

**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

- Complaint. Nos.** 05/2018 – Narender Singh Mann & another Versus
M/s Astrum Value Homes Pvt. Ltd.
- 86/2018 – Rekha Chauhan Versus M/s Astrum
Value Homes Pvt. Ltd.
- 87/2018 – Rita Somra & another Versus M/s Astrum
Value Homes Pvt. Ltd.
- 88/2018 – Suman Bansal Versus
M/s Astrum Value Homes Pvt. Ltd.
- 90/2018 – Rohtashv Bindle Versus M/s Astrum
Value Homes Pvt. Ltd.
- 99/2018 – Darshan Kumar DHINGA & another Versus
M/s Astrum Value Homes Pvt. Ltd. and
another.
- 104/2018 – Sushil Jain Versus M/s
Astrum Value Homes Pvt. Ltd. and
another.
- 105/2018 – Girish Kumar Versus M/s
Astrum Value Homes Pvt. Ltd. and another.
- 107/2018 – Mahinder Midha Versus M/s
Astrum Value Homes Pvt. Ltd. and Anr.
- 108/2018 – Shanti Devi Versus M/s
Astrum Value Homes Pvt. Ltd. and Anr.
- 109/2018 – Arati Joshi Versus M/s
Astrum Value Homes Pvt. Ltd. and Anr.
- 111/2018 – Sarla Jindal & another Versus M/s Astrum
Value Homes Pvt. Ltd. and another.

- 112/2018 – Piyooosh Oberoi & another Versus
M/s Astrum Value Homes Pvt. Ltd. & Anr.
- 115/2018 – Virender Kumar Versus M/s
Astrum Value Homes Pvt. Ltd. and Anr.
- 136/2018 – Ahay Taneja Versus M/s
Astrum Value Homes Pvt. Ltd.
- 155/2018 – Brij Bhushan Sharma Versus M/s
Astrum Value Homes Pvt. Ltd. and another.
- 158/2018 – Raj Kumar Sharma Versus M/s
Astrum Value Homes Pvt. Ltd. and another.
- 161/2018 – Vinod Chahal Versus M/s
Astrum Value Homes Pvt. Ltd. and another.
- 190/2018 – Naveen Goyal Versus M/s
Astrum Value Homes Pvt. Ltd. and another.
- 192/2018 – Jagdish Malik & another Versus
M/s Astrum Value Homes Pvt. Ltd. & Anr.

Date of Hearing: 17.10.2018


Coram: - Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance: -

Sh. Shekhar Verma, Advocate for Complainant
Sh. J.S. Manjhu, Advocate for Respondents
Sh. Vimal Sharma, Company Representative for
Respondents

ORDER:

1. The facts of the lead case **Complaint No.88 of 2018 Suman Bansal & others Versus Astrum Value Homes Pvt. Ltd.** are being taken into consideration for disposal of the matter.
2. This matter had been part heard on 16.10.18 and finally heard today on 17.10.18. On 16.10.18, Ld. Counsel for the complainant had filed a miscellaneous application for reviewing the order of the Authority passed after its hearing on 10.09.18. Ld. Counsel had requested that the matter heard by two members of the Authority should be heard by Full Bench. After arguments, the application was disposed of and terms thereof have bene incorporated in this order.
3. In brief, the complainant's case is that she purchased an apartment from an original allottee on 15.04.2013 in the project 'La Regencia' promoted by the respondent. The original allottee had booked the apartment in May 2012. On 06.06.2013, buyer's agreement was executed and Apartment No. F-601 measuring 1865 sq.ft. was allotted to her. It was agreed that the possession will be handed over within 30 months. The complainant alleged that the period of 30 months should be reckoned from 29.05.2012 i.e. date when the



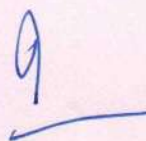
apartment was initially booked. Accordingly, if the period of 30 months is reckoned from the date of booking, it comes to 29.11.2014 and if it is reckoned from the date of agreement then it comes to 5.12.2015. Against total sales consideration of Rs.54,28,750/-, the complainant has already paid an amount of Rs.40,44,015/-. The complainant further states that the payment plan is construction linked. Since, no further demand has been raised by the respondent after 04.07.2016, it is evident that no construction work has been taking place. At present, only bare structure is standing at the site.

