HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 124 OF 2022

BEENU DUBEY ....COMPLAINANT(S)

VERSUS

RUHIL PROMOTERS PRIVATE LIMITED ....RESPONDENT(S)

Hearing: 3rd

2. COMPLAINT NO. 200 OF 2022

MUKESH DEVI AND VIRENDER KUMAR ....COMPLAINANT(S)

VERSUS

RUHIL PROMOTERS PRIVATE LIMITED ....RESPONDENT(S)

Hearing: 3rd

3. COMPLAINT NO. 716 OF 2022

Poonam Devi & Balwan Singh ....COMPLAINANT(S)

VERSUS

RUHIL PROMOTERS PRIVATE LIMITED ....RESPONDENT(S)

Hearing: 2nd

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

Date of Hearing: 10.08.2022

Present: - Sh. Sudeep Singh, learned counsel for the complainant (in complaint no. 124/22)

Sh. Arjun Kundra, learned counsel for the complainant (in complaint no. 716/22)

None for the complainant (in complaint no. 200/22)

Sh. Kamal Dhaiya, learned counsel for the respondents in all complaints.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Captioned bunch of complaints is being disposed of together by this common order. Complaint No. 124 of 2022 tittled " Beenu Dubey Versus Ruhil Promoters Pvt. Ltd." has been taken as lead case.

2. While initiating his pleadings, learned counsel for complainant stated during the hearing that the decision dated 09.08.2022 taken by the Authority in Complaint No. 453 of 2022 titled as Dinesh Kumar V/s Ruhil Promoters Pvt. Ltd. squarely covers the controversy involved in the above mentioned complaints. To support his contention he briefly averred facts of the case that vide allotment letter dated 03.09.2014, a flat bearing no. 502, tower- B-2 measuring super area of 1708 sq.ft. was allotted to complainant for total sale consideration of Rs. 40,53,000/-. Complainant had paid an amount of Rs. 39,63,694/- to the respondent-promoter. As evidence of said paid amounts, complainant has annexed statement of accounts issued by respondent at page no. 42 of complaint. As per Builder buyer agreement dated 03.09.2014 builder was under an obligation to handover possession of booked plot within a period of 36 months along with grace period of 180 days from date of execution of agreement, which comes to 03.03.2018. 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 possession along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016. Hence, these complaints be disposed of in the same manner. Operative part of said order dated 09.08.2022 is reproduced below for ready references:

> " 1. Captioned bunch of complaints are being disposed of together by this common order. Complaint No. 453 of 2022

tittled "Dinesh Kumar Versus Ruhil Promoters Pvt. Ltd." has been taken as lead case.

2. Initiating his pleadings, learned counsel for complainant argued that complainant had booked an apartment bearing no. 301 in Block E-1 in respondent's project, "Ruhil Residency", Bahadurgarh" in the year 2013. Complainant alleges that he had paid an amount of ₹ 35, 44,329/- against the total sale consideration of ₹ 36, 13,750/-. As evidence of paid amount, complainant has annexed Annexures A-2 and Annexure A-3 at page no. 46- 64 of complaint.

As per agreement dated 07.02.2013, respondent had committed to deliver possession of the unit within 36 months along with grace period of 180 days from the date of execution of agreement, which comes to 07.08.2017. In support of this contention he has annexed a copy of agreement at page no. 14-45 of complaint book. Learned counsel for the complainant has argued that despite lapse of five years from the deemed date of possession, respondent has not given possession to the complainant. He further argued that more than eight years have gone from date of execution of agreement and project is still incomplete. Complainants have prayed for possession of the unit along with delay interest.

Learned counsels for complainants further argued that in some of the captioned complaints, complainants in addition to prayer for possession of booked flats, have also prayed for following reliefs:

i. Refund of the amount paid by complainants on account of club charges as no club facility has been provided by the respondent.

ii. Demands raised on account of GST be quashed.

