



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 507 OF 2019

Sanjay Thareja

....COMPLAINANT(S)

VERSUS

M/S Landmark Apartments Ltd.

....RESPONDENT(S)

## 2. COMPLAINT NO. 822 OF 2019

Hari Ram Gupta & Nisha Gupta

....COMPLAINANT(S)

VERSUS

M/S Landmark Apartments Ltd.

....RESPONDENT(S)

**CORAM:** Rajan Gupta  
Dilbag Singh Sihag

**Chairman  
Member**

**Date of Hearing:** 12.08.2022

**Hearing:** 9<sup>th</sup> in both cases

**Present: -** Complainant in person in both cases.

Ms. Shubhnit Hans, learned counsel for the respondent through video conference in both cases

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

Captioned complaints are being taken up together for hearing as facts and grievances are similar and pertains to same respondent. This order is passed taking lead case as complaint no. 507/2019.

2. While perusing the case file, it is observed that complainant had booked a residential flat in a residential group housing colony named "Landmark Imperial Heights" of the respondent company situated at Sector 88, Faridabad, Haryana. Flat no. D-204 was allotted to him in January 2013. A copy of allotment letter is annexed at Annexure C-1. Complainant claimed to have paid an amount of Rs 45,50,000/- to respondent against the total sale consideration of ₹ 59,22,100/- till date. However, he has annexed receipts of only an amount of Rs 35,31,000/- against the claimed amount as Annexure C-2.
3. During court proceedings, Complainant alleged that respondent had promised to deliver possession of booked flat by the end of January 2016 however respondent has failed to do so. Complainant submitted that he had sent various reminder letters and legal notices to respondent to know exact status of the project but received no communication. A copy of legal notice dated 24.12.2018 is annexed as Annexure C-5. Complainant further submitted that in the year 2018 the license of this group housing colony got expired and the construction of the project came to a halt. Thereafter, complainant stopped



making further payments. Complainant alleged that an inordinate delay of more than 8 years has already taken place in delivery of possession of the booked unit and still there is no hope of completion of project in foreseeable future. Feeling aggrieved, complainant has sought relief of refund of entire money paid by him along with from payment of interest for delay.

4. Respondent in his reply has submitted that DTCP had granted license bearing no. 10 of 2010 for area measuring 10.931 acres dated 23.01.2010 for construction of the project in question in the name of M/s Universal Buildwell Pvt Ltd c/o M/s Landmark Apartments Pvt. A copy of the said license is annexed as Annexure R-2. Thereafter, respondent company and M/s Universal Buildwell Ltd. applied for bifurcation of license to Department of Town and Country Planning. But DTCP has declined request for bifurcation of license. As a result, respondent company challenged said order before the Hon'ble Punjab & Haryana High Court, Chandigarh bearing no. CWP No.4077 of 2018 titled as "M/s Landmark Apartment Pvt Ltd v State of Haryana, wherein notice has been issued but the same was pending for adjudication.

Meanwhile, Department has cancelled said license no.10 of 2010 vide order dated 25.07.2018. Respondent also challenged said orders before the Hon'ble Punjab and Haryana High Court vide CWP titled as 24568 of 2018 titled as Landmark Apartments Pvt Ltd vs State of Haryana and others. Relevant



part of the orders passed in aforesaid Civil Writ Petitions are reiterated in following paragraph.

5. While perusing case file, it is revealed that the matter was heard at length on 10.10.2019 and 03.03.2020. Operative part of the said orders are reproduced below:

1. Learned counsel for the respondent has apprised that his part of the project has already been completed but on count of non-renewal of license of project of the respondent, the occupation certificate has been withheld by Department of town and country planning. Haryana against which respondent approached to the Hon'ble High Court for bifurcation of the license and Hon'ble High Court was pleased to allow the writ petition. The operative part of the same was produced below:

"We are actually conscious of the fact that this project since inception was lawful and the only dispute that has emerged it form the concern of the State regarding impermissibility of bifurcation of the license which would mean that petitioner would develop some additional area out of the composite area, already a part of the project when conceptualized. We have noticed that proviso to rule 17 does permit transfer in part therefore, it is not a case where license necessarily has to be transferred as hole only as is argued by the state. Evidently, there are certain condition prescribed to such a transfer. Assuming for the sake of argument that such a transfer is totally impermissible as the state contends, then the question that needs attention is rather the residents of the area who have invested in the project considering it to be lawful as it was indeed, can be made to suffer on account of technical objection of the respondents in not permitting such a transfer of license against some portion of the land, which originally was a part of the land owned by the developer in agreement for development with the petitioner. Needless to say, the state is very well within its right to see that the project as conceptualized and executed is not flouted for which what has be ensured is the execution. Bifurcation of a

license is a procedure between the developer and the state. Law permits it either in complete or in parts with stipulation of payment, an accompanying amount, provided under Rule 17 which the petitioner indeed would be bound to satisfy through payment but is proportionately as per the area mentioned. We permit the petitioner to seek occupancy certificate which the respondent shall not deny after the payment in above so as to ensure that the interest of flat owners doesn't suffer particularly when no objection has been raised by the state regarding the lawful character of the project and its execution."

