



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 423 OF 2022

MR MANOJ SAIN

....COMPLAINANT

VERSUS

ANSAL PROPERTIES & INFRASTRUCTURE LIMITED

....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member
Member**

Date of Hearing: 27.09.2022

Hearing: 3rd

**Present through video call: - Adv. Priyanka Aggarwal , Learned counsel for
the complainant.
Adv. Ajay Ghangas, Learned counsel for the
respondent**

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings, learned counsel for complainant stated during the hearing that the decision dated 26.07.2022 taken by the Authority in Complaint No. 1007 of 2021 titled as "Jee Sukh Ram Khedar Versus Ansal Properties & Infrastructure Pvt. Ltd" squarely covers the controversy involved in the above mentioned complaints. To support his contention he briefly averred facts that complainant had booked apartment bearing no. 03, tower-31 admeasuring 1600 sq.ft. for total sale consideration of Rs. 30,45,000/-. Complainant had paid an amount of Rs. 29,19,111/- to the respondent-promoter till January 2021. As evidence of said paid amounts, receipts issued by respondent has been annexed by complainant at page no. 51-55 of complaint book. As per Builder buyer agreement dated 19.11.2007 builder was under an obligation to handover possession of booked plot by 21.06.2010. However, respondent has offered the possession on 07.07.2021 but apartments are not in habitable manner. Due to inordinate delay of ten years caused in handing of possession, complainant sought refund of paid amount along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016. Hence, this complaint be disposed of in the same manner. Operative part of said order dated 26.07.2022 is reproduced below for ready references:

1. " While initiating his pleadings, learned counsel for the complainant submitted that complainant had purchased a flat bearing no. 03, in Tower 31, admeasuring 1650 sq.ft in

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respondent's project "Green Escape Apartments", Sonapat from Original allottee Ms. Shelly Jain in the year of 2011. Respondent had issued letter of transfer of allotment in favour of complainant on 06.06.2011, which is evident from Annexure P-2 of complaint. Builder buyer agreement was executed between parties on 23.06.2011. As per Clause 12 of the agreement, possession of booked property was to be delivered within 30 months from the date of sanctioning of building plans. Total sale consideration of the flat was Rs. 35,33,900/- against which complainant had already paid an amount of Rs. 25,17,914/-. Further he argued that an email from respondent was received offering possession for fit outs subject to payment of Rs. 20,17,255.86/- on 02.07.2021. Thereafter, complainant visited the site and found that flat is still incomplete. To prove his contention he has annexed latest photographs of the flat as Annexure P-6 of complaint. Learned counsel for the complainant states that there is no possibility of getting the project completed in near future. For the reason of inordinate delay of over eight years and no hope of its completion in near future, complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. He prays that total paid amount of Rs. 25,17,914/- given to the respondent may be refunded along with permissible interest calculated from the date of payment till the payment of the entire amount of principal and accrued delay interest thereon.

2. On the other hand, respondent in their reply have raised mostly technical objections 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-8 of the reply submitted by the respondents, he stated that huge investments were made for carrying out construction and development work of project. At present, status of construction is at advanced stage and fit out possession has been offered to the complainant. Delay in completion of construction is due to unavoidable circumstances and reasons beyond the control of respondent-promoter.

3. Sh. Manoj Kumar, learned counsel for complainant reiterated the facts mentioned in para 1 of this order. Respondent counsel Sh. Ajay Ghangas, had also made a statement during course of hearing that respondent would not in a position to complete the project and construction is stopped, So, possession to complainant cannot be delivered.

4. Since, complainants have sought relief of refund vide captioned complaints but the same was kept by Authority due to disputes of jurisdiction of the Authority to deal with complaints in which relief of refund was sought which was subjudice before Hon'ble High Court and Hon'ble Supreme Court.

Now, the position of law has changed, in view of Judgment passed by Hon'ble Supreme Court in lead SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc. plea raised against the maintainability of the complaint is no more tenable. Since the issue relating to jurisdiction of Authority stands finally settled. Accordingly, Authority hereby proceeds with dealing with all the matter on their merits.

5. After going through record and stand taken by respondent in his reply upon para 2 apart from considering the statement given by learned counsel for respondent in court proceeding today that construction of the project is stopped. So, respondent is not in position to handover the booked flat, Authority comes to conclusion that respondent have failed to develop the project in time and admittedly it is not being developed. Further, from bare perusal of photographs attached at Annexure P-6 of complaint, it proves that booked flat of complainant cannot be completed in foreseeable future. Respondent have failed to show any progress of towers nor they are in a position to commit any time line to complete the project. Delay of nearly eight year has already been caused.

Considering foregoing ground of relief claimed by complainants i.e. refund of the amount paid by them to the respondents along with interest in terms of Rule 15 of RERA, Rules, 2017 deserves to be granted 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.

Further, during hearing, complainant was granted one week time to submit receipts of paid amount by him to the respondent. Accordingly, complainant has attached a table showing dates and payments along with their proofs in the office of the Authority on 01.08.2022. On perusal of said documents, it is revealed that all payments amounting to ₹ 25,17,914/- were paid to present respondent namely, "Ansal Properties & Infrastructure" except one payment of ₹ 3,00,000/- which was paid on 04.06.2013 to another respondent, namely, "Ansal Housing and Construction Ltd." Fact remains

that complainant in original complaint has prayed for refund of ₹ 25,17,914. Accordingly, Authority after considering all documents placed on record, orders to refund the amount which is prayed in original complaint by the complainant because amount of 25,17,914/- has only been paid to the present respondent-promoter.

6. Respondent are directed to refund an amount of ₹ 25,17,914/- paid by the complainant to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 from respective dates of making payments till passing of this order. Authority has got the interest calculated, which works out to ₹ 26,04,133/- . This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 26.07.2022 at the rate of 7.80 plus 2%= 9.8%. Respondent shall pay ₹ 51,22,047/- (25,17,914/-+ ₹ 26,04,133/-) to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days from the date of uploading of the order on the website of the Authority.”

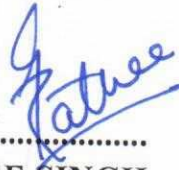
2. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 1007 of 2021 titled as “Jee Sukh Ram Khedar Versus Ansal Properties & Infrastructure Pvt. Ltd” Therefore, captioned complaint is disposed of in terms of the order passed by Authority in Complaint no. 1007 of 2021.

3. In furtherance of above mentioned observation, Authority would dispose of captioned complaint with the order that refund of the amount paid by complainant to the respondent along with interest in terms of Rule 15 of RERA, Rules, 2017 deserves to be granted from respective dates of making payments till passing of this order.




4. Further Authority directs the respondent to refund entire principal amount of ₹ 29,19,111/- to the complainant with interest. Authority has got the interest calculated, which works out to ₹ 31,45,663/-. This interest has been calculated from the date of making payments by the complainant upto the date of passing of this order i.e. 27.09.2022 at the rate of 10%. Now, respondent has to pay total amount of ₹ 60,64,774/- (29,19,111/- /- + ₹ 31,45,663/-.) to the complainant. Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.

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


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]