

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

**Complaint. No. 591 /2018-** Divya Lal  
Versus  
Ansal Housing & Construction Ltd.

**Date of Hearing: 21.11.2018**

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

**Appearance: -** Sh. Ajay Kumar Lal, Counsel for Complainant  
Sh. Khush Karan Kumar, Counsel for Respondent

**ORDER:**

1. In brief, the complainant's case is that, vide allotment letter dated 22.07.09, she was allotted a commercial unit/shop no. UGF/006, measuring 155 sq. ft. in "Ansal Galleria Town", Sector 36, Karnal, Haryana. The booking amount for the shop/unit was Rs 6,21,937/-. The shop's number and prime location was chosen by the complainant on paying additional charges in the form of PLC (Prime Location Charges). As per the payment plan, the shop/unit was to be completed in 29 months from date of allotment letter i.e. by December 2011. On 13.09.11, the respondent intimated to complainant that original payment plan has been rescheduled without informing any status of the construction work. On 18.01.13, the respondent sent a letter to complainant stating that the shop

which was allotted to her on the upper ground floor has been shifted to first floor. The respondent also informed the complainant that area of the shop/unit has been increased and thereby, cost has also been increased from Rs. 6,21,937.50/- to Rs. 9,54,487/- The complainant had already made full payment of Rs. 6,21,937/- by the year 2011. Despite making full payment, the respondent did not deliver the possession of unit/shop to complainant in time. To his surprise, the respondent had shifted the location of unit from upper ground floor to first floor without seeking his consent and also increased the area of the unit arbitrarily. Learned Counsel of the complainant stated that his client had met the respondent number of times and requested to refund the amount but to no avail.

So, in this background, the complainant filed this complaint for refund of the money paid by him along with interest and payment of Rs 50 lacs as compensation.

2. On the other hand, Learned Counsel of the respondent stated that the present complaint is not maintainable as provision of Section 3 of RERA Act, 2016 is not applicable to the projects wherein completion certificate had already been issued on the commencement date of the Act. He further stated that the Project had already received the completion/occupancy certificate on 28.04.16. The respondent further cited a law laid down in **“Neel Kamal Realtors Suburban Pvt. Ltd. V Union of India, 2018(1)**



**R.C.R. (CIVIL) 298**, wherein Hon'ble Division bench of Bombay High Court has held that the provisions of the Act are prospective in nature. Hence, provisions of this Act are not applicable to projects which have already been started on the date of the commencement of the Act i.e. 01.05.17.

3. The Authority, after considering the submissions made by both the parties, has passed following orders:

- (i) As far as the issue of jurisdiction of this Authority is concerned to entertain the present complaint as raised by Learned Counsel for respondent, this issue has already been deliberated and settled and the Authority has powers to entertain such complaint under the provisions of Sections 11, 18 and 19 of the RERA Act, 2016. The Authority has passed a comprehensive order with regard to jurisdiction of the Authority in **Complaint no. 144 of 2018 Sanju Jain V TDI**. The reasons cited in the said order shall be applicable in this case also.
- (ii) Hence, this is undoubtedly a case of refund considering the following grounds:
  - The complainant had made full payment against the booked shop which had a preferential location on upper ground floor whereas this location of the shop had been changed by the respondent



arbitrarily without seeking prior consent of the allottee. The Complainant had been put to disadvantage by shifting his booked shop at disadvantageous location.

- The area of the shop too had been increased without seeking the consent of the complainant allottee, moreover, cost of the shop has been increased from Rs. 6,21,937.50/- to Rs. 9,54,487/-.
- The possession of the booked shop has not been offered even after inordinate delay of nine years.

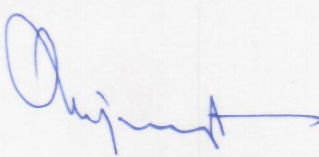
Considering the above facts, the Authority observed that the complainant has a right to seek refund of entire amount paid by him with permissible interest.

- (iii) The Authority directs the respondent to refund the already paid amount to the complainant along with interest as stipulated under Rule 15 of The HRERA Rule, 2017. The respondent shall pay the entire amount within 60 days in two instalments of which first instalment will be payable within 30 days and the next within next 30 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website of the Authority.

Case is **disposed of** and file be consigned to the record room.

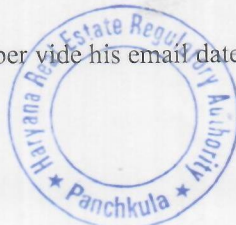
  
Dilbag Singh Sihag  
Member


Anil Kumar Panwar  
Member

  
Rajan Gupta  
Chairman

Sh. A.K. Panwar, Hon'ble Member vide his email dated 07.01.2019, has approved and consented to the above orders.

Dated:07.01.2019



  
Executive Director  
HRERA, Panchkula