He further states that the department has not complied with the orders of the Hon'ble High Court till date. Therefore, the Authority may direct be department to grant occupation certificate for his part of the project.

4. After going through written as well as verbal submissions. Authority is of the view that a report may be sought from DTCP whether department is inclined to comply with the order of the Hon'ble High Court to bifurcate the license and issue occupation certificate accordingly. So, department of Town and Country Planning is directed to file its reply before next date of hearing."

6. Authority vide its order dated 03.03.2020 had expressed its prima facie view that this case is fit case for refund. The operative part of the same is reproduced below for reference:

In previous orders dated 10.10.2019 and 23 01.2020, the Authority sought a report from DTCP, Panchkula, wherein it was directed to file its reply in relation to the order passed by the Hon'ble High Court to bifurcate the license and issue occupation certificate accordingly. A reply has been received from the concerned department stating that there is no such provision of bifurcation of license in the HDRA Act, 1976 and its rules, 1976. The operative part of the same was produced below

"M's Landmark Apartment Pvt Ltd had filed a CWP No 24568 of 2018 in the Hon'ble Punjab and Haryana High Court and in this writ petition the Hon'ble High Court vide

orders dated 28.10.2018 has kept in abeyance the license cancellation order dated 17.07.2018 passed by DTCP Haryana. Further, the Hon'ble High Court vide order dated 10 05 2019 in Civil writ petition no. 24568 of 2018 while admiring the petition has permitted Landmark Apartment Pvt Ltd to bifurcate the license no 10 of 2020 granted for setting up of a Group Housing colony on the land measuring 10.931 acres falling in sector- S5 & 88 Faridabad to Universal Buildwell Pvt Ltd in collaboration with Landmark Apartment Pvt Ltd and has further permits to seek occupancy certificate which the Department cannot deny after the payment is made by Landmark Apartment Pvt Ltd. There is no such provisions of bifurcation of license in the Haryana development and regulation of urban areas act 1975, and its rules, 1976 and AG Haryana has opined that this is a fit case filing the SLP Accordingly the department has filed SLP No. 21573 of 2019 before Hon'ble Supreme Court of India where in on dated 13-09-19, the following order has been passed

"the petitioner will not be compelled to bifurcate the license, until further orders"

2. The Authority observes since the bifurcation has been denied by DTCP and a SLP filed by the department against the order of Hon'ble High Court is Complaint No. 507,827. 1608/2019 also sub-judice before the Hon'ble Supreme Court, therefore, the relief of possession cannot be granted, So, it is a fit case for relief of refund. However, at present, the Authority cannot deal with complaints in which relief of refund has been sought, for the reason of stay granted by Hon'ble Punjab and Haryana High Court vide order dated 25.11.2019 in writ petition no. CWP-34244 of 2019 titled Wg. Cdr. Sukhbir Kaur Minhas Versus State of Haryana and Others against the operation of Haryana Real Estate (Regulation and Development) Amendment Rules 2019, by virtue of which the power of granting relief of refund to allottees was conferred to this Authority. Hence, the Authority decides to adjourn these complaints to 28.05.2020 to await the outcome of matter pending before the Hon'ble Punjab and Haryana High Court."

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7. However, this matter was adjourned sine die on account of dispute regarding jurisdiction of the Authority which was sub judice before Hon'ble Supreme Court.

8. Now, 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 C No.13005 of 2020 Etc.] disposed of on 12.05.2022 shall be available to the petitioners in the instant matters.

Consequent to the decision of above referred SLPs, issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.

9. Considering all submissions and averments made by both parties and status of ongoing litigation between Town and Country Planning and respondent party, Authority observes and orders as follows:

- (i) In nutshell, case of the complainant is that he had booked a residential flat in the year 2013 and, possession of the same was to be delivered by January 2016. Respondent despite receiving more than

80% of total sale consideration has failed to deliver possession till date. Complainant has prayed for refund of paid amount on the ground that extraordinary delay of more than 5 years has taken place in delivery of possession and still there is no of its completion in near foreseeable future.

(ii) Considering factual position, Authority observes that the litigation between respondent and Town and Country Planning is pending on the issue of bifurcation of license for development of project in question, which will certainly delay the completion of project and further grant of necessary approvals from concerned department. In such like cases, the Authority cannot force the complainant to wait for indefinite period awaiting delivery of possession.