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:

Sr. No.	COMPLAINT NO.	Tower	DATE OF AGREEMENT	TOTAL SALES CONSIDERATION (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION
	453/22	E	07.02.2013	36,13,750/-	35,44,329/-	07.08.2016

	211/22	F	5.12.2012	36,88,500/-	36,24,417/-	05.06.2016
3.	288/21	E	12.03.2013	41,55,850/-	37,67,541/-	12.09.2016
4.	407/22	R	07.03.2013	81,57,600/-	63,00,710/-	24.08.2016
5.	417/22	A	26.02.2013	44,34,600/-	48,23,116/-	07.09.2016
6.	409/22	A	13.12.2012	38,27,099/-	34,74,701/-	11.06.2016
7.	410/22	A	27.12.2012	44,34,600/-	40,22,934/-	15.06.2016
8.	414/22	G	28.11.2012	29,80,000/-	25,17,000/-	15.05.2016
9.	416/22	B	30.07.2015	40,93,000/-	42,34,799/-	30.01.2019
10.	431/22	E	16.01.2013	42,70,300/-	41,92,419/-	16.07.2016
11.	445/22	E	27.05.2013	38,31,045/-	37,58,826/-	26.11.2016
12.	446/22	B	16.01.2013	43,57,740/-	51,37,876/-	15.07.2016
13.	447/22	H	14.01.2017	31,80,000/-	31,61,074/-	14.10.2018
14.	833/22	H	11.08.2015	34,80,000/-	32,46,352/-	11.02.2019
15.	834/22	I	18.06.2013	43,15,000/-	39,01,312/-	17.12.2016
16.	415/22	C	01.09.2015	40,07,600/-	40,24,536/-	01.03.2019

4. On the other hand, Case of the respondent is that the project is complete in all respects and Occupation Certificate for the entire project has also been received by the respondent on 17.03.2022. Learned counsel for the respondent Sh. Kamal Dhaiya made a statement that respondent is ready to offer the possession of the booked flats to the complainant. However, he argued that delay interest claimed by complainants in captioned complaints are not payable for the reason that project in question was completed by respondent-promoter in the year 2020. Thereafter application for grant of Occupation Certificate was filed by respondent-promoter on 13.01.2020. On 17.03.2022 Occupation Certificate was received by the respondent from the concerned department.

Learned counsel for respondent while elaborating his arguments, argued that said Certificate was issued to respondent against the application dated 13.01.2020, which was kept pending with the department and got delayed due to Covid-19 situation as national lockdown was announced in the entire country. Concluding his arguments, he prayed that relief of possession without delay interest be awarded to the complainants.

Learned counsel of the respondent while addressing the other two reliefs claimed by complainants argued that club charges has rightly been charged from the complainants as club facility has duly been provided in the Society. Second, objection with regard to quashing of demand raised on account of GST is also payable by complainants, for the reasons that deemed date for delivery of possession in captioned complaint was from August 2017 to 2019. As per the government notification, GST come into operation on 1st july 2017, meaning there by if possession was handed over to the complainants even on the agreed dates then also complainants were liable to pay the applicable GST. Accordingly, now complaints have to pay the applicable taxes as on date.

5. After hearing both parties and going through the documents placed on record, Authority observes that admittedly complainant booked unit in 2012 and respondent was under an obligation to handover the possession by August 2017 but possession has not been offered till date by the respondent/ promoter. Today, learned counsel for the respondent Sh. Kamal Dahiya made a statement in court that Occupation Certificate for the project in question has been received by the respondent/ promoter and they are ready to handover the possession of booked unit to the complainant.

However, he objected to the delay interest claimed by complainants. Taking into consideration written submissions and arguments put forth by counsel of the respondent with regard to delay interest to be given to the complaints, Authority is of the view that as per agreement executed between parties, respondent was under an obligation to handover the possession of flats latest by 2017 but till date respondent has not handed over the same to the complainants. Five years of delay in handing over of possession is considered to be an inordinate delay, therefore,

plea of learned counsel of respondent for not awarding delay interest to the complaints is not acceptable.

Lastly, in regard to payment of GST, Authority is of the view as was expressed by respondent in para 4 of this order that if deemed date for handing over of possession was after 1st july 2017, then GST and other taxes will be duly payable by the complaints.

