



Complaint no. 88 & 153 of 2021

## **HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### **1. COMPLAINT NO. 88 OF 2021**

Bijender Kumar Taparia

....COMPLAINANT(S)

VERSUS

M/s Aarcity Builders Pvt. Ltd

....RESPONDENT(S)

### **2. COMPLAINT NO. 153 OF 2021**

Mukesh

....COMPLAINANT(S)

VERSUS

M/s Aarcity Builders Pvt. Ltd

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:**

31.05.2022

**Hearing:**

7th

**Present:-**

Mr. Vivek Thakral, Counsel for the complainant  
(in complaint no. 88 & 153 of 2021)

Mr. Shekhar Verma, Counsel for respondent

**ORDER (RAJAN GUPTA-CHAIRMAN)**

1. Complainants herein are seeking relief of refund of amount paid in lieu of booked unit to respondent. Authority had not been hearing the matters in which relief of refund was sought for the reasons that its jurisdiction to deal with such matters was subjudice before Hon'ble Supreme Court.

2. Now the position of law has changed on account of the verdict dated 13.05.2022 passed by Hon'ble Supreme Court in SLP Civil Appeal no. 13005 of 2020 titled as M/s Sana Realtors Pvt Ltd vs Union of India & others whereby special leave petitions have been dismissed with an observation that relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & Others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.) disposed of on 12.05.2022 shall be available to the petitioners in the instant matters.

3. Consequent to the decision of above referred SLPs, the issue relating to the jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds to deal with this matter on its merits.

4. When this matter had last come up on 05.05.2022, Authority after hearing both parties and considering all facts and submissions had passed a detailed order which is reproduced below:

*“ In captioned complaints grievances and facts involved are similar and against the same project of the respondent. Taking*





Complaint no. 88 of 2021 titled "Bijender Kumar Taparia Vs M/s Aarcity Builders Pvt. Ltd. " as lead case, facts averred are that complainant agreed to purchase a flat in respondent's project namely "Regency Park" situated at Hisar for which booking was made on 10.09.2011 after paying a booking amount of Rs. 3,50,000/- . Complainant has already paid an amount of Rs. 10,75,000/- for said flat against total sale consideration of Rs. 41,11,062/-. No builder buyer agreement had been executed between the parties. It is alleged by the complainant that despite taking substantial amount for booked unit respondent has failed to develop said project and is not in a position to deliver possession. Complainant had initially filed present complaint seeking refund of the paid amount alongwith interest as the booked unit was not ready for possession.

Thereafter vide application dated 14.10.2017 complainant had requested the Authority to allow him to amend his relief from seeking refund of paid amount to seeking possession of booked unit alongwith interest as complainant had come to know that respondent has started construction in the project and is now in a position to deliver possession of the flats. Said applications were placed before Authority and their request had been allowed vide order dated 12.01.2022.

2. Shri Anurag Jain, learned counsel for complainant submitted that at the time of booking the flat complainant had been informed that possession of the flat shall be delivered within 4 years from date of booking. Complainant has paid an amount of Rs 10,75,000/- for booked unit by the year 2014 but even after taking nearly 25 percent of total sale consideration respondent has failed to execute any agreement with the complainant and further failed to deliver possession of booked unit. By April 2013 complainant had paid an amount of Rs 7,50,000/- , receipts of which are annexed as Annexure C2,C3 & C4 in the complaint file and further deposited cash amount of Rs 3,25,000/- with the office of respondent company in the year 2014. He further submitted that the respondent had specifically asked that said demand be paid in cash and did not even provide any receipt for the same.





*Complainant made numerous request to respondent in regard to possession of booked but received no response.*

*Seeing that the project had been abandoned by respondent and no construction has been taking place, complainant filed present complaint before this Authority on 20.01.2021 seeking refund of his amount deposited with the respondent as he had no hope that respondent will begin construction. Later, in the year 2021 complainant came to know that respondent promoter has actively begun construction of the project which is now nearing completion. Now complainant wishes to take over possession of the flat for which he had deposited his hard earned money with respondent since 2014. Therefore, vide application dated 14.10.2021 complainant requested the Authority that he may be allowed to amend relief sought and same was allowed vide order dated 12.01.2022.*

3. *Learned counsel for complainant apprised the Authority that now respondent vide letter dated 08.11.2021 has issued him cancellation letter despite retaining the amount for more than six years which is arbitrary and unconscionable. Despite severe default on the part of respondent, complainant is ready to pay the outstanding balance and take possession of booked unit. Complainant vide application dated 22.11.2021 had requested the Authority to restrain the respondent from cancelling the booked unit. Therefore, he requested the Authority that impugned cancellation letter dated 08.11.2021 be quashed and directions be issued to respondent to offer him possession of booked unit.*

4. *Shri Shekhar Verma, learned counsel for respondent submitted that complainant had booked flat no. D-201 in Tower-D for a total sale consideration of Rs 34,61,063 plus allied charges like EDC/IDC charges. At the time of booking, complainant had opted for construction linked payment plan. It is admitted that there has been a huge delay in delivery of possession of flat but now the flat is about to be completed and the project in its final stages. However, till date complainant has barely paid a sum of Rs 7,50,000/- towards booked unit despite issuing multiple demand letters and reminder letters annexed as Annexure R-1 to R-16.*



