



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2649 OF 2019

Anil Dewan

....COMPLAINANTS

VERSUS

Ansal Properties & Infrastructure Ltd.

....RESPONDENT

2. COMPLAINT NO. 386 OF 2021

Kartar Singh

....COMPLAINANTS

VERSUS

Ansal Properties & Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 01.06.2022

Hearing: 5th (in complaint no. 2649/19)

14th (in complaint no. 386/21)

Present through video call: - Sh. Satyam Aneja, learned counsel for the complainant (in complaint no. 2649/19)

Sh. Atul and Rakesh Handa, learned counsel for the complainant (in complaint no. 386/21)

Sh. Ajay Ghangas, learned counsel for the respondent in both complaints.

ORDER (DILNAG SINGH SIHAG-MEMBER)

1. Captioned bunch of complaints is being disposed of together by these common orders. Complaint No. 2649 of 2019 titled "Anil Dewan Versus Ansal Properties & Infrastructure Pvt. Ltd" has been taken as lead case.

Complainant in the lead case had booked an apartment bearing no.0062-GC-SA-127, admeasuring 619.24 sq. ft. in respondent's project "GALAXY COURT ", Panipat by paying booking amount of ₹ 3,00,000/- to the respondent/promoter on 26.07.2012. Total sale consideration of the apartment was Rs. 19,81,568/- against which complainant has paid an amount of Rs. 6,12,843/-. As a proof of payment, complainant has annexed receipts of payments as Annexure C-1,2,3 at page no. 19-21 of complaint book. Complainant stated that repeated requests were made by him for execution of Builder Buyer Agreement but respondent never bothered to reply. In the year 2015, complainant received a copy of builder buyer agreement which was signed by him and sent back to the respondent by speed post on 20.04.2015. However, complainant received signed copy of builder buyer agreement bearing signature of respondent on it on



30.01.2019. As per Clause 12 of the agreement, possession of booked property was to be delivered within 18 months from the date of allotment of unit i.e. 26.07.2012. Therefore, deemed date of possession in this case was 27.01.2014. Complainant also submitted that project in question does not have a valid license, therefore it cannot be developed in near future. On account of inordinate delay of eight years and further no hope of its completion in near future, complainant has sought relief of refund of his money along with permissible interest as per Rule 15 of HRERA Rules, 2017 and compensation on account of damage having been suffered along with cost of legal expenses.

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.	DATE OF Agreement/Allotment	TOTAL SALES CONSIDERATION (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION
1.	2649/2019	26.07.2012	19,81,568/-	6,12,843/-	27.01.2014
2.	386/2021	06.06.2013	19,64,129/-	12,60,440/-	07.12.2014

3. On the other hand, respondent in their reply have raised technical objections by and large 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- 4(i) & (xxi) of the reply submitted by the respondents, it has been stated

that total sale consideration of booked unit was to be paid in six installments whereas complainant has paid only three installments and thereafter stopped making payments. Therefore, he could not claim possession without making further payments alongwith applicable charges and interest mentioned in agreement. Respondent while denying allegation made by the complainant stated that project had got the license bearing no. 17-28 dated 20.07.2005 from the competent Authority for development of the project.

4. Sh. Satyam Aneja, learned counsel for the complainant referred to last order dated 05.05.2022 passed by the Authority in support of his contentions highlighting a notice board placed at site by the Town and Country Planning Department advising general public not to invest in this Project. Hence, project in question cannot be completed in near future apart from inordinate delay of eight years. Therefore, he prays that total amount of ₹ 6,12,843/- paid to the respondent may be refunded along with permissible interest calculated from the date of payment till payment of entire amount of principal and accrued delay interest thereon. Learned counsel for the respondent Sh. Ajay Ghangas contended that project is registered with Authority vide id HRERA- PKL-342-2017 dated 27.10.2017. It is complete and they have applied for grant of occupation Certificate with concerned department, however, same has not been issued.

5. Since, complainants had sought relief of refund. Initially, the matter was kept pending by Authority on account of jurisdiction dispute of the Authority to



deal with complaints in which relief of refund was sought that was subjudice , before Hon'ble High Court and Hon'ble Supreme Court.

Now, position of law has changed in view of Judgment passed by Hon'ble Supreme Court in lead Civil Appeal No. 13005/ 2020 titled as M/s. "M/S. Sana Realtors Pvt. Ltd. vs. Union Of India". Objection raised against maintainability of the complaint on account of lack of jurisdiction is no more tenable, since issue relating to jurisdiction of Authority stands finally settled, Authority hereby proceeds for dealing with this matter on its merits.

6. After hearing both parties and going through record, Authority observes that complainant had booked an apartment on 26.07.2012, and paid an amount of ₹ 6,12,843/- to the respondent in the year 2012 itself. Respondent was under an obligation to handover the possession of booked unit by 27.01.2014. In ordinary delay of eight years has already been taken place in handing over the possession and further there is no hope of its completion in near future. So, there is no merit in claim that the project is complete and Occupation Certificate has also been applied with concerned department. No document has been placed on record in this regard to support the contention of respondent.

In view of above facts, and as evidences shown during hearing by learned counsel for the complainant highlighting fixing of a notice board at the site by the Town and Country Planning Department, advising general public not to invest in this project, proves that project in question is not complete yet. Further, licence



granted for the project by the concerned department has also been expired on 24.07.2017 and same is not renewed till date, which further proves that project cannot be completed in foreseeable future. So, complainant after waiting for long eight years, now wishes to withdraw from the project under Section 18 of RERA Act 2016. For these reasons, Authority is satisfied that project in question cannot be completed in near future. So, complainant deserves to be granted relief of refund as per rule 15 HRERA Rules 2017 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-

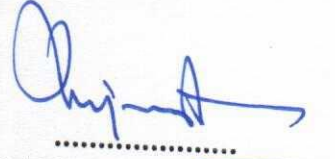
Sr. No.	COMPLAINT NO.	Total amount claimed to be paid by the complainant (In Rs.)	Total amount on which interest is calculated (in Rs.)	INTEREST (In Rs.) 9.50	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
	2649/2019	6,12,843/-	6,12,843/-	5,67,833/-	11,80,676/-
2.	386/2021	12,60,440/-	11,60,439/-	10,10,804/-	21,71,243/-

In complaint no 386/21, complainant has alleged that he had paid an amount ₹ 12,60,440/- . However, he had annexed a table at page no 21 of complaint, whereby details of paid amount of ₹ 11,60,439/- has been provided and as proof of it, receipts of paid amount of ₹ 11,60,439/- are only annexed at page no. 27-30; to 51-53 of complaint. Accordingly, complainant is entitled to

receive interest on amount of ₹ 11,60,439/- instead of claimed amount of ₹ 12,60,440/-.

8. Respondents shall refund the money along with interest within period of 90 days as 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]