4. During oral arguments, Ld. Counsel for the complainant states that numerous attempts have been made by the complainant to persuade the respondents to start construction but each time they have made false assurances without any progress at the site. Several meetings with the representative of district administration have also been held in which the respondents have held several promises but none of those promises have actually been fulfilled. The respondents have been making false promises and are just not serious about completing the project. Since the project has been delayed inordinately, no work is going-on on the ground, there are disputes between the respondent partners and even the structure already constructed at the site is deteriorating and may have actually become

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unsafe, therefore, the complainant seeks refund of their deposit along with interest @ 18% as well as due compensation.

5. The respondents have basically admitted the fact of the complainant having paid the claimed amount to them. They, however, state that as per clause 4.1 of the agreement, the possession of the apartment is supposed to be handed over within 30 months of executing the buyer's agreement which, however, is subject to force majeure conditions, timely payment of the price of the apartment etc. It has further been stated by the respondents that structure of the building is complete and the Authority while adjudicating the complaint of this nature has to consider the interest of the project as a whole and the impact of any refund/claim on the interest of all allottees of the project as well. It is mentioned in the registration certificate of the project dated 12.09.17 that it will be completed by December, 2019. Further, if the relief of refund as prayed for is allowed then not only would the interest of the other allottees of the said project be jeopardized but viability of the project as a whole would also go into serious problems. The respondents have also challenged the jurisdiction of this Authority but have given no reasons for the same. The respondent also states that the complainant is barred by the principle of acquiescence because one, the complainant has executed



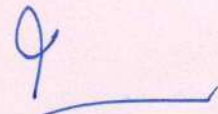
the buyer's agreement without any objection and second, she is bound by the terms and conditions set therein. The complainant cannot challenge those conditions at such a belated stage.

6. The Authority observes as follows: -

- (i) This bunch of complaints had been received by the Authority in the months of March/April, 2018. It is apparent from the facts submitted orally and in writing by the parties that the project is comprised of two phases. Admittedly, the Phase-I is complete, its possession has been handed over and the allottees are living in those apartments. The problem, however, has arisen in the Phase-II of the project. As argued by the Ld. Counsel and also noted by the Authority on various dates that the project has run into difficulties on account of stoppage of cash flow due to non-payments by a chunk of allottees and also because of internal disputes between the respondent no. 1 & 2. Respondent No.2, M/s Stanza Developers & Infrastructure Pvt. Ltd. is the land owner licensee and respondent No.1 is the developer of the project.



- (ii) There are 180 apartments in Phase-II of the project, out of which 145 have been allotted, out of which 20 are the complainants.
- (iii) The respondent No.1 is assuring to complete the project and is ready to follow the directions of the Authority. The Authority observed that in case the relief of refund is granted to the complainants, interests of the rest of the non-complainant allottees could also get seriously jeopardized and the project may not get completed. The Authority considers it to be its responsibility to not only protect the interest of the complainants but also the non-complainant allottees in the larger public interest. Growth and development of the real estate project is also a responsibility of Authority.
7. Keeping in view the aforesaid facts and circumstances, the Authority had adjourned this matter six times and have granted in all seven hearings to the complainants and the respondents. Keeping in view the larger interest of the allottees, the Authority has taken a view that since the funds collected from the allottees does not appear to have been siphoned away by the respondents and they are willing to follow the directions of the Authority to complete the project, the refund of the money paid by the complainants in this situation is not



justified. The Authority had asked the respondents to open an 'Escrow Account' in which they should contribute an amount of Rs.20 crores from their own resources and invest that money only on completion of the project. The Authority had also asked the respondent to give monthly schedule of completing the construction work as well as the amount to be spent on various construction activities in each month.

