



Complaint No. 3061 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3061 OF 2019

Ajay Vinayak

....COMPLAINANTS(S)

VERSUS

M/s Jagran Developers Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 19.07.2022

Hearing: 11th

Present: Mr. Himanshu Raj, Counsel for the complainant through VC.
Mr. Drupad Sangwan, Counsel for the respondent through VC.
Mr. Rajesh Garg, Authorized Representative of respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

Captioned complaint was filed by complainant before Ld. Adjudicating Officer on 24.12.2019 for relief of refund of paid amount alongwith interest.

Notice dated 25.12.2019 was issued to respondent to file his reply and case was listed for first hearing on 13.02.2020.

2. Vide order dated 03.11.2020 the matter was transferred by Ld. Adjudicating Officer to this Authority for appropriate orders. Relevant part of the order is reproduced below:-

"Both of the captioned complaints are taken together for hearing as they involve similar issues and are against same project of respondent. Arguments of both the parties were heard on 21.08.2020 whereby statement of complainant's counsel was recorded that he restricts present complaint only to refund of principal amount alongwith interest and litigation cost.

Complainant in both the captioned complaints is seeking refund of paid amount alongwith interest. In Civil Writ Petition 38144 of 2018 titled as Experion Developers Pvt. Ltd. vs State of Haryana and others alongwith other Writ Petitions, date of decision 16.10.2020, it has been observed by Hon'ble High Court of Punjab and Haryana, Chandigarh that it is The Haryana Real Estate Regulatory Authority which has the power to examine and determine the outcome of complaint when it comes to refund of the amount and interest on the amount or directing payment of interest for delayed delivery of possession or penalty or interest thereon.

In view of aforementioned observation of Hon'ble High Court of Punjab and Haryana, Chandigarh, these files are to be dealt with by Hon'ble Real Estate Regulatory Authority, Panchkula. Both the counsels for the parties are directed to appear before Hon'ble Real Estate Regulatory Authority, Panchkula on 23.12.2020. The office is directed to update these cases in the cause list of Hon'ble Authority. Files be sent there well in time."



3. Thereafter, this case was listed for hearing before the Authority on 17.02.2022 and got subsequently adjourned for final arguments on 19.07.2022.
4. In this case, complainant has sought relief of refund of the amount paid by him to respondent alongwith 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 subjudice before Hon'ble Supreme Court.
5. 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.
6. Consequent to the decision in above referred SLPs, issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.
7. Case of the complainant is that he had booked a shop cum office space (hereinafter referred as SCO) in respondent's project named 'The Galleria,

Kurukshetra Global City', Kurukshetra, on 27.06.2011 by paying an amount of Rs.1,10,000/-. Builder buyer agreement for SCO no. UG-51 with area of 350.33 sq ft was executed between the parties on 10.04.2014. In terms of clause 27(a), possession was supposed to be delivered upto 10.10.2017 (36+6 months). It has been alleged by the complainant that respondent has failed to offer possession of booked unit despite receiving payment of Rs 16,62,501/- against basic sale price of Rs 16,83,336/-.

8. Further facts of the matter are that complainant after waiting for 2 years from the deemed date of possession had sent an email dated 08.05.2019 calling upon respondent to refund the entire paid amount with interest, but in vain. Feeling aggrieved, present complaint has been filed by the complainant seeking refund of paid amount of Rs 16,62,501/- alongwith interest.

9. On the other hand, respondent in his written reply has stated that after completing construction work of the unit they had applied for occupation certificate to the department concerned on 22.04.2019. Thereafter, offer of possession of unit in question was made to complainant on 22.01.2020 alongwith demand of Rs 2,25,109/-. Occupation certificate was received on 17.03.2020.. Further, it has been submitted that only an amount of Rs 16,04,515/- (on account of BSP) + Rs 58,314/- (service tax+GST) has been received from the complainant.



10. Ld. counsel for complainant argued that relief of refund prayed by complainant is justified for the reason that respondent failed to deliver possession of the SCO within stipulated time and as of today, complainant is a green card holder and resides in USA and due to fact of not being an Indian citizen, property in question is not of any use to complainant. He prayed for allowing this complaint in his favor.