*Complainant in present complaint is part of a group of those allottees who have severely defaulted in making requisite timely payments in accordance with the chosen plan. Said real estate project has majorly suffered on account of non-payment of dues by allottees and it has further delayed development process for other allottees.*

*He further submitted that respondent had continuously sent demand/ reminder letters to the complainant for making outstanding payment till the year 2016, then a last demand letter was issued to complainant on 25.04.2019 calling the complainant to immediately clear due payments and as a goodwill gesture respondent had waived off outstanding interest amount. However, complainant failed to do the needful and respondent was constrained to cancel the allotment of complainant.*

5. *Shri Verma stressed on the fact that present complaint had been filed before this Authority in January 2021 and was adjourned sine die vide order dated 04.03.2021 because the matter pertained to relief of refund of the paid amount, awaiting outcome of proceedings before Hon'ble Supreme Court. Till then it was in the knowledge of respondent that complainant in both complaints wished to withdraw from the project and had sought refund of the paid amount. Present complainants became part of the project in the year 2011 and made payments till 2013 thereafter, since 2014 respondent company has been chasing such allottees including present complainants who have defaulted in making payments. Development of project under question came to a halt due to severe shortage of funds because of such allottees. Now that respondent has invested considerable amount of its own money and taken responsibility, the project is nearing completion and flats are ready for possession. Now it is the duty of the respondent to ensure that possession is first delivered to more serious allottees who have chosen to remain with the project by fulfilling their obligations in terms of making timely payments. Respondent company has started shifting allottees from phase 2 of the project (which is yet to begin) to phase 1 which is ready for handing over of possession. Therefore, respondent company after*



review had cancelled all such allotments wherein allottee/applicants were in continuous default in terms of to timely payments so as to adjust serious and faithful allottees of the project. It is pertinent to mention that complainants in present complaints have seriously defaulted in making payments as per agreed plan and thus they are not entitled to seek possession. The only relief admissible at this point to them is relief of refund of paid amount along with interest.

With regard to the allegation of complainant of having paid cash amount of Rs 3,25,000/- , Shri Verma categorically denied that respondent has received any cash payment from either of the complainants. He admitted that only an amount of Rs 7,50,000/- has been received from complainants.

6. After considering submissions of both parties, Authority observes that complainant had booked the unit in the project of the respondent in the year 2011 and by 2013 had paid an amount of Rs 7,50,000/- for the booked unit. It is an admitted fact that possession of the flat has been extra ordinarily delayed because of which complainant had filed this complaint seeking refund of paid amount alongwith interest. Subsequently when it appeared to the complainant that respondent is finally in a position to complete construction and deliver possession of flats, complainant vide application dated 14.10.2021 put forth a request to amend his prayer from seeking refund to claiming possession of booked unit. Prima facie this request had been allowed by the Authority vide order dated 12.01.2022. Meanwhile, respondent company had issued complainant a letter dated 08.11.2021 for cancellation of the allotted on account of non payment of dues. Authority observes that whether a complainant is entitled to amend his prayer and seek possession shall be based on the facts and merits of the case.

7. In the year 2011, complainant had agreed to purchase the unit in the project of respondent and opted for construction linked payment plan which means that development of the project as a whole was dependent upon timely payment of outstanding dues by various allottees who had chosen to become a part of the project. Total sale consideration of the flat was



approx Rs 41 lakh , however, complainant has only paid an amount of Rs 7,50,000/- to the respondent till 2013 which is less than 20 per cent of total sale consideration. Since 2013 onwards complainant failed to make further payment despite several demand letters issued by respondent, without providing any reasonable justification for the same. When taken into account the fact that several allottees who became part of the project by way of booking, failed to adhere to payment plan and stopped making further payments, it created cash crunch for the respondent promoter resulting in delay in development of project.

In any case, execution of a real estate project is an arduous task and when an allottee decides to become a part of an under construction project, he understands such risk factors. It is a duty of the allottee to fulfil his obligations of making timely payments.

8. Considering peculiar facts and circumstances of present case, Authority observes that complainants have committed serious defaults in clearing outstanding dues. They should have adhered to the agreed payment plan and fulfilled their obligations. On perusal of various demand/reminder letters placed on record and the fact that respondent promoter was even willing to waive off outstanding interest in its last demand letter dated 25.04.2019 subject to clearing of all outstanding dues, it is apparent that the intention of respondent were bonafide. Respondent had given to the complainant several opportunities to clear dues and show his intent to stay with the project but complainant time and again failed to honour those demands. As is evident respondent promoter and the project as a whole has gravely suffered on account of default committed by various allottees by not clearing their respective dues. Now that respondent has doubled his efforts and is seriously trying to develop the project, his intentions to firstly adjust those allottees who have been faithful to the project by making timely payment appears laudable.

