



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**BEFORE ADJUDICATING OFFICER**

**Complaint no. 769 OF 2021**

**Date of Institution: 22.07.2021**

**Date of Decision: 28.10.2021**

**Bharat Kumar Sen, r/o 143/9, 1<sup>st</sup> Floor, Gaushala Road,  
Krishan Garh, Basant Kunj, New Delhi**

**.....COMPLAINANT**

**VERSUS**

**M/s Ansal Properties and Infrastructure Pvt. Ltd.,  
115 Ansal Bhawan, Kasturba Gandhi Marg, New Delhi-110001**

**.....RESPONDENT**

**Hearing: 5<sup>th</sup>**

**Present:- Sh. Prabhu Nath Chaudhary Advocate, counsel for complainant  
through video conference**

**Sh. Vishal Yadav, counsel for respondent through video  
conference**

*Sanita Gupta*

**ORDER (DR. SARITA GUPTA- ADJUDICATING OFFICER)**

1. Brief facts culminating into the institution of the present complaint are:

The complainant had filed Complaint no. 24 of 2019 titled as Bharat Kumar Sen Versus Ansal Properties and Infrastructure Ltd before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. Vide order dated 31.10.2019, relief of refund along with interest at the rate prescribed under Rule 15 of HRERA Rules 2017 was allowed in favour of complainant. Despite order of Hon'ble Authority, amount was not paid by the respondent to the complainant. The complainant was compelled to file execution of the above said order, which is pending adjudication before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula.

2. The complainant has further stated that respondent has failed to comply with various obligations towards complainant/allottee viz. the respondent did not register the project with the Haryana Real Estate Regulatory Authority, Panchkula despite the fact that it was an on-going project, the complainant has suffered wrongful loss and damages because of false information and commitment contained in sales brochure, advertisement/ prospectus, without entering into written agreement for sale,

the respondent could not demand more than 10 % of the cost of the unit, after execution of builder buyer agreement on 23.07.2012 physical possession of the booked unit was to be delivered to the complainant upto 27.05.2014. Even after serving of notice to the respondent on 16.11.2018 to cancel the allotment of the unit, the respondent has not refunded the amount paid by the complainant and the respondent has not provided information relating to sanctioned plan etc. and stage wise time schedule of completion of project. Hence, complainant has approached this Court seeking compensation under following heads:

- (i) Amount of ₹ 15,00,000/- for physical and mental harassment of the complainant due to failure to meet the promised obligations by the respondent/ promoter
- (ii) Amount of ₹ 12,90,000/- as damages for loss of earning on the accommodation w.e.f. 27.05.2014 till filing of complaint i.e. 22.07.2021 @ 15,000/- per month
- (iii) Penalty for violation of the orders and directions of the RERA, Panchkula under Section 63 of the Act which is 5% of the cost of the project
- (iv) Litigation cost of ₹1,50,000/-

3. Upon notice, the respondent appeared through counsel and filed written statement taking preliminary objections that present complaint is not maintainable on the ground that complainant had already filed Complaint no. 24 of 2019 before RERA Authority on similar grounds which was

decided vide order dated 31.10.2019 and the respondent was directed to refund the paid amount along with interest as per Rule 15 of HRERA Rules. Thereafter, complainant had filed Execution Complaint bearing no. 73 of 2020 before Hon'ble Authority, which is pending adjudication. Complainant has not approached the Court with clean hands and the complaint has been filed on false and frivolous grounds.

On merits, it has been submitted that respondent/promoter had offered the alternate unit to the complainant which he had refused to accept and prayed for relief of refund before Id. Authority. The respondent has failed to complete the construction work and deliver the possession due to reasons beyond its control. The respondent has prayed for dismissal of the complaint with heavy cost.

4. Arguments raised by learned counsel for both the parties have been carefully heard along with meticulous examination of the records of case.

5. At the outset, it has been argued by learned counsel for complainant that the complainant had booked a flat measuring 1690 sq. ft. in the project namely "Green Escape Apartments" of the respondent on 18.06.2012. Allotment cum builder buyer agreement was executed between the complainant and the respondent on 23.07.2012. Flat no. 0102-14-0402 was allotted to complainant. Total sale consideration of the flat was

₹32,18,400/- against which the complainant had paid an amount of ₹12,80,986/-. Assurance was given to the complainant that actual physical possession of the flat would be handed over within forty-two months with an extended period of six months from the date of execution of the builder buyer agreement which comes to 23.07.2016. Nine years have already elapsed from the date of booking despite that no work has been carried out at the site of said project.

Since the respondent was not able to give physical possession of the unit, the complainant was left with no option but to file complaint bearing no.24 of 2019 seeking refund before Hon'ble Real Estate Regulatory Authority, Panckula. Vide order dated 31.10.2019, Hon'ble Authority directed the respondent to refund the entire amount along with interest as per Rule-15 of HRERA Rules 2017. Execution of the said order was filed. Out of the total amount, only ₹ 2 lakh have been paid by the respondent to the complainant and remaining amount is to be paid and execution is also pending adjudication before Hon'ble Authority. Ld. counsel for the complainant has prayed for amount of compensation for physical and mental harassment, loss of earnings and penalty for violation of orders along with litigation cost.