11. Rebutting arguments of complainant's counsel, Ld. counsel for respondent argued that relief of refund sought by complainant does not deserves to be granted as unit is ready in all respects for possession and project is complete but it is the complainant who is at fault by not coming forward to take possession solely for the reason that he is now a citizen of USA. This is not a valid ground for seeking refund.

12. After hearing submissions of both parties and perusing relevant record, Authority observes and orders as follows:

- (i) Respondent admits allotment of SCO and execution of builder buyer agreement dated 10.04.2014. There is no denial to the fact of Rs. 16,62,829/- having been paid by complainant to respondent. Payment of this amount is adequately proved from statement of account attached as Annexure R-9 of reply.



(ii) Complainant herein is seeking relief of refund of paid amount with interest. However, fact remains that project has been completed by the respondent and occupation certificate has also been received. Respondent has invested the money received in the project. Real estate projects often get delayed by 2-3 years and it is presumed that allottees who become part of an under construction project are aware of it. Authority has to strike a balance between the interests of the allottees on one hand and that of the project on the other. Therefore, when a project is completed it will be deemed that promoter has invested the money received from the allottees on the project, therefore, refund in such situation is not justified. Further, plea of the complainant that property in question is not of any use since now he is not an Indian citizen is not acceptable for the reason that change in position of allottee in terms of citizenship after execution of Builder buyer agreement does not have any impact on the builder buyer agreement executed between them. Builder is under an obligation to invest the money of allottee towards construction of unit, which has been done in this case. Therefore, prayer of refund of paid amount on this ground is not justified.



(iii) As per terms of BBA executed between the parties, respondent was supposed to deliver possession latest upto 10.10.2017. Undisputedly, respondent sent an offer of possession to complainant on 22.01.2020 when it had not obtained an occupation certificate. The occupation certificate was rather received 2 months thereafter on 17.03.2020. Therefore, offer of possession will be deemed valid only with effect from 17.03.2020, and complainant deserves to be awarded delay interest from the deemed date of possession i.e. 10.10.2017 till the date of receipt of occupation certificate i.e. 17.03.2020 in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.80%).

(iv) In respect of statement of receivables and payables issued by respondent it is observed that respondent has charged holding charges to the tune of Rs 48,500/-. Regarding holding charges, it is observed that present complaint was filed on 24.12.2019 seeking relief of refund of Rs 16,62,829/- for the reason that respondent has not offered possession of booked unit till filing of present complaint. At that time plea of respondent was that they had applied for grant of occupation certificate after completing construction work of the unit. Further, possession of booked unit was actually offered on



22.01.2020 during pendency of this complaint though occupation certificate was received on 17.03.2020. Therefore, dispute between the parties was pending adjudication before this Authority. Equity demands that respondent cannot charge holding charges for such period during which the matter remained sub-judice.

(v) Another issue is in regard to calculations of delay interest of Rs 3,58,857.47/- for the period ranging from deemed date of possession (10.10.2017) to date of offer of possession (22.01.2020). Said calculations made by respondent are not correct for the reason that possession was offered by respondent on 22.01.2020 but occupation certificate was received on 17.03.2020. Therefore, valid offer of possession duly supported with Occupation certificate can only be deemed valid w.e.f from date of receipt of Occupation Certificate as stated above. Therefore, complainant is entitled for delay interest from deemed date of possession (10.10.2017) to date of receipt of occupation certificate (17.03.2020). The admissible delay interest works out to Rs 3,83,413/- as per provisions of Rules 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.8%).

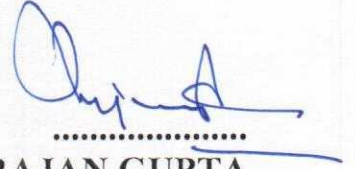


(vi) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 16,04,515/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of service tax amounting to Rs 57,986/- and Rs 328/- on account of GST from total paid amount of Rs 16,62,829/-. The amount of such taxes are not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.

(vii) Respondent is directed to issue fresh statement of accounts of receivables and payables incorporating therein delay interest of Rs 3,83,413/- in terms of principles laid down in this order to the complainant within 45 days of uploading of this order and complainant is also directed to take possession of unit after making payment of balance dues within 45 days of receipt of said statement of accounts.



13. **Disposed of** in above terms. File be consigned to record room after uploading order on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

