



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 627 OF 2020

Vishal Bathla

....COMPLAINANT

VERSUS

Green Space Infraheights Pvt. Ltd.

....RESPONDENT

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 05.08.2022**

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

**Present:** Ms. Rubai J. Singh, ld. counsel for complainant.  
Mr. Sumit Kumar, proxy counsel for respondent.

### **ORDER (DILBAG SINGH SIHAG - MEMBER)**

1. While perusing case file, it is observed that, Authority vide order dated 31.05.2022, expressed its tentative view on the matter; directing the respondent to refund paid amount to the complainant after deducting earnest money to the tune of

10% of basic sales price. Relevant part of the Order dated 31.05.2022 is reproduced below:

“1. In this case, complainants have sought relief of refund of the amount paid by them to respondents along with 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 sub-judice first before Hon’ble High Court and later 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 of above referred SLPs, the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.

4. Case of complainant is that he had applied for allotment of residential unit in the project “Shree Vardhman Green Space” of respondent situated in Sector 14, Panchkula Extension II on 31.05.2015. Flat No. 306, 3<sup>rd</sup> floor in Tower F having carpet area of 511 sq. ft. and balcony area of 100 sq. ft. was allotted to him on 26.08.2015. Flat -

2

Buyers Agreement has not been executed. Complainant has made payment of Rs. 5,41,393/- against basic sale price of Rs. 20,94,000/- till 12.09.2015. Complainant stated in his complaint on page 10 para 6 that due to his financial difficulties he failed to secure house loan for the flat due to which he requested the respondent-promoter to cancel his allotment and refund the paid amount. Despite repeated reminders, complainant did not receive any response from the office of respondents. Thereafter complainant sent a registered letter dated 17.12.2016 requesting for cancellation and refund of money. Said letter is annexed as Annexure P-9 with the complaint file. Thereafter, respondent asked the complainant to submit certain documents required for cancellation. Complainant claims that all required documents were duly sent by complainant through registered post dated 15.02.2017. Copies of documents are marked and annexed as Annexure P-11 with complaint file.

5. Complainant further stated that respondent informed him vide email dated 18.02.2017 that he has to deposit a total of Rs. 46,643/- towards various heads i.e., Rs. 25000/- for cancellation fees, Rs. 3,750/- as service tax, Rs. 17,893/- as sales tax. Copy of said letter is annexed as Annexure P-15 with complaint file. In reply of demand of respondent-promoter complainant sent a letter dated 06.02.2017 to respondent and requested him to refund Rs. 4,94,750/- (Rs.5,41,393/- – Rs. 46,643/-) after deducting abovementioned charges. Complainant alleges that till today respondent has not refunded the amount of Rs. 5,41,393/- to complainant. Aggrieved by the same complainant has filed this complaint seeking relief of refund.



6. Respondent filed reply on 17.09.2020. vide which he has admitted that complainant has made payment of Rs. 5,41,393/- towards the unit allotted to him. He further alleges that complainant changed his mind and stopped making due payments to respondent despite several demand letter and reminders dated 16.08.2016, 06.10.2016 and 22.09.2018 sent to him, for which complainant is at fault and has violated the agreement between the parties.

7. After considering averments made by both parties Authority observes that factual position reveals that complainant applied for booking a flat on 31.05.2015 by making payment of Rs. 1,07,935/- and up to 12.09.2015 he made total payment of Rs. Rs. 5,41,393/- towards the unit. He could not secure loan for the apartment, and accordingly informed the respondent to cancel his allotment and refund the paid amount after deduction of admin charges and service tax. He requested for cancellation of allotment vide letter dated 17.12.2016 (Annexure P-9). Respondent accepted complainant's request for cancellation vide email dated 18.02.2017, and demanded certain documents for proceeding with cancellation process. However, till date no refund has been given by respondent to the complainant. In such circumstances, Authority is of the view that complainant is entitled to get refund of the paid amount after deduction of earnest money.

8. RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. Respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. Basic sale price in the present matter is Rs. 20,94,000/-. 10 % earnest money will be deducted



from the basic sales price. The Authority in order to maintain equity between the parties, directs the respondent to refund paid amount after deduction of earnest money to tune of 10% of basic sales price. Basic sales price is Rs. 20,94,000/- and 10% of it works out to Rs. 2,09,400/-. Respondent however is liable to refund the said amount along with interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from date of payment till the date on which request for cancellation of unit is made.

