



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1427 OF 2021

Angad Singh Ahluwalia

....COMPLAINANTS

VERSUS

Ansal Properties and Infrastructure Pvt. Ltd.

....RESPONDENT

**CORAM:** Rajan Gupta  
Dilbag Singh Sihag

**Chairman  
Member**

**Date of Hearing:** 17.08.2022

**Hearing:** 3<sup>rd</sup>

**Present through video call:** - Sh. Vivek Sethi, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent.



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

1. While initiating his pleadings, learned counsel for complainant stated during the hearing that the decision dated 01.06.2022 taken by the Authority in Complaint No. 944 of 2020 titled as "Rajiv Arora Versus Ansal Properties & Infrastructure Pvt. Ltd" squarely covers the controversy involved in the above mentioned complaints. To support his contention he briefly averred facts that present complainant is a subsequent purchaser. On 14.04.2015 a flat bearing no. 0102-27-0203, tower-27 measuring 1472 sq.ft. was transferred to complainant for total sale consideration of Rs. 23,08,000/-. Complainant had paid an amount of Rs. 25,08,288/- to the respondent-promoter till February 2019. As evidence of said paid amounts, receipts issued by respondent has been annexed by complainant at page no. 71-84 of complaint book. As per Builder buyer agreement dated 14.03.2013 builder was under an obligation to handover possession of booked plot within a period of 48 months from date of execution of agreement, which comes to 14.03.2017. But till date neither refund of the paid amount nor possession of booked plot 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 01.06.2022 is reproduced below for ready references:



“ 2. Complainant in the lead case, is a subsequent purchaser. Original allottee had booked a flat bearing no.0102-26-0501, in Tower T-26 admeasuring 1541 sq. ft. in respondent's project “Green Escape Apartments”, Sonapat on 29.10.2012. Original allottee and respondent had executed flat buyer agreement dated 29.10.2012. As per Clause 5.1 of the agreement, possession of booked property was to be delivered within 42 months with a grace period of 6 months. So, deemed date of possession comes to 30.10.2016. Subsequently, original allottee assigned all rights and liabilities in favour of complainant on 07.12.2012, which is evident from letter dated 07.12.2012 annexed as Annexure C-6 of complaint. Total sale consideration of the flat was Rs. 25,49,452.34/- against which complainant had already paid an amount of Rs. 23,28,824/-. Learned counsel for complainant states that there is no possibility of getting the project completed in near future. For the reason of inordinate delay of over six years and no hope of its completion in near future, complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that total paid amount of Rs. 23,28,824/- given to the respondent may be refunded along with permissible interest calculated from the date of payment till the payment of the entire amount of principal and accrued delay interest thereon.

3. A table has been prepared by the Authority, wherein details regarding date of booking; date of FBA execution; deemed date of completion of project; payment made by the complainants against their respective sale consideration have been summarised. Said table is reproduced below:

Sr. No.	COMPLAIN T NO.	Towe r	DATE OF AGREEMEN T	TOTAL SALES CONSIDERATIO N (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINAN T (In Rs.)	DEEMED DATE OF POSSESSIO N
1.	944/2020	26	29.10.2012	25,49,452.34/-	23,28,824/-	30.10.2016
2.	1116/2021	19	14.02.2012	21,53,000/-	17,36,336.88/-	15.02.2016
3.	813/2021	15	14.02.2012	30,82,015/-	21,39,673.50/-	15.02.2016

4. On the other hand, respondent 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; complaint has not been filed on proper format etc. Further in para-8 of the reply submitted by the respondents, he stated that huge investments were made for carrying out construction and development work of project. At present, stage of construction is at



advanced stage and the possession of unit is likely to be delivered in 8-9 months.

5. Sh. Vivek Sethi, learned counsel for complainant reiterated the facts mentioned in para 1 of this order. Respondent counsel Sh. Ajay Ghangas, had also made a statement during course of hearing that respondent would not in a position to complete the project and construction is stopped, So, possession to complainant cannot be delivered.

6. Since, vide captioned complaints complainants have sought relief of refund but the same was kept 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, the position of law has changed, in view of Judgment passed by Hon'ble Supreme Court 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. 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 with dealing with all the matter on their merits.

7. After going through record, respondent's stand in reply as stated in para 4 and considering the statement given by learned counsel for respondent in court proceeding today that construction of the project is stopped, so, respondent is not in position to handover the booked flat, Authority comes to conclusion that respondent have failed to develop the project on time and admittedly it is not being developed. Accordingly, booked flat of complainant cannot be completed in foreseeable future. Authority has laid down a principle that alternate unit can be offered to an allottee only with his express written consent. Allottees have a right to get possession of the apartment booked by them. As per law they cannot be forced to relocate themselves to an alternate unit. Respondent have not failed to show any progress of towers nor are they in a position to commit any time line to complete the project. Delay of nearly six year has already been caused.

For the foregoing reasons relief claimed by complainants i.e. refund of the amount paid by them to the respondents 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 respondents, additional interest will also be payable. ”

2. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 944 of 2020 titled as “Rajiv Arora Versus Ansal Properties & Infrastructure Pvt. Ltd” Therefore, captioned



complaints are disposed of in terms of the order passed by Authority in Complaint no. 944 of 2020.

3. In furtherance of above mentioned observation, Authority would dispose of captioned 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.

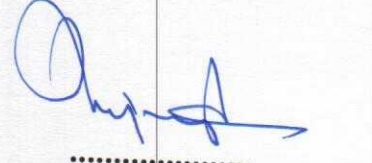
While perusing file, it is observed that complainant has alleged that he had paid an amount ₹ 25,08,288/- . However, he had annexed statement of account issued by respondent at page no. 85 – 92 of complaint, wherein details of paid amount of ₹ 25,05,913/- only has been provided. Further in para 8 of reply, respondent has also admitted that an amount of Rs. 25,05,913/- has been paid by the complainant. Accordingly, complainant is entitled to receive interest on amount of ₹ 25,05,913/- instead of claimed amount of ₹ 25,08,288/-.

4. Further Authority directs the respondent to refund entire principal amount of ₹ 25,05,913/- to the complainant with interest. Authority has got the interest calculated, which works out to ₹ 18,13,801/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 17.08.2022 at the rate of 10%. Now, respondent has to pay total amount of ₹ 43,19,714/- (25,05,913/- + ₹ 18,13,801/-.) to the complainant.



Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.

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



.....  
RAJAN GUPTA  
[CHAIRMAN]



.....  
DILBAG SINGH SIHAG  
[MEMBER]

