



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 1027 OF 2019

Ramesh Paper Mart .....COMPLAINANT(S)

VERSUS

M/S T.G Buildwell Pvt.Ltd .....RESPONDENT(S)

## 2. COMPLAINT NO. 1028 OF 2019

Manoj Kumar Verma .....COMPLAINANT(S)

VERSUS

M/S T.G Buildwell Pvt.Ltd. ....RESPONDENT(S)

## 3. COMPLAINT NO. 1423 OF 2019

Surender Kumar Garg .....COMPLAINANT(S)

VERSUS

M/S T.G Buildwell Pvt.Ltd. ....RESPONDENT(S)

**CORAM:**           **Rajan Gupta**  
                          **Dilbag Singh Sihag**

**Chairman**  
**Member**

**Date of Hearing:** 20.07.2022

**Hearing:**           6<sup>th</sup>

**Present: -**        Mr. Anand Dubey, learned counsel for the complainant  
                          through video conference

Mr. Akshat Mittal, learned counsel for the respondent through video conference

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

1. Captioned complaints have been taken up together as grievances and facts involved are identical and against the same project of the respondent. Complainants have sought relief of refund of their respective paid amount in lieu of their booked units from the respondent. Complaint no. 1027 of 2020 titled as Ramesh Paper Mart vs M/s T.G Buildwell Ltd. has been taken as lead case. Facts of the case are that complainant had booked a residential apartment in the project "Tivoli Holiday Village" of respondent situated in Dharuhera, Distt Rewari, Haryana on 11.08.2008. Apartment no.SA-1404, measuring 60.85 sq. ft. was allotted to him on the same day i.e., 11.08.2008. Apartment- Buyers Agreement was executed on 18.08.2008. Complainant has made a payment of Rs. 4,00,000/- against basic sale price of Rs. 26,00,000 /- on 25.06.2008. As per clause 15 of Apartment-Buyer Agreement, possession was to be offered within 30 months from the date of construction. But respondent has failed to deliver possession of booked units even after lapse of more than 10 years. Construction work has been stopped at the site for a long time. Therefore, Complainant has

prayed for refund of the amount paid by him along with interest in terms of Rule 15 of HRERA Rules 2017.

2. Mr Akshat Mittal, learned counsel for the respondent submitted his reply today in court. While submitting that complainant in this case had booked an apartment in the project of the respondent in the year 2008 for a basic sale consideration of Rs 26,00,000/- against which complainant has only paid an amount of Rs 4,00,000/- till date. Complainant had booked the apartment under construction linked plan and gravely defaulted in making payments in adherence to payment schedule. Several demand letters and reminder letters annexed as R2 at page 24-32 (Colly) were issued to the complainant for making payment of outstanding amount but complainant failed to make payment. He further stated that as per clause 8 of the Apartment buyer agreement, if an allottee has failed to make payments as per the payment schedule, than company shall be entitled to cancel the allotment and forfeit the earnest money i.e., 15% of the basic sale price of the apartment i.e., amount of Rs 3,90,000/- which is equivalent to the amount paid by the complainant. Therefore, after issuing several reminder letters to the complainant to make further payments, a notice of forfeiture of the principal amount and cancellation of allotment of unit has been issued to the complainant vide letter dated 15.01.2019. A copy of letter is annexed in his reply as Annexure R-3.

3. Learned counsel for respondent further stated that default on part of the complainant and other such allottees on account of non-payment of dues created a huge cash crunch for the respondent and as a result respondent was unable to complete construction of said project, but still answering respondent is making all efforts to complete the project and deliver possession of booked units to various allottees.

As far as current status of the project is concerned, Mr. Amit Sharma, authorized representative of the respondent company submitted that the tower in question comprises of 10 floors and at present respondent company has completed construction upto second floor. Respondent sought time to finish construction work with regard to said project.

4. On the other hand, Mr Anand Dubey, learned counsel for the complainant submitted that complainant had booked a flat in the project of the respondent in the year 2008 and as per buyers' agreement, possession of the unit should have been delivered by 2011 however, even after a delay of more than 10 years, respondent is still not in a position to deliver possession of booked unit to complainant. On hearing dated 03.02.2022, respondent had submitted that project has been granted extension till August 2022 for completion and respondent will try to deliver possession by that time. However, as per respondent's submissions construction of the project has been completed only

upto second floor whereas tower in question comprises of 10 floors, meaning thereby presently project is nowhere near to completion and complainant who has already waited for a long time no more want to wait for possession of booked unit.

Learned counsel for the complainant further submitted that complainant had booked unit under construction linked plan and was duty bound to make payments in adherence to payment schedule but when respondent himself failed to begin construction of project as per plan, then complainant was not at fault by not making further payments. Complainant approached the respondent several times seeking information with regard to construction schedule of the project especially his unit but no satisfactory response received. Therefore, complainant decided to withdraw from the project. With regard to plea of respondent for forfeiture of earnest money, learned counsel submitted that complainant stopped making further payments because of delay on part of respondent to begin construction of project in question. It is the respondent who was at fault here for failure in timely delivery of possession. Even now project is at very initial stage. Respondent even after such extraordinary delay has not delivered possession of booked unit to the complainant nor has returned the paid amount. In case complainant was a defaulting party, respondent should have returned paid amount after forfeiture



of earnest money when complainant initially failed to make payment. Whereas respondent issued him a letter for cancellation in the year 2019 and even has failed to return the money. Therefore, allegations made by the respondent are baseless as it was the respondent who was at fault for not delivery possession by deemed date ad thus cannot be allowed to forfeit any money.

8. In view of the submissions and averments of both the parties, Authority observes that complainant had opted for a construction-linked payment plan. Payments were supposed to be made as and when the project moves ahead. However, after booking, it was found that no construction work was carried out as per the agreed plan, so complainants stopped making further payments to the respondent. Since, admittedly no progress had taken place in construction of project, complainant had rightly stopped making further payments. Possession of unit should have been delivered by the year 2011 but was not delivered by that date. Further, respondent failed to communicate to the complainant with regard to status of construction of the project. After lapse of 8 years from deemed date of possession a notice of forfeiture of principal amount and cancellation of allotment was issued to the complainant. Such notice cannot be sustained in the eyes of law as it is the respondent who is at fault here for failure in construction of project. Therefore, respondent cannot be allowed to forfeit any earnest money towards booking of the unit. It has been established

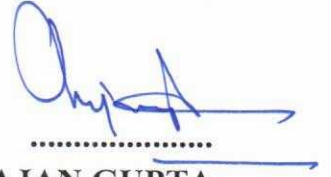


that an inordinate delay in delivery of possession of booked unit has been proved. Moreover, respondent is not in position to complete the project in foreseeable future. Complainant cannot be asked to wait indefinitely for possession. Therefore, complainants are entitled to refund of the amount along with interest. Thus, inordinate delay caused in the construction of the project would totally justify the prayer for refund of money paid by the complainant. Authority allows refund of the money paid by the complainant along with interest as provided in rule 15 of the RERA Rules, 2017. i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.80% (7.80% + 2.00%) from the date of payments of the amounts till today.

The principal amount and interest payable to each of the complainant is given in the table below:

Sr.no.	Complaint no.	Amount Paid	Interest	Total
1.	1027 of 2019	₹4,00,000/-	₹5,51,915/-	9,51,915/-
2.	1028 of 2019	₹4,00,000/-	₹5,60,708/-	9,60,708/-
3.	1423 of 2019	₹4,00,000/-	₹5,68,561/-	9,68,561/-

9. Case is **Disposed of**. Files be consigned to record room after uploading of this order on the website.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

