



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 39 OF 2020

Sumant Singh Ajay

....COMPLAINANTS

VERSUS

Konark Rajhans Estates Pvt. Ltd.

....RESPONDENT

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing:** 01.06.2022

**Hearing:** 9<sup>th</sup>

**Present: -** Mr. V.K. Aggarwal, counsel for the complainant  
Mr. Vivek Sheoran, counsel for respondent through VC

### ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, following facts are found in nutshell:-
  - i) That the complainant in the year 2016 booked a 2BHK apartment in project of respondent named 'Asha Panchkula' at Sector 14, Kot Behla, Panchkula. Complainants deposited an amount of Rs. 1,00,000/- as booking amount. Respondent allotted unit bearing no. F-0505 to complainant. Letter of allotment in favour of complainant is annexed as Annexure A1 in complaint file.

ii) An allotment letter dated 16.06.2016 was issued for the apartment measuring 1110 sq. ft. which is equivalent to 103.12 sq. mts. Later on 13.07.2016, based on mutual understanding between parties, allotment was changed to 3BHK apartment from 2 BHK apartment. New allotment letter annexed as A3 was issued on 13.07.2016 for apartment no. D-0405 having area of 1405 sq. ft. Basic sale price agreed between parties for 3 BHK apartment was Rs. 30,83,975/-. Total cost including IDC, EDC, power back up and club membership charges worked out to be Rs. 39.31,870/-.

iii) Flat buyer agreement was executed on 29.07.2016 wherein under clause 9 it was stipulated that possession will be offered within 36 months from the date of receipt of first instalment against allotment of the said apartment plus grace period of 6 months. The date of first instalment was 01.06.2016, therefore due date of completion works out to be 31.05.2019 exclusive of grace period. In case, there was any grace period, the project was to be handed over up till 30.11.2019. Complainant has already paid an amount of Rs. 9,89,960/- as is evident from the receipts issued by respondents, which are annexed by the complainant as Annexure A2 (Colly) at page 11-18A of the complaint file. As respondent failed to discharge their legal duty,



complainant therefore filed this present compliant praying for possession of booked unit.

2. Respondent filed their reply on 05.03.2020 wherein they stated that due to slowdown in real estate market, respondent could not sell even 50% flat in Tower A to D. Therefore, the company has migrated its 50% plot area in DDJAY policy 2016 for plotted colony in order to reduce project cost and complete the project at earliest. Company conceded delay of construction of Tower C and D as there are no fresh bookings for last 2 years. For this reason they have requested all their customers in Tower C to H to take flats in Tower A and B. They have also requested the present complainant to shift to Tower A or B but no response has been received. They expressly mentioned in their reply that owing to low sales and global recession they were not able to complete the project. As per RERA registration certificate, due date of completion was 28.08.2020 therefore any cause of action would arise only after that.

3. Thereafter, complainant on 25.01.2021 filed an application to amend the prayer clause of the complaint. In original compliant, relief sought was only of possession but vide this amendment application, they sought refund of entire paid amount if respondent fails to handover possession. Copy of amended complaint was forwarded to respondent via email.



4. During hearing dated 03.02.2021, respondent made it clear that it would not be possible to complete tower C and D in near future whereas tower A and B are almost complete. Therefore, respondent is willing to offer alternate possession to complainant in one of these two completed towers. Some time was allowed to the complainant to think about the alternate offer of possession and reach at a final decision. On 10.03.2021, Complainant made it clear before the Authority that alternate unit offered by the respondent is not acceptable to them and now they intend to prosecute the complaint only for seeking relief of refund. As main relief sought was refund, therefore the complaint was adjourned sine die pending matters before Hon'ble Supreme Court pertaining to dispute of jurisdiction of Authority to hear refund matters.

5. Matter was reheard on 15.03.2022 when Authority gave its tentative view that since alternate unit is not acceptable to the complainant therefore refund is admissible in this case. Relevant order is reproduced below:

1. Ld. Counsel for the complainant states that the tower D is not ready and the he is not willing to take possession in tower A or B as offered by the respondent.

2. Based on the argument advanced by the counsel for complainant the Authority observes that as the complainant has made his intention clear, the Authority is inclined to allow refund to the complainant. The complainant has paid only 25% of the total consideration they cannot be made to pay the balance 75% if they are not interested in the alternative unit.

3. Ld counsel for respondent seeks some time to argue the matter. Accepting his request, case is adjourned to 31.03.2022 for arguments.

6. Ld. Counsel for complainant submitted their written arguments on 31.05.2022. During hearing, they restated the same facts as mentioned under written submissions dated 31.05.2022. Ld. Counsel for complainant submitted that respondent builder has not adhered to the sanctioned plans and projects specifications. Respondent is not constructing Tower D as per the original sanctioned plans in which petitioner has booked apartment No. D-0405 and thus violated the terms and conditions of agreement. Therefore, final submission of complainant is that he prays for refund of Rs. 9,89,960/- along with permissible interest rate.

7. Authority is of the considered view that the matter has been tentatively decided on 15.03.2022, and alternate offer of possession in Tower A or B is not acceptable to complainant, therefore the view taken by the Authority in the order dated 15.03.2022 stands confirmed. Authority directs the respondent to refund entire amount of Rs. 9,89,960/- paid by complainant along with interest rate as prescribed under Rule 15 of HRERA, Rules 2017, i.e. SBI highest MCLR rate + 2% which is 9.40% p.a. simple interest. Entire payable amount along with interest is tabulated below:

*h*

S.No.	Principal Amount	Date of Payment	Interest till 01.06.2022	Total
1.	Rs. 1,00,000/-	01.06.2016	Rs. 57,052/-	Rs. 1,57,052/-
2.	Rs. 79,505/-	15.06.2016	Rs. 45,070/-	Rs. 1,24,575/-
3.	Rs. 70,000/-	15.06.2016	Rs. 39,681/-	Rs. 1,09,681/-
4.	Rs. 66,689/-	12.07.2016	Rs. 37,336/-	Rs. 1,04,025/-
5.	Rs. 3,28,356/-	15.07.2016	Rs. 1,83,573/-	Rs. 5,11,929/-
6.	Rs. 90,000/-	25.01.2018	Rs. 37,222/-	Rs. 1,27,222/-
7.	Rs. 90,000/-	30.01.2018	Rs. 37,105/-	Rs. 1,27,105/-
8.	Rs. 90,000/-	30.01.2018	Rs. 37,105/-	Rs. 1,27,105/-
9.	Rs. 75,410/-	30.01.2018	Rs. 31,090/-	Rs. 1,06,500/-
<b>Total</b>	<b>Rs. 9,89,960/-</b>		<b>Rs. 5,05,234/-</b>	<b>Rs. 14,95,194/-</b>

Respondent is directed to refund above stated amounts along with interest shown in the table above within time period of 90 days prescribed in Rule 16 of RERA Rules, 2017.

8. **Disposed off** in above terms. File be consigned to record room.

  
 RAJAN GUPTA  
 [CHAIRMAN]

  
 DILBAG SINGH SIHAG  
 [MEMBER]