



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

### 1. COMPLAINT NO. 2418 OF 2019

Rajesh

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

### 2. COMPLAINT NO. 2408 OF 2019

Adarsh Sharma and Mahendra Pal Sharma

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

### 3. COMPLAINT NO. 2423 OF 2019

Anil Kumar Dubey

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

### 4. COMPLAINT NO. 2424 OF 2019

Krishna Chandra Joshi

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

9

**5. COMPLAINT NO. 2428 OF 2019**

Ashwani Sharma and Mohini Sharma .....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd. ....RESPONDENT(S)

**6. COMPLAINT NO. 2432 OF 2019**

Davinder Behal .....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd. ....RESPONDENT(S)

**7. COMPLAINT NO. 2439 OF 2019**

Rohit Panghal .....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd. ....RESPONDENT(S)

**8. COMPLAINT NO. 2444 OF 2019**

Neeraj Thakur .....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd. ....RESPONDENT(S)

**9. COMPLAINT NO. 2460 OF 2019**

Rajeev Kumar .....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd. ....RESPONDENT(S)

**10.COMPLAINT NO. 2462 OF 2019**

Complaint No.2418,2408,2423,2424,2427,2428,2432,2439,2444,2460,2462,2463 ,  
2465,2466,2470,2471,3046 of 2019

Anil Singh Bisht

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**11.COMPLAINT NO. 2463 OF 2019**

Nidhi Garg

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**12.COMPLAINT NO. 2465 OF 2019**

Suhagni Bhat and Ranjan Bhat

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**13.COMPLAINT NO. 2466 OF 2019**

Sunil Dudeja and Raj Rani

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**14.COMPLAINT NO. 2470 OF 2019**

Purnima Jain

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

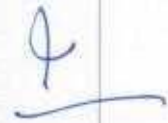
....RESPONDENT(S)

**15.COMPLAINT NO. 2471 OF 2019**

Neeraj Virmani

....COMPLAINANT(S)

VERSUS



Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**16.COMPLAINT NO. 3046 OF 2019**

Kanwar Singh

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 16.08.2022**

**Hearing: 8<sup>th</sup>**

**Present through video conference: -**

Mr. Yogesh Kumar Goyal,  
Ld. Counsel for the complainants  
(in all complaints except complaint  
nos. 2427, 3046/2019)

Sh. Kanwar Singh, complainant(in  
complaint no. 3046/19)

None for respondents in all  
complaints.

**ORDER (RAJAN GUPTA- CHAIRMAN)**

1. In the captioned bunch of complaints, complaint No. 2418 of 2019 titled 'Rajesh Vs. Hightech Construction Company Pvt. Ltd. has been taken as a lead case. When this matter had come up for consideration of Authority on 6.5.2022, Authority had recorded brief facts of the matter and had expressed a view that this case is not fit for allowing refund because after taking into



consideration COVID-19 period, the due date for offering possession was yet to arrive. Order passed by the Authority on 6.5.2022 is reproduced below:-

“ 1. All the captioned complaints were taken up together for hearing as the grievances involved therein are common and pertaining to the same project of the respondent. Complaint no. 2418 of 2019 titled as Rajesh versus Hightech Construction Co. Pvt. Ltd. has taken as a lead case.

2. Complainant's case is that he had booked a residential flat in the project of respondent situated at Faridabad in the year 2015. Total sale consideration of said flat was Rs 19,01,720/- against which complainant has paid a sum of Rs 4,93,379/-. Complainant was allotted flat bearing no. 208 in tower A-1 of the project. Builder buyer Agreement was executed between the parties on 12.09.2015 and as per clause 3.6 of said agreement possession of the flat should have been delivered by 11.09.2019. However it has been more than two years since due date delay but respondent has failed to deliver possession of booked unit till date. Feeling aggrieved, complainant has filed present complaint seeking refund of paid amount alongwith applicable interest.

