



## **HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

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

### **1. COMPLAINT NO. 2446 OF 2019**

Subhash and Manisha

....COMPLAINANT(S)

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT(S)

**CORAM:** Rajan Gupta  
Dilbag Singh Sihag  
Nadim Akhtar  
Geeta Rathee Singh

Chairman  
Member  
Member  
Member

**Date of Hearing: 07.09.2022**

**Hearing: 9<sup>th</sup>**

**Present through video conference: -**

Mr. Yogesh Kumar Goyal,  
Ld. Counsel for the complainant

None for respondents.

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

1. While initiating his arguments, learned counsel for the complainant apprised the Authority that present matter was heard at length and was disposed of while granting relief of refund along with permissible interest to the complainant on last date of hearing i.e. 16.08.2022 along with other bunch



matters. However, While perusing the file, it was revealed that complainant has not attached receipts issued by respondent for paid payments. Therefore, matter was relisted for today for placing on record the receipts of paid amounts. Accordingly, today complainant has submitted said receipts via email dated 07.09.2022.

Further learned counsel for complainant stated during the hearing that the decision dated 16.08.2022 taken by the Authority in Complaint No. 2418 of 2019 titled 'Rajesh Vs. Hightech Construction Company Pvt. Ltd. squarely covers the controversy involved in the above mentioned complaint. To support his contention he briefly averred facts of the case that vide agreement dated 21.08.2015, a residential flat bearing no. 1008, in tower A3 measuring 462.93 sq.ft and 100 sq.ft of balcony was allotted to complainant for total sale consideration of Rs. 13,99,798/-. Complainant had paid an amount of Rs. 7,31,692/- plus service tax to the respondent-promoter. As evidence of said paid amounts, complainant has filed his statement of account via email dated 07.09.2022. On the other hand, respondent has admitted in his reply at Annexure -3 at page no. 19 that complainant has paid an amount of 7,50,154/- to the respondent. As per Builder buyer agreement dated 21.08.2015 respondent was under an obligation to handover possession by 20.08.2019. 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 along



with 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 16.08.2022 is reproduced below for ready references:

“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 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 capacity of complainants to pay. This amounts to breach of contract 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 % PLUS 2 % =10%	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs. )
	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/-	5,32,294/-	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. ”.



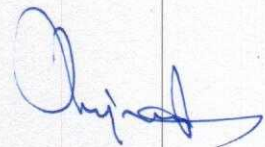
2. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 2418 of 2019 titled 'Rajesh Vs. Hightech Construction Company Pvt. Ltd. Therefore, captioned complaint be disposed of in terms of the order passed by Authority in Complaint no. 2418 of 2019.

3. In furtherance of above mentioned observation, Authority would dispose of the complaint with the order that refund of the amounts 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.

4. Accordingly, respondent is directed to refund the amount of ₹ 7,50,154/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payments till passing of this order. Authority has got the interest calculated, which works out to ₹ 5,10,018/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 07.09.2022 at the rate of 8 plus 2%= 10%. Respondent shall pay ₹ 12,60,172/- (7,50,154/- + ₹ 5,10,018/-) to the complainant within period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.



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



.....  
**RAJAN GUPTA**  
**[CHAIRMAN]**



.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**



.....  
**NADIM AKHTAR**  
**[MEMBER]**



.....  
**GEETA RATHEE SINGH**  
**[MEMBER]**