



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2893 OF 2019

SAM KURIEN

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

2. COMPLAINT NO. 497 OF 2019

SHASHI SAINI

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

3. COMPLAINT NO. 1153 OF 2020

SUNIL KUMAR SHARMA

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

4. COMPLAINT NO. 53 OF 2021

MAINSH KAMDAR AND ANR

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

CORAM:

Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 01.06.2022

Hearing: 13th (in complaint nos. 497 of 2019)

13th (in complaint nos. 53 of 2021)

3rd (in complaint nos. 1153 of 2020)

4th (in complaint no. 2893 of 2019)

Present through video calling: -

Adv. Satish Rana, learned counsel for complainant (in complaint no. 2893/2019)

Adv. Chaitanya Singhal, learned counsel for complainant (in complaint no. 1153/2020)

Adv. Karan Arora, learned counsel for complainant (in complaint no. 53/2021)

None for complainant (in complaint no. 497/2019)



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

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. Captioned bunch of complaints is being disposed of together by this common order. Complaint No. 2893 of 2019 titled "Sam Kurien Versus Ansal Properties & Infrastructure Pvt. Ltd" has been taken as lead case.

Complainant in the lead case had booked a flat/ Apartment bearing no.403, in Tower A admeasuring 1335 sq. ft. in respondent's project "THE EUROPA RESIDENCY", Sonapat in year 0f 2010. Total sale consideration of the flat was Rs. 27,86,750/- against which complainant had already paid an amount of Rs. 13,30,094/-. Both parties signed flat buyer agreement dated 03.09.2010. As per Clause 10.1.a of the agreement, possession of booked property was to be delivered within 36 months with an additional grace period of 3 months from signing of agreement. Therefore, deemed date of possession in this case was 04.12.2013. Complainant has further stated that respondent changed his allotment flat/apartment from no. A- 403 to no. G- 701, and also area of flat was increased from 1335 sq. ft. to 1701.2 sq.ft.

Learned counsel for the complainant stated that construction of the project is at mere rudimentary level and further would take years for completion of project. There is no possibility of getting the project completed in near future. For the reason of inordinate delay of over nine years and 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 ₹ 13,30,094/- to the respondent may be refunded along with permissible 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.	2893/2019	G	03.09.2010	27,86,750/-	13,30,094/-	04.12.2013
2.	497/2019	F	01.09.2010	20,48,750/-	11,96,556/-	02.12.2013
3.	1153/2020	G	01.09.2010	29,35,950/-	16,25,926/-	02.12.2013
4.	53/2021	F	01.10.2010	27,89,888/-	20,42,247/-	02.01.2014

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 to hear the complaint; complaint has not been filed on proper format etc. Further in para-9 of the reply submitted by the respondents, he stated that project got delayed due to reasons beyond their control. Further, respondents

are ready to consider allotment of an alternate flat to the complainant in other ready to move project of the respondent.

4. Sh. Satish Rana, learned counsel for complainant stated that they do not wish to have an alternate apartment rather press for relief of refund along with interest and compensation. Respondent counsel Sh. Ajay Ghangas, had also made a statement during course of hearing that respondent would not in a position to complete the project, therefore, possession to complainant cannot be delivered.

5. Since, vide captioned complaints complainants have sought relief of refund but the same was kept 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, in view of Judgment passed by Hon'ble Supreme Court 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. plea raised against the maintainability of the complaint is no more tenable. Since the issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with all the matter on their merits.

6. After going through record, considering statement given by respondent counsel in court proceeding today and reply of respondent



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. 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 in terms of 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-

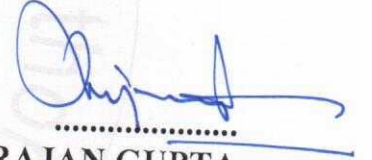
Sr. No.	COMPLAINT NO.	Total amount claimed to be paid by the complainant (In Rs.)	Total amount on which interest is calculated (in Rs.)	INTEREST (In Rs.)	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
	2893/2019	13,30,094/-	13,30,094.32	13,15,932/-	26,46,026.32/-
2.	497/2019	11,96,556/-	11,96,556/-	11,49,872/-	23,46,428/-
3.	1153/2020	16,25,926/-	16,24,052.3/-	15,58,724/-	31,82,776.3/-

4.	53/2021	20,42,247/-	20,42,250.29/-	17,84,571/-	38,26,821.29/-
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In complaint no 1153/20, complainant has alleged that he had paid an amount ₹ 16,25,926/- . However, he had annexed a table at page no 11 of complaint, whereby details of paid amount of ₹ 16,24,052.3/- has been provided and as proof of it, receipts of paid amount of ₹ 16,24,052.3/- are only annexed at page no. 47 to 60 of complaint. Accordingly, complainant is entitled to receive interest on amount of ₹ 16,24,052.3/- instead of claimed amount of ₹ 16,25,926/-.

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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]