9. For above reasons, Authority is unable to agree with contentions of the complainants. The complainant however, will be entitled to seek relief of refund of the paid amount alongwith

*interest for which this complaint was originally filed. The amount of interest admissible to the complainants shall be calculated in terms of Rule 15 of HRERA Rules 2017. With regard to the cash amount of Rs 3,25,000/- which the complainant claim to have paid, Authority grants complainant last opportunity to substantiate their claim with documentary evidence, failing which Authority will have to accept that complainant has only paid an amount of Rs 7,50,000/- and will accordingly issue directions to respondent to refund an amount of Rs 7,50,000/- along with admissible interest on next date.*

10. *Adjourned to 31.05.2022*

2. Complainant in complaint no. 88 of 2021 had averred that he has paid an amount of Rs 10,75,000/- to the respondent towards booking of a unit in the project of which an amount of Rs 3,25,000/- was paid as a cash instalment to the respondent of which complainant did not have any receipt or proof otherwise. Respondent had only agreed to having received an amount of Rs 7,50,000/- from the complainant and had denied the payment of Rs 3,25,000/-. Authority on hearing dated 05.05.2022 had given an opportunity to the complainant to substantiate their claim of having paid cash amount of Rs 3,25,000/- to the respondent with documentary evidence, failing which Authority will accept that complainant has only paid an amount of Rs 7,50,000/- and accordingly issue directions to respondent to refund an amount of Rs 7,50,000/- to the complainant along with admissible interest on next date.

Learned counsel for the complainant submitted that complainant was unable to find any documentary proof to verify the claim of having paid an amount of Rs 3,25,000/- to the respondent. He submitted that since he was



unable to substantiate his claim of having paid an additional amount of Rs 3,25,000/- to the respondent, accordingly, Authority may issue directions to respondent for refund of amount of Rs 7,50,000/- alongwith admissible interest.

3. Shri Shekhar Verma, learned counsel for the respondent submitted that Authority vide its order dated 05.05.2022 had observed that the complainant in present has only paid an amount of Rs 7,50,000/- against a total sale consideration of Rs 41 lakh to the respondent and since 2013 onwards complainant has failed to make further payments despite several demand/reminder letters issued by respondent, without providing any reasonable justification for the same. Authority had taken in account the fact that when several such allottees fail to adhere to payment plan and stop making further payments it creates a cash crunch for the respondent promoter thus resulting in delay in development of project. Considering all the facts and submissions, Authority had observed that the complainant had committed serious defaults in clearing outstanding dues and because of which the respondent promoter and the project as a whole has suffered gravely. Authority vide its order of said date had rightly denied the contentions of complainant in regard to seeking possession of booked unit and had in terms of their original prayer allowed refund of paid amount alongwith interest.

At this point learned counsel for respondent, Shri Verma, prayed the Authority that since the respondent had cancelled the allotment of the unit on



08.11.2021 on account of default committed by the complainant by not clearing outstanding dues, respondent is entitled to forfeit the earnest money deposited by the complainant

4. In light of the facts and circumstances, Authority observes that though in present complaint complainant had submitted that he has paid an amount of Rs 10,75,000/- to the respondent for booked unit of which Rs 3,25,000/- were paid by the complainant in cash of which he could not produce any receipt or proof thereof. Respondent on the other hand has only admitted to having received an amount of Rs 7,50,000/- from the complainant and denied having received a further cash amount of Rs 3,25,000/-. Therefore, Authority vide its order dated 05.05.2022 had given the complainant an opportunity to prove its claim in regard to the amount of Rs 3,25,000/- by substantiating his claim with documentary evidence. However, complainant could not provide any proof for the same. Therefore, Authority is unable to accept the submission of the complainant of having paid a total amount of Rs 10,75,000/- to the complainant and thus will only allow relief to the extent of a total amount of Rs 7,50,000/-. Therefore, Authority in furtherance of its observations recorder vide order dated 05.05.2022 directs the respondent to refund the amount of Rs 7,50,000/- to the complainant alongwith admissible interest in terms of Rule 15 of HRERA Rules 2017 after deducting earnest money.





5. As per clause 9 of the terms and conditions of application/booking form earnest money was to be 20 % of the sale consideration. Authority observes that 20% earnest money is too high. Authority would therefore consider it unconscionable and unreasonable. RERA provides for Earnest money of 10% of basic cost price of the unit. This is also a standard market practice. Therefore, respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant with interest.

6. Authority accordingly orders refund of the amount paid by the complainants alongwith interest as shown in table below:

S.No	Complaint No.	Principal amount t (In Rs.)	Interest @9.50% (In Rs)	Total amount to be refunded by the respondent (In Rs)
1.	88 of 2021	7,50,000/-	6,80,838/-	14,30,838/-
2.	153 of 2021	7,50,000/-	6,80,134/-	14,30,134/-

7. Respondents shall refund the paid amount alongwith interest within the period prescribed in Rule 16 of RERA Rules 2017.

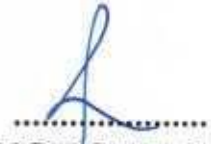
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Complaint no. 88 & 153 of 2021

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



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

