



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO.557 OF 2021

Mahesh Kumar Sharma

...Complainant.

Versus

Victory Buildestate Pvt. Ltd.

...Respondent.

2. COMPLAINT NO. 558 OF 2021

Pooja

...Complainant.

Versus

Victory Buildestate Pvt. Ltd.

...Respondent.

3. COMPLAINT NO. 559 OF 2021

Nipun Kumar

...Complainant.

Versus

Victory Buildestate Pvt. Ltd.

...Respondent.

4. COMPLAINT NO. 560 OF 2021

Raj Kumar

...Complainant.

Versus

Victory Buildestate Pvt. Ltd.

...Respondent.

Date of hearing: 30.06.2022

Hearing: 11th (in all complaints)

Present: - Mr. Akash Vashishth, Ld. Counsel for the complainant
(In all complaints)
Respondent already ex-parte

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, following facts are found:-

i) That complainant in the year 2015 applied for draw of lots in project of respondent 'ABL Harmony Homes' situated in sector 27, Rewari. Respondent promoter issued an allotment cum demand letter on 27.08.2015 by which complainant was allotted a two BHK apartment bearing no. 806 in Tower E, having carpet area of 523 sq. ft. and balcony area of 87 sq. ft. Allotment letter dated 27.08.2015 has been annexed as annexure C5 in complaint file. At the time of allotment, five percent of the total sale consideration i.e., Rs. 96,315/- as booking amount was demanded and the same was paid by the complainant on 31.08.2015.

ii) Apartment buyer agreement was executed on 05.10.2016. Under clause 8.1, it was stipulated that possession would be offered within a period of 4 years from the date of execution of the agreement. Taking into consideration the execution of BBA, due date of completion was 05.10.2020. Complainant has already paid an amount of Rs. 9,54,241/- as is evident from the letter

dated 31.12.2018 which was issued by respondents, annexed by the complainant as Annexure C9 at page 73-74 of the complaint file.

iii) From perusal of the letter dated 31.12.2018 as annexed as C9, it is revealed that respondent promoter changed booked unit of the complainant from E-806 to A-806 situated in tower A stating a reason that there was some change in building structure. New unit A-806 was having area of 521.408 sq. ft. with a balcony area of 89.728 sq. ft. However, complainant did not consent to above reallocation and communicated the same to the respondent vide multiple communications dated 14.01.2019, 17.01.2019 and 19.01.2019. Moreover, respondent made an additional demand of Rs. 5,25,647/- vide letter in question.

iv) It is also alleged that no construction is on-going at the project site due to internal dispute of Respondent Promoter with its contractor namely M/S Millennium Engineers therefore status of current project is a struck project.

Consequently, an association named 'ABL Harmony Flat Allottee Association' was formed to take over the project wherein complainant was also a member. Since complainant was not



interested in changing the terms and conditions of agreement, therefore he opted to withdraw his name from association.

v) Complainant has taken a loan of Rs. 17,60,161/- from DHFL out of which Rs. 8,74,463/- has already been disbursed. But since the unit of complainant was changed from E-806 to A-806, bank has stopped disbursing further loan amount. Aggrieved by the actions of respondent in arbitrarily changing the unit and project not completing in due time, complainant filed this present complaint seeking refund of Rs. 9,54,241/-.

2. Notice to the respondent was sent on 16.07.2021 but same could not be delivered due to receiver shifted from given address. On the request of Ld. Counsel of complainant, dasti notice was also served but same could not be delivered due to closed premises of the respondent.

As the notice could not be served vide ordinary means, respondent was served notice by publication in newspaper 'Indian Express' dated 13.08.2021. Since respondent failed to appear even after publication, therefore Authority decided to proceed ex-parte against respondent vide order dated 09.09.2021.

3. During present hearing, Ld. Counsel for the complainant again reiterated the facts and insisted for refund only. Considering the written submissions and present status of the project, Authority is of the view

that this project is neither complete nor likely to be completed in near future. Authority is in process of handing over current project to Association 'ABL Harmony Flat Allottees Association' and a separate complaint no. 2978 of 2019 titled 'ABL Harmony Flat Allottees Association versus Victory Buildestate Pvt. Ltd.' is pending before this Authority. Complainant was part of this association and later opted out of same for reasons stated in complaint file. When complainant has made his intentions clear and there is no likelihood of project completion in foreseeable future being a failed project, therefore the Authority is of the view that refund is admissible in this case.

4. Further it is being made clear that order for refund in future will be executed against other assets of the respondent company and not against the assets of the project "ABL Harmony" of respondent situated in Sector 27, Rewari as this project is in process of handed over to 'ABL Harmony Flat Allottees Association' in complaint no. 2978 of 2019 for its completion by the Association.

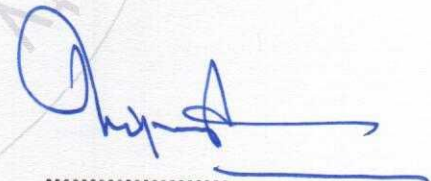
5. Authority directs the respondent to refund entire amounts paid by complainants along with interest rate as prescribed under Rule 15 of HRERA, Rules 2017, i.e. SBI highest MCLR rate + 2% which is 9.70% p.a. simple interest. Entire payable amount along with interest is tabulated below:



S.No	Complaint No.	Amount Paid	Interest @ 9.70% till 30.06.2022	Total
1.	557/2021	Rs. 9,54,241/-	Rs. 5,59,009/-	Rs. 15,13,250/-
2.	558/2021	Rs. 14,79,889/-	Rs. 7,30,895/-	Rs. 22,10,784/-
3.	559/2020	Rs. 11,94,153/-	Rs. 6,15,094/-	Rs. 18,09,247/-
4.	560/2021	Rs. 12,20,428/-	Rs. 6,47,339/-	Rs. 18,67,767/-

Therefore, respondent is directed to pay amount as mentioned in table above as refund of deposited money alongwith interest to the complainant. Money shall be returned by the respondent within time period of 90 days as prescribed in Rule 16 of the RERA Rules.

6. In these terms, present complaint stands **disposed of**. File be consigned to record room, after uploading order on website of Authority.

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 RAJAN GUPTA
 [CHAIRMAN]

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 DILBAG SINGH SIHAG
 [MEMBER]