In response to the various directions of the Authority as have been recorded in various interim orders passed by it on different dates, the respondents have submitted their plan of action and schedule of expenditures for completing the project. The directions passed by the Authority from time to time in the interim orders may be read as a part of this order. All the orders passed by the Authority are available on its website.

8. In response to the directions of the Authority, the respondents have undertaken to complete the project in three phases as follows: -
 - (i) Towers E & F and related external infrastructure shall be completed by June, 2019.
 - (ii) Towers G & H and related external infrastructure shall be completed by September, 2019.

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- (iii) Tower I and related external infrastructure shall be completed by December, 2019.

8A. The respondent no. 1 has undertaken to incur the expenditure on Towers E, F, G, H and I as listed below in each month starting from October, 2018 up to December, 2019:

Period	Monthly expenditure (In lacs)
October 2018	100.00
November 2018	200.00
December 2018	250.00
January 2019	350.00
February 2019	350.00
March 2019	350.00
April 2019	400.00
May 2019	400.00
June 2019	400.00
July 2019	350.00
August 2019	350.00
September 2019	350.00
October 2019	150.00
November 2019	150.00
December 2019	100.00
Total	4250.00

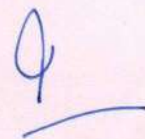
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8B. In order to show their seriousness, the respondents produced a statement showing the details of the 'Escrow Account' with ICICI Bank, Gurgaon Branch bearing Account No. 661405600771 and the fact of having deposited an amount of about Rs.10 crores in that account. The respondents submitted that they will deposit more amount in this account as and when required to meet the schedule given above.

8C. The respondent also gave a table of the construction activities which will be carried out in each month starting from October, 2018 upto December, 2019. The said table was taken on record.

9. After detailed consideration of the matter and evaluating the written and oral submissions made by both the parties, the Authority disposed of this matter with following directions: -

- (i) The respondents shall strictly adhere to the undertakings given by them in respect of completing the construction activities as shown in the table and for meeting the deadlines stated above. They will incur the expenditure on the project as promised by them. Any failure on this account will invite exemplary penalty. In order to ensure that the promises are fulfilled by



the respondents, a suo moto Complaint No. 801 of 2018 has been registered against the respondents which will be heard every two months by the Authority. This suo moto complaint shall now come up for hearing on 11.12.18.

- (ii) This Authority has taken a view with regard to the compensation to be paid to each of the allottee on account of delay in handing over possession by the developers in complaint **Case No.113 of 2018- Madhu Sareen Versus M/s BPTP Ltd.** In the said complaint, two Members have taken a view that for the delay compensation should be payable as prescribed in Rule 15 of the HRERA Rules whereas the 3rd member has taken a different view for the reasons recorded in detail in complaint **Case No.49 of 2018- Parkash Chand Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd.** While as per law, the majority view will be implemented, however, the views of the respective members shall remain as expressed in above mentioned complaints.
- (iii) The respondent shall strictly abide by the super area, for which the complainant shall be charged, in accordance with the already approved plans as on this date without making any further amendments therein. Further, the super area allocated

to each complainant for which he/she will be charged shall be conveyed by the respondents and the same shall not be altered.

- (iv) The allottees shall be liable to pay all statutory charges; taxes and levies payable to the State Government or State Government authorities as are applicable upto the deemed date of possession calculated from the date of execution of buyer's agreement. This date will differ in each case. If any tax, levy or charge has been imposed by the State Government or its authorities after the said deemed date of possession, the same shall be borne by the respondents.
- (v) The respondents shall prepare a statement of account in respect of each allottee atleast two months prior to the likely date of offer of possession. In the statement of account, the amount payable by the allottees to the developers and the amount of compensation payable by the developers to the allottees shall be duly shown. The allottees shall be asked to pay only the balance excess amount if any.
- (vi) The respondent shall prepare a directory of all the allottees containing therein their addresses and phone numbers and circulate the same amongst all the allottees. He shall take steps

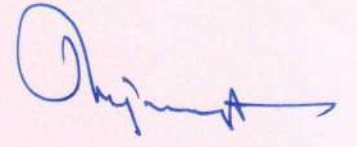
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to form an association of the allottees and hold a monthly meeting to apprise the allottees of the financial and physical progress of the project.

