



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2904 OF 2019

Kusum Chhibber

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

2. COMPLAINT NO. 2969 OF 2019

Deepak Taneja

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

3. COMPLAINT NO. 2983 OF 2019

Manikunju PP and Mollykutty Mani

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

4. COMPLAINT NO. 2984 OF 2019

Prabir Das and Deepa Das

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

5. COMPLAINT NO. 2986 OF 2019

Prabir Das and Deepa DasCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

6. COMPLAINT NO. 3070 of 2020

Sandeep Satyapal Chugh and Upasana ChughCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

7. COMPLAINT NO. 773 OF 2020

R K Singh son of Shatrughan SinghCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT

8. COMPLAINT NO. 1403 OF 2020

Maitreyee SaklaniCOMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.RESPONDENT



9. COMPLAINT NO. 2864 OF 2019

Arun Gupta

....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 12.05.2022

**Hearing: 5th (in complaint case no. 2904, 2969, 2983, 2984, 2986, 3070, 773
of 2019)**

4th (in complaint case no. 2864 of 2019 and 1403 of 2020)

Present: -

Adv. Jagdeep Singh Rana, learned counsel for the complainant through video conferencing (in complaint case no. 2904, 2969, 2983, 2984, 2986, 3070, 2864 of 2019 and 773 of 2020)

None for the complainant (in complaint case no.1403 of 2020)

Adv. Sourabh Goel , learned counsel for the respondent through video conferencing (in all complaints)

ORDER (RAJAN GUPTA - CHAIRMAN)

1. All captioned complaints are taken up together as facts and grievances of all complaints are more or less identical and relate to the same project of the respondent situated at Sector-89, Faridabad. Complaint no. 2864



of 2019 titled "Arun Gupta Vs M/s Ferrous infrastructure Pvt. Ltd." has been taken as lead case for disposal of the matters.

2. The captioned complaints have been filed by complainants seeking relief of refund of the paid amounts along with interest as applicable as per rules for having caused delay in offering possession.

3. Brief facts as averred by complainant are that he booked an apartment in the project promoted by respondents in the year 2007. An allotment letter dated 21.11.2007 was issued vide which flat No. 804, Tower Block-G with 1194 sq. ft. super area, on 8th floor was allotted to the complainant. Flat Buyer Agreement was executed on 03.07.2008. In terms of Clause 14 of the FBA, possession was to be delivered within a period of 36 months and therefore deemed date of possession works out to 03.07.2011. Complainant has already paid Rs. 21,97,260/- against total sale consideration of Rs. 22,48,071/-. Proof of making payments has been annexed as annexure C-3 to the complaint.

4. Notice was successfully delivered to respondent on 30.12.2019. During the hearing dated 10.03.2022, Sh. Sourabh Goel, Advocate who was appearing before Authority in certain other matters of the respondent, submitted that respondent has neither received notice nor copy of complaint book in all captioned complaints. He had accepted notice on behalf of respondent in the present complaints and had sought time to file reply. However, no reply has been filed. Therefore, Authority decides to dispose off captioned complaints since enough time has already been given to respondent

to file his reply. It is noted that initially notice had been delivered on 30.12.2019.

5. Learned counsel for complainant Sh. Jagdeep Singh Rana requested for disposal of all the complaints in terms of orders of the Authority passed in Complaint no. 762 of 2018 titled as Rakesh Kumar Versus M/s Ferrous Infrastructure Private Limited and Others.

6. Upon re-examination of facts, The Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as bunch of cases with lead case **Complaint No. 762 of 2018** titled as **Rakesh Kumar Versus M/s Ferrous Infrastructure Private Limited and Others**. Therefore, captioned complaints are disposed of in terms of the order passed by Authority in Complaint no. 762 of 2018. Relevant portions of **Complaint no. 762 of 2018** titled as **Rakesh Kumar versus M/s Ferrous Infrastructure Private Limited and Others** is reproduced below :-

“ 13. In view of above captured facts and circumstances and finding in lead complaint case No.826 of 2018 the project does not appear feasible to be completed within foreseeable period of time, because the licences needs to be bifurcated; liability towards pending EDC, IDC and other charges towards the state Government needs to be discharged; building have to be made structurally safe; unauthorised construction may have to be either regularised or demolished as per policy of the State Govt; and pending construction works including infrastructural works have to be completed without fulfilling these requirements, the

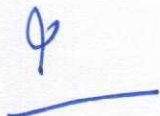
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project will not be granted occupation Certificate by the state Government. Needless to add that inter-se disputes amongst the partners companies also have to be resolved. These are tough and time-consuming tasks with uncertain outcome.

Regarding the arguments of the respondent that relief of refund cannot be granted because the same has not been asked for, it is observed that even though most of the complaints have not sought the relief of refund of the money, but the Authority, in view of the explained facts and circumstances, is not in a position to grant them the demanded relief of possession of apartments within a specified time frame. Therefore, alternate reasonable relief becomes admissible. Accordingly, the only feasible relief that can be given to the complainants is to refund the amounts paid by the complaints to the respondent along with interest calculated in accordance with Rule 15 of the HRERA Rules. This interest shall be calculated from the dates of payments made by the complainants up to the date of uploading of this order on the website of the Authority.

14. Those complainants who do not wish to get refund of the money and instead they wish to get possession of their apartments, they may wait till all the problems are resolved and project is completed, thereafter they will be offered possession of the apartments along with compensation in accordance with principal laid down in Complaint no. 113 of 2018, titled as Madhu Sareen Versus BTP and complaint no. 49 of 2018, titled as Prakash Chand Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd.”

7. The complainants are seeking relief of refund. These complaints were filed in the year 2019 but it 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.

8. 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.

9. Consequent upon above judgement 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

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."

Now the issue relating to the jurisdiction of Authority also stands finally settled.

10. Authority has gone through all facts and relevant documents. On the basis of submissions of both parties and perusal of record, Authority observes that inordinate delay has been caused by respondent promoter in handing over possession of flat to the complainants. Failure on part of respondent to deliver possession of flats even after lapse of 10 years has frustrated the very purpose of booking the flat. Learned counsel for complainant has stated that complainant no longer requires the booked flat. Such inordinate delay itself is a justification for allowing refund. In this case however, the project is not complete as it has not received occupation certificate. In such circumstances, the Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.



11. Authority accordingly orders refund of the money paid by all the complainants along with interest @ 9.4 % as shown in the table below-

SR. NO.	COMPLAINT NO.	DATE OF AGREEMENT	TOTAL AMOUNT PAID BY THE COMPLAINANT AS PER RECEIPTS PLACED ON RECORD (In Rs.)	INTEREST (In Rs.)	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
1.	2864/2019	03.07.2008	21,97,260/-	27,33,339/-	49,20,599/-
2.	2904/2019	07.01.2008	31,66,242/-	38,85,734/-	70,51,976/-
3.	2969/2019	30.06.2012	29,35,963/-	36,34,965/-	65,70,928/-
4.	2983/2019	19.07.2008	30,20,145/-	35,30,993/-	65,51,138/-
5.	2984/2019	18.04.2008	27,68,793/-	35,15,212/-	62,84,005/-
6.	2986/2019	18.04.2008	27,68,793/-	35,15,212/-	62,84,005/-
7.	3070/2019	15.05.2008	26,93,750/-	32,15,044/-	59,08,794/-
8.	773/2020	08.10.2008	17,70,000/-	22,11,535/-	39,81,535/-
9.	1403/2020	06.10.2009	16,01,295/-	13,45,827/-	29,47,122/-

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

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

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]