



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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## 1. COMPLAINT NO. 402 OF 2022

**ANIL KUMAR GUPTA**

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

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

**Member  
Member  
Member**

**Date of Order: 12.10.2022**

**Present through video calling:**

Adv. Sushil Kumar, learned counsel  
for the complainant (in complaint no.  
402/2022)

Adv. Ajay Ghangas, learned counsel  
for the respondent.

### **ORDER (Dr. GEETA RATHEE SINGH-MEMBER)**

1. Learned counsel for the complainant Sh. Sushil has submitted that decision dated 01.06.2022 taken by the Authority in Complaint No. 944 of 2020 titled as "Rajiv Arora Versus Ansal Properties & Infrastructure Pvt. Ltd" squarely covers the controversy involved in above mentioned complaints. To support his contention, he briefly averred the facts of the lead

case wherein complainant had booked flat bearing no. 0102-26-502, having area 1610 sq.ft. in the year 2011. An Builder buyer agreement dated 09.09.2011 was executed between the parties, whereby respondent was supposed to handover possession by 09.09.2015 as per clause 5.1 of the said agreement. Total sale price of flat was ₹ 35,81,250/- against which complainant has already paid an amount of ₹ 33,34,712/- . As a proof of payment, complainant has annexed statement of accounts issued by respondent as Annexure C-5 at page no. 48 -53. Respondent was supposed to hand over possession of the booked apartment within 48 months from the date of execution of agreement. As per BBA, deemed date of possession works out to be 09.09.2015. Respondent has not offered possession to the complainant till date. Learned counsel for the complainant states that there is no possibility of getting the project completed in near future. Complainant has sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017. Considering inordinate delay of seven years and no hope of its completion in near future. Operative part of said order dated 01.0.2022 is reproduced below for ready references:

“1. *Captioned bunch of complaints is being disposed of together by this common order. Complaint No.944 of 2020 titled “Rajiv Arora Versus Ansal Properties & Infrastructure Pvt. Ltd”. has been taken as lead case.*

2. *Complainant in the lead case, is a subsequent purchaser. Original allottee had booked a flat bearing no.0102-26-0501, in Tower T-26 admeasuring 1541 sq. ft. in*

respondent's project "Green Escape Apartments", Sonapat on 29.10.2012. Original allottee and respondent had executed flat buyer agreement dated 29.10.2012. As per Clause 5.1 of the agreement, possession of booked property was to be delivered within 42 months with a grace period of 6 months. So, deemed date of possession comes to 30.10.2016. Subsequently, original allottee assigned all rights and liabilities in favour of complainant on 07.12.2012, which is evident from letter dated 07.12.2012 annexed as Annexure C-6 of complaint. Total sale consideration of the flat was Rs. 25,49,452.34/- against which complainant had already paid an amount of Rs. 23,28,824/-. Learned counsel for complainant states that there is no possibility of getting the project completed in near future. For the reason of inordinate delay of over six 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. 23,28,824/- 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.

3. 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.	Tower	DATE OF AGREEMENT	TOTAL SALES CONSIDERATION (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION
1.	944/2020	26	29.10.2012	25,49,452.34/-	23,28,824/-	30.10.2016
2.	1116/2021	19	14.02.2012	21,53,000/-	17,36,336.88/-	15.02.2016
3.	813/2021	15	14.02.2012	30,82,015/-	21,39,673.50/-	15.02.2016

4. On the other hand, respondent in their reply have raised mostly technical objections like the 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, stage of construction is at advanced stage and the possession of unit is likely to be delivered in 8-9 months.

5. Sh. Vivek Sethi, 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.

6. Since, vide captioned complaints complainants have sought relief of refund 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 was subjudice before Hon'ble High Court and Hon'ble Supreme Court.

Now, the position of law has changed 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.

7. After going through record, respondent's stand in reply as stated in para 4 and

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 on time and admittedly it is not being developed. Accordingly, booked flat of complainant cannot be completed in foreseeable future. Authority has laid down a principle that alternate unit can be offered to an allottee only with his express written consent. Allottees have a right to get possession of the apartment booked by them. As per law they cannot be forced to relocate themselves to an alternate unit. Respondent have not failed to show any progress of towers nor are they in a position to commit any time line to complete the project. Delay of nearly six year has already been caused.

For the foregoing reasons 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.

8. Authority accordingly orders refund of the money paid by all the complainants along with as shown in the table below-

Sr. No.	COMPLAIN T NO.	Total amount claimed to be paid by the complainant (In Rs.)	Total amount on which interest is calculated(in Rs.)	INTEREST (In Rs.) @ 9.30	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs. )
	944/2020	23,28,824/-	23,28,824/-	1702,372/-	40,31,196/-
2	1116/2021	17,36,336.88/-	17,36,336.88/-	14,72,620/-	32,08,956.88/-
3	813/2021	21,39,673.50/-	20,16,173.94/-	19,13,422/-	39,29,595.94/-

In complaint no 813/21, complainant has alleged that he had paid an amount ₹ 21,39,673.50/- . However, he had annexed

*statement of account issued by respondent at page no. 72 – 77 of complaint, wherein details of paid amount of ₹ 20,16,173.94/- only has been provided. Accordingly, complainant is entitled to receive interest on amount of ₹ 20,16,173.94/- instead of claimed amount of ₹ 21,39,673.50/-*

*9. Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.”*

2. On the other hand, respondent in their reply have raised mostly technical objections like complaint is not maintainable; RERA Act of 2016 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-9 of the reply submitted by the respondents, he stated that huge investments were made for carrying out construction and development work of project. However, at present, construction remains stopped and it will take another one year to complete the project.
3. Authority is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint No. 944 of 2020 titled as “Rajiv Arora Versus Ansal Properties & Infrastructure Pvt. Ltd”. Accordingly, captioned complaints are disposed of in terms of the order passed by Authority in Complaint no. 944 of 2020.
4. In furtherance of above mentioned observation, Authority is disposing 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.

Accordingly, Authority orders refund of the money paid by the complainants along with interest as shown in the table below-

Sr. No.	COMPLAINT NO.	Total principle amount claimed to be paid by the complainant (In Rs.)	Total amount on which interest is calculated(in Rs.)	INTEREST (In Rs.) @ 10%	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
1.	402/2022	33,34,712/-	33,34,712/-	29,86,373/-	63,21,085/-

5. 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 order.

.....  
DR. GEETA RATHEE SINGH  
[MEMBER]

.....  
NADIM AKHTAR  
[MEMBER]

.....  
DILBAG SINGH SHAG  
[MEMBER]