



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2172 OF 2019

ROHITA KHERA AND RAJAN KHERACOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

2. COMPLAINT NO. 1258 OF 2019

Sunaina KhannaCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

3. COMPLAINT NO. 1290 OF 2019

Divya SaxenaCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

4. COMPLAINT NO. 1295 OF 2019

Garima SharmaCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

5. COMPLAINT NO. 466 OF 2019

Meenakashi KapoorCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

6. COMPLAINT NO. 362 of 2020

Smt Anupama GuptaCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

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

Date of Hearing: 02.03.2022

Hearing: 5th (in complaint nos. 2172 of 2019)

10th (in complaint nos. 1290,1295,1258 of 2019)

8th (in complaint no. 466 of 2019)

4th (in complaint nos. 362 of 2020)

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Present through video calling: -

Adv. Chaitanya Singhal, learned counsel for complainant (in complaint nos. 362 of 2020)

Adv. Vivek Sethi, learned counsel for the complainant (in Complaint no.1258,1290,1295, of 2019)

Adv. Nimish Chib, learned counsel for the complainant (in Complaint no.2172 of 2019)

None for the complainant (in complaint no. 466 of 2019)

Adv. Ajay Ghangas, learned counsel for the respondents (in all complaints)

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned bunch of complaints is being disposed of together by this common order. Complaint No.2172 of 2019 titled "Rohit Kherra and Rajan Kherra Versus Ansal Properties & Infrastructure Pvt. Ltd". has been taken as lead case.
2. Complainant in the lead case had booked a flat bearing no.0102-14-1104, in Tower T-14 admeasuring 1717 sq. ft. in respondent's project "Green Escape Apartments", Sonapat on 09.05.2012. Total sale consideration of the flat was Rs. 35,69,095/- plus additional charges, against which complainant had already paid an amount of Rs. 13,56,654/-. Both parties signed flat buyer agreement dated 19.05.2012. As per Clause 5.1 of the agreement, possession of booked property was to be delivered within 42



months with a grace period of 6 months. So, deemed date of possession comes to 20.05.2016. Learned counsel states that there is no possibility of getting the project completed in near future. For the reason of inordinate delay of over six years having already been caused and there being no hope of its completion in near future. Complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that total paid amount of Rs.13,56,654/- given to the respondent may be refunded along with interest calculated from the date of payment till the payment of the entire amount of principal and accrued delay interest thereon.

3. A table has been prepared by the Authority, wherein details regarding date of booking; date of FBA execution ; deemed date of completion of project; payment made by the complainants against their respective sale consideration have been summarised. Said table is reproduced below:

Sr. No.	COMPLAINT NO.	Tower	DATE OF AGREEMENT	TOTAL SALES CONSIDERATION (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION
1.	2172/2019	14	19.05.2012	35,69,095/-	13,56,095/-	20.05.2016
2.	1258/2019	36	14.02.2012	53,86,400/-	36,83,332/-	15.02.2016
3.	1290/2019	39	14.02.2012	37,38,300/-	35,23,031/-	15.02.2016
4.	1295/2019	39	25.08.2011	38,40,300/-	36,46,832/-	26.08.2015
5.	466/2019	21	07.05.2012	32,07,015/-	28,36,157/-	08.05.2016
6.	362/2019	39	09.08.2008	27,63,750/-	07,08,911/-	10.02.2011

4. On the other hand, respondent in their reply have raised mostly technical objections like the complaint is not maintainable; RERA Act



cannot be implemented with retrospective effect; Authority does not have jurisdiction to hear the complaint; complaint has not been filed on proper format etc. From a reading of para-8 of the reply submitted by the respondents is clearly made out that respondents are not in a position to complete the project due to 'unavoidable circumstances'. Further, respondents are ready to consider allotment of an alternate flat to the complainant in other project of the respondent.

5. Sh. Nimish Chib and other counsels in unanimous stated that they do not wish to have an alternate apartment and complainants presses for relief of refund along with interest and compensation.

6. In all the captioned complaints complainants are seeking relief of refund. These complaints were filed in the year 2019-2020 but had not been taken into consideration by Authority due to the fact that 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 regarding jurisdiction of Authority stands finally settled, Authority hereby proceeds with dealing with all the matter on their merits.

7. After going through record and the reply of respondent as captured in para no. 4, 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. Authority has laid down a principle that 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 not failed to show any progress of towers nor are they in a position to commit any time line to complete the project. Delay of nearly six year has already been caused.

For the foregoing reasons relief claimed by complainants i.e. refund of the amount paid by them to the respondents along with interest per Rule 15 of RERA, Rules, 2017 deserves to be granted from respective dates of making payments till passing of this order. If delay is caused further by the respondents, additional interest will also be payable.

8. 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 claimed to be paid by the complainant (In Rs.)	Total amount on which interest is calculated (in Rs.)	INTEREST (In Rs.) @ 9.30	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
	2172/2019	13,56,095/-	13,56,095/-	11,94,748/-	25,51,402/-
2.	1258/2019	36,83,332/-	36,83,332/-	31,01,246/-	67,84,578/-
3.	1290/2019	35,23,031/-	35,23,024.55/-	29,15,464/-	64,38,488.55/-
4.	1295/2019	36,46,832/-	36,37,831/-	29,10,385/-	65,48,216/-
5.	466/2019	28,36,157/-	28,36,187/-	24,12,273/-	52,48,460/-
6.	362/2019	07,08,911/-	07,08,911/-	1023051/-	17,31,962.6/-

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9. Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.

Disposed of. Files be consigned to the record room after uploading of order.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