Learned counsel for complainant submitted that at present tower A1 has not yet been started. The project is far from completion. Complainant who has already waited for long is not interested to wait any further for taking possession of unit. Therefore, his request may be accepted and relief of refund may be allowed in his favour.

3. On the other hand, respondent/promoter in their reply have rebutted the averments made by complainant. Respondent states that present complaint is not maintainable for non- joinder of necessary party. As the project in question was developed by M/S SRS retreat services under Affordable Housing policy in year 2013, but license of the project was transferred in name of respondent on 23.01.2018. Further all bookings, allotments and deposit of amounts had been mutually settled and agreed between the complainants and M/S SRS Retreat Services, and answering respondent is not signatory to either of the documents which are being relied upon by complainants.

Secondly, respondents states that as per documents relied upon by complainant builders buyer agreement was signed on 12.09.2015 and deemed date of possession was shown as 11.09.2019, whereas Clause 3.6 of the agreement states that project shall be completed within four years

4

from approval of building plans or grant of environmental clearance whichever is later. Hence, complainant has wrongly mentioned the due date of possession. Accordingly respondent argues that captioned complaints deserve to be returned, being pre-mature at this stage.

4. During hearing, learned counsel for complainant reiterated the facts mentioned in Para 2 of this order. On the other hand none appeared for the respondent.

5. Authority has gone through relevant documents. After due consideration observes and orders as follows:-

I. Firstly, complainant has sought relief of refund in the captioned matters but respondent is willing to offer possession to the complainants as project in question is an on-going project. Said project is registered with the Authority and the date completion has been shown as 31.12.2021. Authority is prima facie of the view that as per registration certificate granted to respondent, completion date was December 2021, which had just lapsed. It also includes period of Covid-19 pandemic in all such matter extension additional time period of 9 months to all the projects on account of COVID situation. So, it can be concluded that completion date of the project is yet to arrive. Therefore, Authority prima facie is of the view that these cases are not fit for refund at this stage. Authority is of view that relief of possession along with delay interest is not permissible at this stage as complaints are premature and respondents still have time for offering possession to the complainants after obtaining occupation certificate.”

2. Thereafter, the matter was considered by the Authority on 2.8.2022 when certain additional facts which have important bearing on outcome of the proceedings were brought to the notice of Authority.

3. Important facts to be noticed in this case are that complainants had booked their apartments in an affordable Group Housing Colony floated by respondents-company. Complainants-allottees of the project executed Builder Buyer Agreement for purchase of 2 BHK apartments with super area measuring



572.56 sq.ft. at a cost of Rs. 4000/- per sq.ft of carpet area and Rs. 500/- per square feet for area of balcony, which total comes to Rs.19,01,720/- per apartment. Each of the complainant- allottee has paid money ranging from about Rs.5 lacs to about Rs.7 lacs to the respondent. They are yet to pay remaining consideration. There is no allegation from respondents that any complainant-allottees has failed to pay due instalments. It is to be assumed that all the complaints are paying regularly and are not in default.

4. However, respondents-promoters have increased size of the apartments from 2BHK to 3BHK and also the super area of the apartments increased from 572.56 sq.ft. to 756.25 sq.ft, representing an increase of about 32%, which consequently will result in proportionate increase in sale price of each apartment.

5. Today, learned counsel for complainants Sh. Yogesh Kumar argued that complainants cannot afford increased price of the apartments. 32% increase in the area and consequent increase in price is beyond their requirements and beyond their capacity to pay. For this reason, complainant- allottees wish to withdraw from the project. Allottees complainants are not at all at any fault. It is the respondent who has unilaterally increased the size of apartments and consequently the cost without seeking consent of allottee- complainants. Therefore, respondent has unilaterally altered the term of agreement which is beyond the capavity of complainants to pay. This amounts to breach of contract

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on the part of respondent company. For this reason, their prayer for refund deserves to be allowed.