(iii) Therefore, Authority is of considered view that by virtue of Section 18, a right has been granted to complainant to continue with the project or to opt for refund of his paid amount. Moreover, in the cases where there is no definite period for completion of project and delivery of possession, Authority cannot compel a complainant allottee to wait merely on the assurances of the respondent promoter that the project will be completed by them. So, Authority decides that complainant is entitled to relief of refund of paid amount along with interest as per provisions of Rule 15 of HRERA Rules, 2017.

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(iv) Accordingly, respondent is directed to refund the amount paid by the complainant along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) 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 receipt of amounts till date of this order.

(v) The total interest payable by the respondents to the complainants works out to Rs. 30,15,922/- calculated in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % which is 9.80% p.a. simple interest. Details are as follows:

S. No	Principal Amount	Date of Payment	Interest Accrued till 12.08.2022 @ 9.80%	Total
1.	Rs. 5,00,000/-	14.01.2013	Rs. 4,69,595/-	Rs. 9,69,595/-
2.	Rs. 3,00,000/-	18.04.2013	Rs. 2,74,185/-	Rs. 5,74,185/-
3.	Rs. 5,00,000/-	21.06.2013	Rs. 4,48,384/-	Rs. 9,48,384/-
4.	Rs. 6,50,000/-	07.10.2013	Rs. 5,64,050/-	Rs. 12,14,050/-
5.	Rs. 7,00,000/-	15.04.2014	Rs. 5,71,729/-	Rs. 12,71,729/-
6.	Rs. 4,00,000/-	22.06.2014	Rs. 3,19,399/-	Rs. 7,19,399/-
7.	Rs. 4,81,000/-	20.10.2014	Rs. 3,68,580/-	Rs. 8,49,580/-
<b>Total</b>	<b>Rs. 35,31,000/-</b>		<b>Rs. 30,15,922/-</b>	<b>Rs. 65,46,922/-</b>

Complainant claims to have paid Rs. 45,50,000/- but receipts corresponding to Rs. 35,31,000/- has only been annexed with complaint file.

For receipt of balance amount, an email dated 02.09.2022 was sent to complainant but again receipts for only Rs. 35,31,000/- were submitted. In absence of any substantive proof for payment of total Rs. 45,50,000/-, Authority is hereby allowing refund of only amount of Rs. 35,31,000/- for which proper receipts have been annexed in complaint file. Authority hereby orders that the respondent shall refund the principal amount of Rs. 35,31,000/- plus interest amount of Rs. 30,15,922/- which works out to be Rs. 65,46,922/- to the complainant, within a period of 90 days i.e. the period prescribed under Rule 16 of the HRERA Rules, 2017.

10. In complaint no. 822/2019, respondent shall refund the principal amount of ₹ 38,91,920 plus interest amount of ₹ 40,39,780/- which works out to be ₹ 79,31,700/- to the complainant, within a period of 90 days i.e. the period prescribed under Rule 16 of the HRERA Rules, 2017. Details are as follows:

S. No	Principal Amount	Date of Payment	Interest Accrued till 12.08.2022 @ 9.80%	Total
1.	₹ 1,00,000/-	24.05.2010	₹ 1,19,855/-	₹ 2,19,855/-
2.	₹ 2,83,000/-	30.07.2010	₹ 3,34,100/-	₹ 6,17,100/-
3.	₹ 2,83,000/-	27.12.2010	₹ 3,22,702/-	₹ 6,05,702/-
4.	₹ 2,00,000/-	04.10.2011	₹ 2,12,969/-	₹ 4,12,969/-
5.	₹ 1,00,000/-	04.10.2011	₹ 1,06,484/-	₹ 2,06,484/-
6.	₹ 90,000/-	04.10.2011	₹ 95,836/-	₹ 1,85,836/-

7.	₹ 1,57,500/-	04.10.2011	₹ 1,67,713/-	₹ 3,25,213/-
8.	₹ 2,82,800	12.01.2012	₹ 2,93,545/-	₹ 5,76,345/-
9.	₹ 5,47,420/-	22.03.2012	₹ 5,57,930/-	₹ 11,05,350/-
10.	₹ 1,24,200/-	30.06.2012	₹ 1,23,250/-	₹ 2,47,450/-
11.	₹ 3,00,000/-	30.06.2012	₹ 2,97,705/-	₹ 5,97,705/-
12.	₹ 10,00,000/-	30.06.2012	₹ 9,89,666/-	₹ 19,89,666/-
13.	₹ 4,24,000/-	24.07.2012	₹ 4,18,025/-	₹ 8,42,025/-
<b>Total</b>	<b>₹ 38,91,920/-</b>		<b>₹ 40,39,780/-</b>	<b>₹ 79,31,700/-</b>

11. Complaints are, accordingly **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.

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

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