6. Considering above facts and in view of statement given by learned counsel for respondent, Authority decides to dispose of the matter granting relief of giving offer of possession along with delay interest on the already paid amounts from the deemed date of possession till today i.e. 09.08.2022. Account branch of this Authority on calculation of interest @ 9.8% i.e. (SBI highest marginal cost of landing rate plus 2 %), as per Rule 15 of HRERA, Rules 2017, has worked out the amount of interest payable to the complainants from deemed date of possession till 09.08.2022 as shown in the table below-

Sr. No.	COMPLAINT NO.	Total amount on which interest is calculated(in Rs.)	Upfront INTEREST calculated (In Rs.) @ 9.8%	Further Monthly interest after 09.08.2022 to be paid by respondent
1	453/22	35,44,329/-	20,87,872/-	29,500/-
2	211/22	36,24,417/-	21,96,357/-	30,167/-
3.	288/21	37,67,541/-	21,82,944/-	31,358/-
4.	407/22	63,00,710/-	36,82,825/-	52,443/-
5.	417/22	48,23,116/-	28,01,028/-	40,144/-
6.	409/22	34,74,701/-	21,00,033/-	28,921/-
7.	410/22	40,22,934/-	24,27,053/-	33,484/-
8.	414/22	25,17,000/-	15,39,466/-	20,950/-
9.	416/22	42,34,799/-	14,64,475/-	35,247/-
10.	431/22	41,92,419/-	24,94,409/-	34,895/-
11.	445/22	37,58,826/-	21,02,203/-	31,286/-
12.	446/22	51,37,876/-	30,58,317/-	42,764/-
13.	447/22	31,61,074/-	11,84,822/-	26,311/-
14.	833/22	32,46,352/-	11,12,191/-	27,020/-
15.	834/22	39,01,312/-	21,59,895/-	32,472/-
16.	415/22	40,24,536/-	13,59,345/-	33,497/-

Further, Authority directs respondent to handover the possession of booked unit to the complainant within 30 days from uploading of this order on the website of the Authority. Respondent is also directed to issue fresh statement of Account to the complainant. While preparing the statement of receivables and payables, respondent shall adjust the amount of interest awarded above by this Authority payable to complainants .

Disposed of. Files be consigned to record room and order be uploaded on the website of the Authority."

2. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 453 of 2022 titled as Dinesh Kumar V/s Ruhil Promoters Pvt. Ltd. Therefore, captioned complaints are disposed of in terms of the order passed by Authority in Complaint no. 453 of 2022.

3. In furtherance of above mentioned observation, Authority would dispose of both these complaints with the order that possession of booked flats be handed over to complainants along with delay interest on the already paid amounts from the deemed date of possession till today i.e. 10.08.2022. Account branch of this Authority on calculation of interest @ 9.8 i.e. (SBI highest marginal cost of landing rate plus 2 %), as per Rule 15 of HRERA, Rules 2017, has worked out the amount of interest payable to the complainants from deemed date of possession till 09.08.2022 as shown in the table below-

Sr. No.	COMPLAINT NO.	Builder buyer agreement	Deemed date of possession	Total amount on which interest is calculated(in Rs.)	Upfront INTEREST calculated (In Rs.) @ 9.8%	Further Monthly interest after 09.08.2022 to be paid by respondent
1	124/22	03.09.2014	03.03.2018	39,63,694/-	17,26,172/-	32,991/-
2	200/22	10.12.2012	10.06.2016	45,42,670/-	27,47,930/-	37,810/-
3.	176/22	27.12.2012	27.06.2016	43,66,121/-	26,21,204/-	36,340/-

Further, Authority directs respondent to handover the possession of the booked unit to the complainants within 30 days from uploading of this order on the website of the Authority. Respondent is also directed to issue fresh statement of Account to the complainants. While preparing the statement of receivables and payables, respondent shall adjust the amount of interest assessed by this Authority as amount of delay interest payable to complainant

Disposed of. Files be consigned to record room and order be uploaded on the website of the Authority.

.....

RAJAN GUPTA
[CHAIRMAN]

.....

DILBAG SINGH SIHAG
[MEMBER]