6. Today again no one has appeared on behalf of respondents. It is third consecutive time that respondents have failed to appear. On the last date of hearing, respondents were given last opportunity to rebut contentions of the complainants and submit their point of view. Having not appeared consecutively for the third time, Authority concludes that the respondents are not interested in putting forward their point of view. Therefore, Authority decides to proceed with the matter on its merits on the basis of written submissions made by respondents, and the written submissions and oral arguments put forward by complainants.

7. Authority is of the considered view that allottees of an affordable Group Housing Colony are typically lower middle class persons. An apartment of 572 sq.ft. is a small apartment. The stipulated cost about Rs.19 lacs is a large sum of money for such categories of allottees. A minor increase in cost may be bearable for such allottees, but increase in the cost by 32 percent would simply be unaffordable for them. In these circumstances, those allottees who wish to continue with the project has option to do so, but those allottees who cannot afford to continue cannot be forced to do so.





8. Respondents have increased the area of apartment from 572.56 sq.ft. to 756.25 sq.ft. representing an increase by about 32% without seeking consent of the allottee, which has increased the basic sale price of each apartment. Such increase in the area by 32 % and cost without consent of allottees amounts to breach of contract by the respondents. In the face of such breach of contract by respondents, complainant-allottees cannot be forced to continue in the project and arrange additional amounts for purchasing apartments which they cannot afford. Therefore, Authority is of the considered view that if by increasing 32 % of area of booked apartments, their sale price also has increased proportionately, then prayer of complainants for allowing them refund of the money alongwith interest as per Rule 15 of RERA Rules, 107 deserves to be allowed.
9. The Authority had passed orders dated 6.5.2022 in which view was expressed that refund cannot be allowed without having full facts been placed before it. In this light of full facts as narrated in this order, Authority is of the considered view that the prayer of the complainants for refund of money paid along with interest deserves to be allowed.
10. Authority has calculated the amount to be refunded to each complainant alongwith interest as shown in the table below:-

Sr. No.	COMPLAINT NO.	Total amount paid by the complainant (In Rs.)	Total amount on which interest is calculated (In Rs.)	INTEREST (In Rs.) @ MCLR - 8 %	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs. )
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9

				PLUS 2 %	
				=10%	
	2418/2019	4,93,379/-	4,93,379/-	3,48,969/-	8,42,348/-
2.	2408/2019	7,39,980/-	7,39,980/-	5,10,234/-	12,50,214/-
3.	2423/2019	7,61,184/-	7,61,184/-	5,05,710/-	12,66,894/-
4.	2424/2019	7,71,617/-	7,71,617/-	5,69,628/-	13,41,245/-
5.	2428/2019	7,69,594/-	7,69,594/-	5,31,143/-	13,00,737/-
6.	2432/2019	7,69,856/-	7,69,856/-	5,26,308/-	12,96,164/-
7.	2439/2019	7,35,720/-	7,35,720/-	5,00,725/-	12,36,445/-
8.	2444/2019	7,72,028/-	7,72,028/-	5,14,498/-	12,86,526/-
9.	2460/2019	4,96,766/-	4,96,766/-	3,41,077/-	8,37,843/-
10.	2462/2019	7,39,980/-	7,39,980/-	5,06,863/-	12,46,843/-
11.	2463/2019	7,60,866/-	7,60,866/-	5,17,133/-	12,77,999/-
12.	2465/2019	7,45,062/-	7,45,062/-	5,10,079/-	12,55,141/-
13.	2466/2019	5,13,115/-	5,13,115/-	3,61,090/-	8,74,205/-
14.	2470/2019	7,36,533/-	7,36,533/-	5,05,782/-	12,42,315/-
15.	2471/2019	7,72,756/-	7,72,756/-	532294/-	13,05,050/-
16.	3046/2019	7,69,594/-	7,69,594/-	5,31,221/-	13,00,815/-

11. The respondents are directed to refund above decretal amount to the complainants within 90 days as provided in Rule 16 of RERA Rules.

12. Disposed of. Files be consigned to record room after uploading the order on web portal of the Authority.

  
RAJAN GUPTA  
[CHAIRMAN]

  
DILBAG SINGH SIHAG  
[MEMBER]