisdiction of the Authority to deal with complaints in which relief of refund was sought was sub-judice before Hon'ble High Court and Hon'ble Supreme Court.

Now, the position of law has changed, in view of Judgment of Hon'ble Supreme Court in lead SLP Civil Appeal No. 13005 titled as "M/S. Sana Realtors Pvt. Ltd. vs. Union Of India". Therefore, the 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 for dealing with this matter on its merits.

6. After going through the records available on file, Authority observes that complainant has alleged that he had paid total amount of ₹ 88,42,529/- to the respondent, however, receipts of ₹ 84,37,333/- has been placed on record by complainant, at page no. 20-24 of the complainant book. Due date of delivery of possession was on 03.07.2015. The respondent despite having received said substantial amount from complainant has failed to deliver possession of booked flat to complainant till date. Seven years delay has already been caused and still no concrete date of its completion has been placed before the Authority. Considering such inordinate delay on part of respondent to deliver the possession, complainant has sought relief of refund along with permissible interest.

Further it is observed that complainant had booked the flat which is situated in Tower -2 of the project, construction of which has not even commenced by the respondent as per his reply recorded in para 2 of this order. Further, complainant argued that booked flat cannot be completed in foreseeable future. So, he wishes to withdraw from the project under Section 18 of RERA Act 2016.

After considering above facts, Authority is of the considered view that respondent had miserably failed to deliver possession of the booked flat even after inordinate delay of eight years. Therefore, relief prayed by complainant of refund along with interest under Rule 15 of HRERA Rules deserves to be granted from respective dates of making payments till passing of this order.

7. Accordingly, respondent is directed to refund the amount of ₹ 84,37,333/- 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 ₹ 72,68,265/-. 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 ₹ 1,57,05,598/- (84,37,333/-+ ₹ 72,68,265/-) to the complainant within 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.

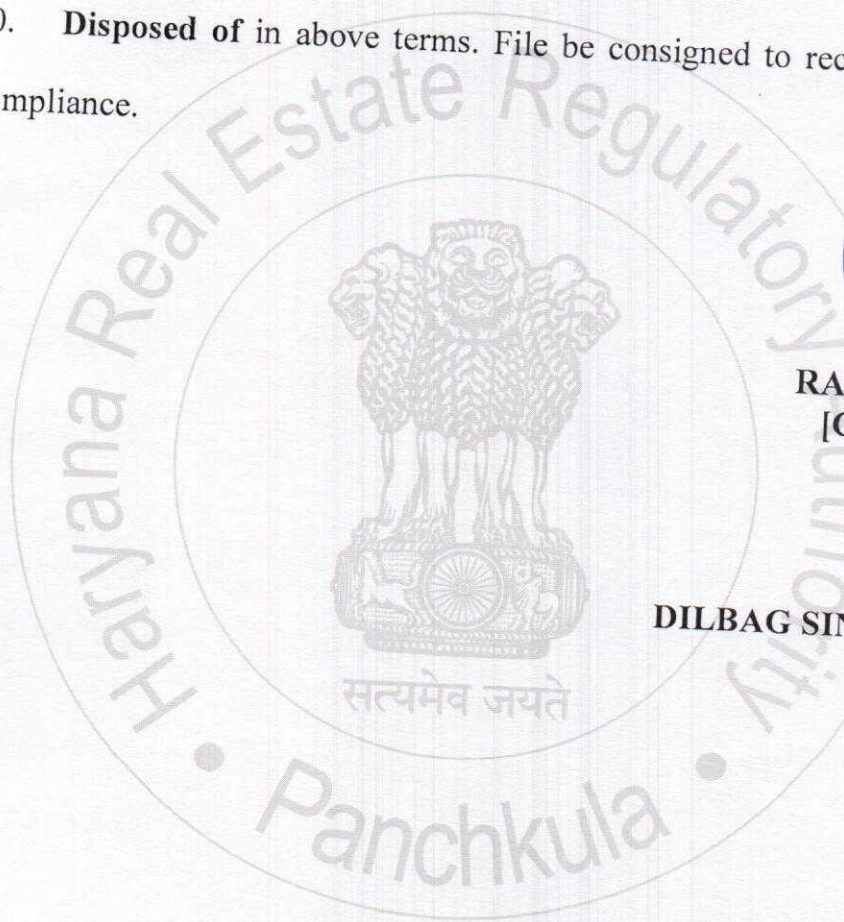
4

Further, complainant has prayed for transfer of the case to Adjudicating Officer for adjudicating his relief in respect of compensation after deciding the matter on its merits. 1. In regard to this prayer of the complainant reference is made to sub rule (e) of Rule 28 of RERA Rules, 2019. The sub rule provides that if in a complaint compensation has been sought, the complaint for adjudging quantum of compensation as contained in Section 12, 14, 18 and 19, shall be referred to Adjudicating Officer by Authority and Adjudging Officer shall conduct an inquiry to adjudge quantum of compensation as per provisions of Sub Section 3 of Section 71 by taking into consideration the factors mentioned in Section 72 of RERA Act 2016.

8. Authority observes that to enable the Adjudicating Officer to adjudge quantum of compensation, details of the claim duly supported with evidence will have to be placed by the claimant before the Adjudicating Officer. For this purpose Form-CAO has been prescribed in the HRER Rules, 2017. The information as is required to be submitted in form-CAO is not before this Authority, therefore, for addressing the issue of claim compensation, complainant/claimant has to submit an application before learned Adjudicating Officer alongwith information in proforma-CAO. Other information of relevant evidence in support of the claim also has to be submitted by claimant-complainant before learned Adjudicating Officer.

9. Complainant herein may follow the procedure prescribed for claiming compensation by filing an application on proforma-CAO. For the purpose of 'reference' to be made in accordance with sub rule (e) of Rule 28, Authority will send a copy of this order to learned Adjudicating Officer to take into consideration findings of the Authority, while taking decision on the application for compensation filed by the complainant.

10. **Disposed of** in above terms. File be consigned to record room after compliance.



*[Signature]*  
.....

**RAJAN GUPTA**  
[CHAIRMAN]

*[Signature]*  
.....

**DILBAG SINGH SIHAG**  
[MEMBER]