



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1217 OF 2021

Mr Sudarshan Khanna & Mrs Asha KhannaCOMPLAINANTS

VERSUS

ANSAL PROPERTIES AND INFRASTRUCTURE LTD.RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 05.05.2022

Hearing: 3rd

Present through video call: - Sh. Jagdeep Kumar, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent.

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. Complainant in the instant complaint has stated that he had booked a flat bearing No.307-, Third Floor, in Tower- B admeasuring area 975 sq. ft., in respondent project named "Europa Residency " situated in Sonapat in the year

2009. However, respondent vide letter dated 26.12.2012 has changed the allotted flat from B 307 to C-702 and area of the flat has been increased from 975 sq. ft. to 1265.825 sq. ft. Accordingly, he had already paid Rs. 18,06,256/- against total sale consideration of Rs 20,98,750/. In support of his contention of amount paid, he annexed receipt of ₹ 18,06,256/- at page no 55-81 of the complaint. As per agreement dated 04.04.2011, Respondent was required to deliver possession by 05.07.2014. Complainant has sought refund along with interest on the ground that project has not been constructed, Respondent failed to deliver possession on time. Therefore, complainant sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.

2. On the other hand, respondents, in their reply have raised by and large technical objections like complaint is not maintainable, RERA Act cannot be implemented with retrospective effect, Authority does not have jurisdiction of hearing the complaint, complaint has not been filed on proper format etc. From a reading of para-9 of the reply submitted by the respondent, it could be clearly made out that respondents have conceded that they were not in a position to complete the project. Further, respondent is ready to consider allotment of an alternate flat to the complainant in another project namely Anand Lok, Sonapat.

3. Sh. Jagdeep Kumar, learned counsel for complainant stated that he does not wish to have an alternate apartment and complainant pressed for relief of refund along with interest and compensation.

4. Since Vide, captioned complaint, complainant has sought relief of refund but the same was kept sinedie 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, position of law has changed on account of verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh 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. Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. vide order dated 13. 01.2022. Consequent upon above judgment passed by Hon'ble High Court, this Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

“4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court. Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech

Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be

taken into consideration after vacation of stay. Action be initiated by registry accordingly.”

Since the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with this matter on its merits.

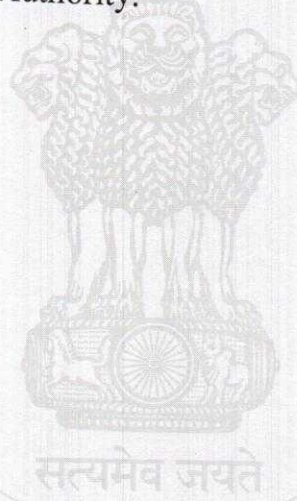
5. Authority observed that admittedly, booked flat of complainant was nowhere near completion due to non-construction at site by the respondent, who has offered to re-allot unit of the complainant in Anand Lok, Sonapat, but the same was not acceptable to the complainant. The Authority has laid down a principle that an alternate unit can be offered to an allottee only with his express written consent. Allottees have a right to get possession of only the apartment booked by them. As per law, they cannot be forced to relocate themselves to an alternate unit. Respondent have failed to show any progress of project in question nor they are in a position to commit any time line to complete it.

On above foregoing findings, relief claimed by the complainants i.e. refund of the amount paid by them to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 deserves to be granted from the respective dates of making payment till the actual realization of the amount.

Further Authority directs the respondent to refund entire principal amount of ₹ 18,06,256/- to complainant with interest. Authority has got calculated interest, which works out to be ₹ 15,87,773/-. This interest has been calculated

from the date of making payments by the complainant upto the date of passing of this order i.e. 05.05.2022 at the rate of 9.40%. Now, respondent has to pay total amount of ₹ 33,94,029/- (₹18,06,256/- + ₹ 15,87,773) to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days in two equal installments. First installment of 50% of total amount shall be payable by respondent to complainant within 45 days of uploading of this order and remaining 50% in next 45 days.

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



.....
RAJAN GUPTA
[CHAIRMAN]

.....
DILBAG SINGH SIHAG
[MEMBER]