



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1530 OF 2020

SANJEEV KUMAR AGGARWALCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

2. COMPLAINT NO. 1529 OF 2020

VINOD KUMARCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

3. COMPLAINT NO. 1534 OF 2020

SURESH KUMAR GUPTACOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

4. COMPLAINT NO. 1540 OF 2020

RUBY SOBTICOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

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5. COMPLAINT NO. 1542 OF 2020

MANOJ JINDALCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

6. COMPLAINT NO. 241 of 2021

NEELAM ALIAS NEELAM KAPOORCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

7. COMPLAINT NO. 297 of 2021

MAHAVIR SINGH RAWAL AND ANRCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

8. COMPLAINT NO. 339 of 2021

MANMOHAN SINGH RATHORE AND ANRCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT



9. COMPLAINT NO. 445 of 2021

PRADEEP KUMARCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

10. COMPLAINT NO. 496 of 2021

RAJESH KUMARCOMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.RESPONDENT

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

Date of Hearing: 01.04.2022

Hearing: 14th (in complaint nos. 1530,1529,1534,1540,1542 of 2020)
12th (in complaint nos. 241 of 2021)
10th (in complaint no. 297,339 of 2021)
11th (in complaint nos. 445,496 of 2021)

Present through video calling: - Adv. Ashish Bakshi, learned counsel
for complainant in all complaints

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.1530 of 2020 titled "Sanjeev Kumar Aggrawal Versus Ansal Properties & Infrastructure Pvt. Ltd". has been taken as lead case.

Complainant in the lead case had booked a flat/ Apartment bearing no.0014-E-0302, in Tower E admeasuring 975 sq. ft. in respondent's project "THE EUROPA RESIDENCY", Sonapat on 28.05.2010. Total sale consideration of the flat was Rs. 20,48,750/- plus additional charges, against which complainant had already paid an amount of Rs. 17,75,979/-. Both parties signed flat buyer agreement dated 28.05.2010. As per Clause 10.1.a of the agreement, possession of booked property was to be delivered within 36 months from signing of agreement. Therefore, deemed date of possession in this case was 29.11.2012. Complainant has further stated that respondent changed his allotment flat/apartment from no. 0114-E-0302 to no. 0114-E-0701, and also area of flat was increased from 975 sq.ft. to 1281.713 sq.ft.

Learned counsel for complainant stated that respondent has raised only bare structure upto 7th Floor and work thereafter was stopped. The project is lying abandoned for last 7-8 years. Learned counsel states that there is no possibility of getting the project completed in near future. For the reason of inordinate delay of over ten 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. 17,75,979/- 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.

2. 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.	1530/2020	E	28.05.2010	26,27,511/-	17,75,979/-	29.11.2012
2.	1529/2020	E	01.09.2010	27,89,874/-	20,37,848/-	02.03.2013
3.	1534/2020	B	13.11.2009	28,21,523/-	22,47,267/-	14.05.2012
4.	1540/2020	D	17.02.2010	26,94,941/-	18,23,811/-	18.08.2013
5.	1542/2020	O	06.08.2010	37,15,050/-	18,97,374/-	07.02.2013
6.	496/2021	E	23.09.2013	26,94,951/-	18,088,15/-	24.09.2017
7.	339/2021	F	23.09.2013	25,94,951/-	18,07,161/-	24.09.2017
8.	445/2021	E	23.09.2013	25,94,951/-	18,08,927	24.09.2017
9.	297/2021	F	25.11.2009	27,21,535/-	12,48,688/-	26.05.2012
10.	241/21	C	06.07.2010	26,77,506/-	12,16,583/-	07.01.2013

3. 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-9 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.

4. Sh. Ashish Bakshi learned counsel for complainant stated that they do not wish to have an alternate apartment and complainant presses for relief of refund along with interest and compensation.

5. In all the captioned complaints complainants are seeking relief of refund. These complaints were filed in the year 2020-2021 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.

6. Authority observes that admittedly, apartment allotted to complainants are not anywhere near completion as was also clearly admitted by the learned counsel for respondent . Respondents have offered to allot another unit to the complainants in some nearby project of the respondent, but the same is not acceptable to the complainant. The 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 failed to show any progress of tower nor are they in a position to commit any time line to complete the project. Delay of nearly ten 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 @ 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.

7. 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.)
	1530/2020	17,75,979/-	17,75,979/-	14,93,004/-	32,68,983/-
2.	1529/2020	20,37,848/-	20,37,847.69/-	17,07,405/-	37,45,252.69/-
3.	1534/2020	22,47,267/-	21,94,252.5/-	19,55,825/-	41,50,077.5/-
4.	1540/2020	18,23,811/-	16,47,836/-	13,64,796/-	30,12,632/-
5.	1542/2020	18,97,374/-	18,97,374/-	17,17,434/-	36,14,808/-
6.	496/2021	18,088,15/-	18,088,15/-	15,87,224/-	33,96,039.47/-
7.	339/2021	18,07,161/-	16,64,143.47/-	14,06,062/-	30,70,205.47/-
8.	445/2021	18,08,927/-	18,08,927/-	15,65,758/-	33,74,685.85/-
9.	297/2021	12,48,688/-	12,48,688.89/-	11,20,946/-	23,69,634.89/-
10.	241/21	12,16,583/-	12,16,583/-	11,11,451/-	23,,28,034/-

In complaint nos. 1534,1540/2020; 339/21, complainants have not attached all the receipt of paid amounts. However, an email dated 08.06.2022 was sent to learned counsel for complainants in captioned complaints to place on record receipts of total claimed amount in order to enable the authority to calculate the interest there on but complainants have not sent any payments proofs/ receipt in these three cases. Therefore, Authority calculates interest on the basis of available record in the following manner:

In complaint no 1534/20, complainant has alleged that he had paid an amount ₹ 22,47,267/- . However, he had annexed a table at page no 5 of complaint, whereby details of paid amount of ₹ 21,94,252.5/- has been provided and as proof of it, receipts of paid amount of ₹ 21,94,252.5/- are only annexed at page no. 37 to 54 of complaint. Accordingly, complainant is entitled to receive interest on amount of ₹ 21,94,252.5/- instead of claimed amount of ₹ 22,47,267/-.

In complaint no 1540/20, complainant has alleged that he had paid an amount ₹ 18,23,811/-. However, he had annexed a table at page no 5 of complaint, whereby details of paid amount of ₹ 16,47,836/- has been provided and as proof of it, receipts of paid amount of ₹ 16,47,836/- are only annexed at page no. 37 to 52 of complaint. Accordingly, complainant is entitled to receive interest on amount of ₹ 21,94,252.5/- instead of claimed amount of ₹ 18,23,811/-.

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In complaint no 339/21, complainant has alleged that he had paid an amount ₹ 18,07,161/- . However, he had annexed a table at page no 5 of complaint, whereby details of paid amount of ₹ 16,64,143.47/- has been provided and as proof of it, receipts of paid amount of ₹ 16,64,143.47/- are only annexed at page no. 36 to 52 of complaint. Accordingly, complainant is entitled to receive interest on amount of ₹ 16,64,143.47/- instead of claimed amount of ₹ 18,07,161/-.

8. 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]