9. Aforesaid view expressed by Authority is tentative subject to final arguments. Last opportunity is granted to the parties to argue their case failing which Authority will confirm its tentative view expressed in this order.”

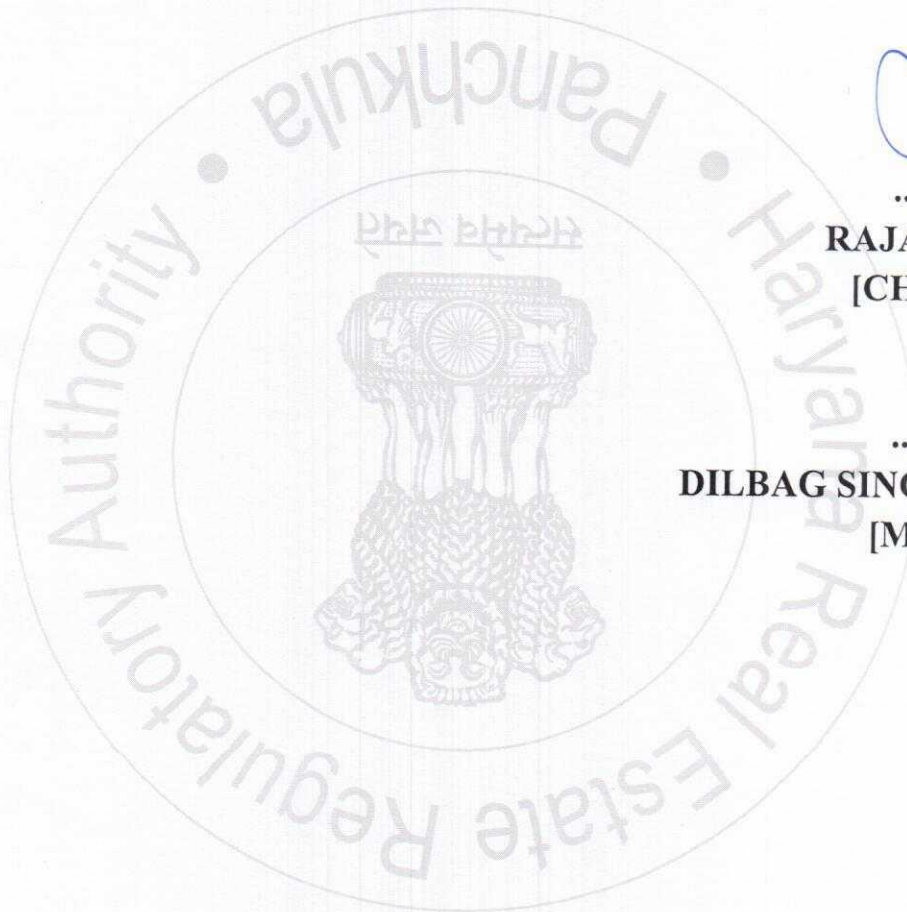
2. Authority confirms the tentative view expressed in the abovementioned order. Accordingly, Authority directs the respondent to refund entire paid amount by the complainant i.e., Rs. 5,41,393/- after deducting earnest money to the tune of 10% of basic sales price i.e., Rs. 2,09,400/-. Therefore, principal amount to be refunded by the respondent comes out to be Rs. 3,31,993/- (Rs. 5,41,393/- - Rs. 2,09,400/-) Authority also observed that complainant is entitled to delay interest as per Rule 15 of the RERA Rules, 2017 on this amount.

Authority got calculated the interest payable to the complainant from its Accounts Branch which works out to Rs.2,24,627/-. This interest has been calculated from the date of making payments by the complainant (12.09.2015) upto



the date of passing of this order (05.08.2022) at the rate of 9.80%. Now, respondent has to pay total amount of Rs. 3,31,993/- + Rs. 2,24,627/- which comes out to be Rs.5,56,620/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal installments.

3. **Disposed of** in above terms. File be consigned to record room.





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**RAJAN GUPTA**  
[CHAIRMAN]



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**DILBAG SINGH SIHAG**  
[MEMBER]+