



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1533 OF 2020

Usha Sarna

....COMPLAINANT

VERSUS

M/s Ansal Properties and Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.07.2022

Hearing: 6th

Present through video call: - Sh. Vivek Sethi, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his arguments, learned counsel for the complainant reiterated the facts recorded in last orders dated 01.02.2022. Said order is being reproduced for ready reference.

1. " While initiating his pleadings, learned counsel for the complainant submitted that complainant had booked flat bearing no. 0102-14-0903, having an area of 1694 sq.ft. in year 2012. An agreement dated 09.05.2012 was executed between the parties, whereby respondent was supposed to handover possession by 07.10.2016.

Vide letter dated 24.09.2016 respondent changed the earlier allotted flat no. 0102-14-0903 to 0102-28-1002 on the account of non-construction of the tower. Thereafter, complainant signed new agreement with respondent on 07.10.2016, vide which flat bearing no. 102, in Tower 28, having area 1968 sq.ft. in respondent project named, "Green Escape Apartment, Sonipat" was allotted to him. Basic sale price of flat was ₹ 31,65,730/- against which complainant has already paid an amount of ₹ 31,41,547/-.

As proof of payment, complainant has annexed receipts of payments as Annexure C-6 at page no 80-94. Respondent was supposed to hand over possession of the booked apartment within 48 months from the date of execution of BBA which works out to be 07.10.2020. Respondent has yet to offer possession of booked flat to the complainant.

2. Main averment of the complainant as made in the written complaint in para no. seventeen is that the project is nowhere near completion nor likely to be completed in near future. There is already inordinate delay of five years in completion of the project from deemed date of possession i.e 07.10.2016 as per first builder buyer agreement. Therefore, he prayed for refund of his money

along with interest as per law and compensation on account of damage having been suffered along with cost of legal expenses.

3. On the other hand, respondents in their reply have challenged the jurisdiction of Authority to deal with this matter on the ground that in this case, relief of refund has been sought. Respondents have pleaded that construction of the flat in question is at advance stage as super structure has already been completed and finishing work is going on and possession of the unit will be offered within 7-8 months.

Today, learned counsel for the respondent has sent an email dated 31.01.2022, seeking adjournment on the ground that he has been suffering from fever, therefore unable to attend the court proceedings.

4. This Authority had kept sine die all refund cases for more than a year or so on the ground of disputed jurisdiction of Authority to deal with such cases. Now law, on the question has been settled by Hon'ble Supreme Court and by Hon'ble High Court as well. Recently Hon'ble Punjab and Haryana High Court has disposed of a bunch of CWPs vide its order dated 13.01.2022 passed in case no. 6688 of 2021. Considering said orders this Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority 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.

5. 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 resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters 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.”

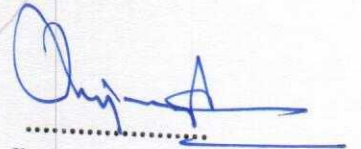
Since, basic issue of jurisdiction stands settled, therefore, Authority has started hearing all the complaints relating to refund which were kept sine die.”

2. On the last date of hearing, respondent was also given an opportunity to place on record any additional fact/ documents having bearing on the outcome in this case if he desires so. Today, learned counsel for the respondent pleaded that as per Annexure C-9 of complaint book, a second builder buyer agreement was executed on 07.10.2016 between parties. Accordingly, respondent was under an obligation to handover possession by 07.10.2020. Since only two years have been lapsed from deemed date of possession, respondent prayed for not allowing relief of refund otherwise the project of respondent gets jeopardise. Further respondents have also pleaded that construction of the flat in question is at advance stage as super structure has already been completed and finishing work is going on and possession of the unit will be offered within 7-8 months.
3. After hearing both parties and considering statement given by respondent's counsel that project is at advance stage and possession will be delivered within 6-7 months, Authority is of the considered view that refund in this case is not permissible for the reason that no inordinate delay has been caused by the respondent-promoter in handing over of possession. As per second agreement dated 07.10.2016, respondent was under obligation to

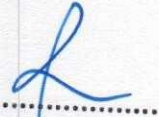
handover possession by 07.10.2020. Accordingly, delay of more than two years has been caused till date. Therefore, at this stage the only relief which can be granted to the complainant is delay possession along with permissible interest.

4. In view of above findings, complainant is allowed relief of possession on the already paid amount of ₹ 31,41,547/- from the deemed date of possession i.e. 07.10.2020 till today i.e. 07.07.2022. Account branch of this Authority on calculation of interest as per Rule 15 of HRERA, @ 9.70 has worked out the amount of ₹ 5,33,486/- as interest payable to the complainant from deemed date of possession i.e. 07.10.2020 till 07.07.2022. Besides, complainant is also entitled to receive each month's interest on the paid amount of ₹ 31,41,547/- from 08.07.2022 onwards till the delivery of actual possession after obtaining Occupation Certificate. Such interest works out to ₹ 25,881/- per month as calculated by the accounts branch of this Authority.

4. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]