6. To rebut the arguments of ld. counsel for the complainant, it has been argued by the ld. counsel for respondent that construction of the project

could not be completed for the reasons beyond the control of respondent. The respondent had offered alternate unit to the complainant which was declined by the complainant and he insisted on refund of the amount. Out of the total amount, only ₹ 2 lakh has already been paid by the respondent to the complainant and the remaining amount could not be paid because of pending execution before Hon'ble Apex Court.

7. Perusal of record shows that the complainant had booked a flat measuring 1690 sq.ft. in the project "Green Escape Apartments" of the respondent on 18.06.2012. Allotment cum building buyer agreement was executed on 27.07.2012. Flat no. 0102-14-0402 was allotted to the complainant. It is not disputed that against the total sale consideration of ₹ 32,18,400/-, the complainant had paid ₹ 12,80,986/-. Despite assurance given by the respondent to deliver actual physical possession to the complainant on 23.07.2016, possession was not handed over. Since the offer of alternate unit was declined by the complainant, he filed complaint bearing no.24 of 2019 before Hon'ble Authority, Panchkula. Vide order dated 31.10.2019, Hon'ble Authority directed the respondent to refund the entire amount paid by the complainant along with interest as per Rule 15 of HRERA Rules 2017. Since the amount was not paid by the respondent, the complainant had to file Execution Complaint bearing no.73 of 2020. Since the actual amount was not mentioned in order dated 31.10.2019 passed by

Hon'ble Authority, in execution, vide order dated 13.8.2020, the amount to be paid by the respondent to the complainant was calculated at ₹34,55,660/-. On 06.10.2020, amount of ₹ 2 lakh was paid by the respondent to the complainant by virtue of demand draft. After payment of ₹ 2 lakh, the remaining amount to be paid comes to ₹ 32,55,660/-. Vide order dated 6.10.2020, Hon'ble Authority had directed the respondent to pay 50% of the total payable amount by way of demand draft on the next date of hearing and submit post-dated cheques for the balance amount payable over a period of 4 months. On the next date i.e. 12.11.2020, instead of paying amount of 50%, respondent sought two weeks' time to pay 50% amount, which was granted by Hon'ble Authority vide order dated 12.11.2020, subject to payment of cost. The respondent was also directed to provide its bank account details. On 22.12.2020, respondent expressed his inability to execute the orders due to financial crisis. The request of respondent was declined and the proceedings under Order 21 Rule 37 CPC were initiated and show cause notice was issued to the directors of the respondent as to why their bank accounts be not attached. On 03.02.2021, ld. counsel for respondent had informed Hon'ble Authority with regard to writ petition 1424 of 2020 being tagged with SLP No. 13005 of 2020. In these circumstances, the execution was adjourned vide orders of Hon'ble Apex Court and the present execution along with others was adjourned by Hon'ble

Authority to await the outcome of said SLP pending before Hon'ble Apex Court.

8. From the aforesaid facts and circumstances, it is apparent that the complainant had paid an amount of ₹ 12,80,986/- on 27.05.2014. Builder buyer agreement was executed on 23.07.2012. Builder buyer agreement shows that the possession would be handed over within 42 months with an extended period of six months, which comes to four years from the date of execution of builder buyer agreement, according to which, date comes to 23.07.2016. Since there is nothing on record to show that possession was to be handed over till 27.05.2014, date of deemed possession would be taken as 23.07.2016. As per version of the complainant, physical possession of the flat was to be handed over upto 27.05.2014. The possession was never handed over. Though Hon'ble Authority has ordered refund of the paid amount along with interest, yet out of the total said amount, only ₹ 2 lakh has been paid. The amount of ₹ 12,80,986/- paid by the complainant was utilised by the respondent for long period of around five years after the date of deemed possession.

Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of



the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant factors enumerated in section 72 of the RERA Act are to be taken into consideration. Section 72 of the RERA Act is reproduced as:

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the Adjudicating Officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the Adjudicating Officer considers necessary to the case in furtherance of justice.”

Since the amount of ₹ 12,90,986/- paid by the complainant has been utilised by the respondent without offering possession till date, it could be termed as disproportionate gain to the respondent and loss to the complainant which could be further termed as a result of default committed by the respondent. It can be said to be continuous default on the part of the

respondent. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default for a number of years i.e. 5 years 98 days and utilisation of the amount paid by the complainant to the respondent starting from 23.07.2016 to 28.10.2021. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6%.

Compensation calculation

Sr. No.	Amount (in ₹)	Time period	Rate of interest	Compensation Amount (in ₹)
1.	12,80,986/-	23.07.2016 to 28.10.2021 ( 5 years+98 days)	6%	4,04,932/-

Though under relief no.3, the complainant has sought penalty for violation of the orders and directions of the RERA, Panchkula under Section 63 of the Act which is 5% of the cost of the project yet this relief is to be granted by Hon'ble Authority. The complainant can approach Hon'ble Authority for its relief.

9. Sequel to aforesaid discussion, this complaint is allowed. The complainant is also awarded ₹25,000/- as litigation cost. Respondent is directed to pay an amount of ₹ 4,29,932/- [₹4,04,932/- + ₹25,000/-] (₹ Four lakh twenty nine thousand nine hundred and thirty two only) to the complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of amount shall be paid within 45 days

of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

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

*Sarita Gupta*  
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**Dr. Sarita Gupta**  
**(Adjudicating Officer)**

**Note :** This judgement contains 11 pages and all the pages have been checked and signed by me.

*Sarita Gupta*  
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**Dr. Sarita Gupta**  
**(Adjudicating Officer)**

**Dated:**

**28.10.2021**