Disposed of in above terms.

Dilbag Singh Sihag
Member

A.K. Panwar
Member



Rajan Gupta
Chairman

The undersigned Member after having perused the order authored by Hon'ble Chairman, will take the privilege of adding the following observations thereto for avoiding any chance of further occurring a hardship to the complainants and to ensure a time bound completion of the project besides addressing a peculiar grievance made by one of the complainants:-

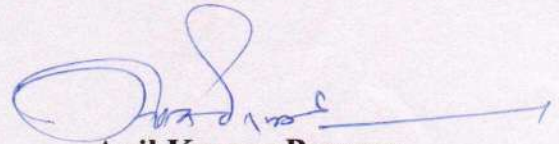
1. Complainant Sushil Jain of case No. 104 of 2018 in the course of hearing on 16.10.2018 has urged the Authority to be more sympathetic in respect of his prayer for refund because he needs money to meet the expenditure of treatment in respect of kidney ailment. He was also carrying treatment history with him on that day for convincing the Authority about such need. The Authority then advised the respondent to consider his case sympathetically and to settle the matter amicably.
2. The Authority in the course of next hearing held on 17.10.2018, when questioned the respondent about the efforts made for amicable settlement with said complainant, the promoter, who was personally present, has stated at bar that he would amicably settle the matter within a week. So, the undersigned Member will direct the respondents to settle the matter amicably with the complainant Sushil Jain and submit a report in this regard within two weeks. If a report is filed, the Administrative Officer (Petitions) shall send its copy to the complainant Sushil Jain for apprising him about the contents of full settlement.

In case the parties fail to arrive at an amicable settlement, the A.O. (Petitions) will put up the matter after lapse of 15 days from the date of uploading of this order, in the next meeting of the Authority so that appropriate action as deemed proper is taken to avoid hardship to the complainant in respect of his proper treatment.

3. The target, now being given by the respondent for completion of project in phases by December, 2019, can be achieved only if the money which the respondent has agreed to invest as per table reproduced in Para-8A of the order authored by Hon'ble Chairman, is actually sufficient to meet the expenditure of remaining work of the project. However, if said money ultimately turns out to be insufficient for completion of project, the promoter in such eventuality despite adhering to his promises made before this Authority will only end up in adding further miseries to the already suffering complainants. The Authority will then be required to allow further extension of time to the promoter for completion of project. So, the undersigned Member will direct that the promoter within 10 days of uploading of this order shall file his affidavit along with a certificate of Architect/Building Engineer to the effect that the project with the amounts mentioned in the table submitted by promoter, will be able to achieve completion on schedule time.

4. The Authority, as observed by the Hon'ble Chairman in Para-7 of his order, had directed the respondent to deposit Rs. 20.00 crores in 'Escrow account' but the respondent had only deposited Rs. 10.00 crores till date. So, the

respondents are directed to deposit the balance amount of Rs. 10.00 crores within 21 days of uploading of this order.

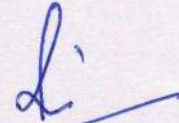


Anil Kumar Panwar.
Member
02.11.2018.

Member-II.

I, undersigned, have gone through the detailed orders passed by Hon'ble Chairman and further observations made by Hon'ble Member in the bunch cases. I do agree with the orders of the Hon'ble Chairman except on issues mentioned in the orders of Hon'ble Member because the view points expressed by Hon'ble Member further supplements the detailed orders. Hence there is sound logic to agree with the view points expressed by Hon'ble Member on both the issues.

The case is listed for hearing on **11.12.2018** for assessing the progress made by the promoter to complete the project in question.



Dilbag Singh Sihag
Member-II
15.11.2018