# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**1. COMPLAINT NO. 1299 OF 2020**

Harish kumar & ors. ....COMPLAINANT

VERSUS

ANSAL PROPERTIES & INFRASTRUCTURE LIMITED ....RESPONDENT

**2. COMPLAINT NO. 1307 OF 2020**

SUSHMA SHADIJA & ors. ....COMPLAINANT

VERSUS

ANSAL PROPERTIES & INFRASTRUCTURE LIMITED ....RESPONDENT

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

**Date of Hearing:** 01.04.2022

**Hearing**: 17th in both complaints

**Present through video call:** Sh. Abhishek Gupta Advocate, counsel for complainant in both complaints
Sh. Ajay Ghangas, counsel for respondent in both complaints

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

1. Captioned complaints are being disposed of together by this common order. Complaint No.1299 of 2020 titled as Harish Kumar & Ors Versus Ansal Properties & Infrastructure Pvt. Ltd. has been taken as a lead case.

2. Complainant in this case had booked a flat in respondent project named "Green Escape Aparments" situated in Sonepat and was allotted Unit No.0102-38-0603. He had already paid Rs. 47,59,912/- against total sale consideration of Rs 41,14,400/. In support of his contention of amount paid, he annexed receipt of ₹ 47,59,912/-, at page no.56 to 70 of the complainant. However in complaint, it is mentioned that almost 10 years have lapsed since complainant had paid booking amount of Rs. 211017/- on 28.09.2011 to the respondent but promoter had miserably failed to deliver possession to the complainant till date. Aggrieved by the action of the respondent, complainant sought refund of paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules 2016.

3. On the other hand, respondent 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. Further in para-9 of the reply submitted by the respondent, he admitted that due to reasons beyond their control construction of project is stopped. However

respondent is ready to consider allotment of an alternate flat to the complainant in another project of the respondent.

4. Sh. Abhishek Gupta, learned counsel for complainants stated that they did not wish to have an alternate apartment and complainants pressed for relief of refund along with interest and compensation.

5. Since Vide captioned complaints, complainants have 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, the 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.

6. After going through record and the reply of respondent as captured in para no. 3, that due to reasons beyond their control project cannot be developed in time, Authority comes to conclusion that respondent have failed to develop the project on time and admittedly it is not being developed. Accordingly, booked flat of complainant cannot be completed in foreseeable future. Respondents have in fact offered to re-allot another unit to the complainant but the same is not acceptable to the complainant. 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 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.

In view of above 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.

Authority accordingly orders refund of the money paid by all the complainants along with interest as shown in the table below-

| Sr. No. | COMPLAINT NO. | TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.) | INTEREST (In Rs.) @ 9.30 | TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs. ) |
|---|---|---|---|---|
| | 1299/2020 | 47,59,912/- | 44,67,422/- | 92,27,334/- |
| 2. | 1307/2020 | 26,87,405/- | 24,19,124/- | 51,06,529/- |

7. Respondent is directed to pay total amounts within a period of 90 days from the date of uploading of the order on the website of the Authority.

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

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

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