

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

**1. Complaint. No. 848/2018-** Sanjeev Garg  
.....Complainant  
Versus

Ansal Crown Infrabuilt Pvt. Ltd.

**2. Complaint. No. 100/2019-** Sachin Garg  
.....Respondent  
.....Complainant  
Versus

Ansal Crown Infrabuilt Pvt. Ltd.

.....Respondent

**Date of Hearing: 19.03.2019**

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

**Appearance: -** Shri, Counsel for Complainants  
Shri, Counsels for Respondent

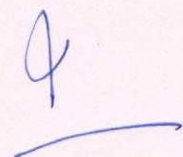
**ORDER:**

1. The captioned complaints are based on similar averments and are directed against the same project of the respondent, therefore, they were taken up together for hearing and are being disposed of by this common

order. The facts of **complaint no. 848/2018 titled as Sanjeev Garg Versus Ansal Crown Infrabuilt Pvt. Ltd.** are being taken into account for disposal of both the complaints.

2. Complainant's case is that vide allotment letter dated 24.11.12, the complainant was allotted a flat no. T-1/803, 8<sup>th</sup> floor, Tower 1 measuring 2606 sq. ft. in the project named "Ansal Crown Heights", Sector 80, Faridabad. Apartment buyer agreement was executed between the parties on 14.03.13. The complainant has already paid an amount of Rs. 88,14,725/- against the basic sales consideration of Rs. 82,55,808/-. The complainant had opted for construction linked plan. The respondent had committed to deliver the possession of unit within 36 months from the date of agreement, thus deemed date of possession comes to 14.03.16. However, the respondent has failed to deliver possession of the unit within the stipulated period of time.

The complainant, further, submitted that construction work is seventy percent complete and now the site of project has been abandoned. The complainant had sent a letter dated 18.05.17 to the mediation Center for seeking refund from the respondent, and later also sent a legal notice to respondent on 19.05.17 requesting the respondent to refund the amount till date. However, the respondent had blatantly refused to return the money, therefore, mediation was also closed.



Further, the respondent on two occasions charged interest @ 24 percent per annum from the complainant for delay of two days in making payments which is highly unconscionable and unreasonable.

The complainant prays for refund of the entire amount along with interest, compensation, cost of litigation or any other relief that the Authority may deem fit.

3. The respondent's case is that the present complaint is not maintainable as the respondent has not violated any provisions of the RERA Act, 2016. Further, the project is near completion and it will jeopardize the whole project if relief of refund is granted to the complainant. The respondent also submitted that Phase I of the project is almost complete and finishing works are going on and Phase II of the project, in which complainant has been allotted the unit, is also nearing completion. The likely date of completion is December, 2019. The respondent also submitted that the RWA which represents the interest of all flat buyers of the project has also filed a complaint no. 86 of 2018 under Consumer Protection Act, 1986 before National Consumer Dispute Redressal Commission, and same is pending for adjudication. Further, the apartment buyer agreement is subject to force majeure conditions and respondent could not complete construction of project in time due to following reasons:

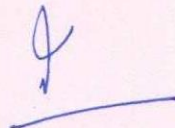


- (i) Respondent applied for renewal of license in the office of DTCP on 21.09.17 and same was granted by the department on 30.04.18, which caused delay of about 221 days.
- (ii) The building plans sanctioned by DTCP were valid only till 07.12.14 and the same was renewed by the department on 26.06.15.
- (iii) The construction work was hampered by the lackadaisical attitude of the contractor.
- (iv) Number of allottees have defaulted in making timely payments. Till date Rs. 30,73,35,278/- are recoverable from the defaulting allottees.

Under such circumstances, respondent prays for dismissal of the said complaint

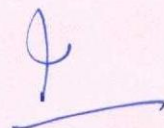
4. In view of the above submissions of both the parties, the Authority observes and orders as follows: -

- (i) This project has been registered with the Authority and in the registration certificate the project date of completion is December, 2019. Major part of the construction has already been completed. This Authority has not only to watch the interest of individual allottees but also of the entire group of allottees. The money paid by the complainants has been substantially spent on the project. The refund to one individual may have cascading

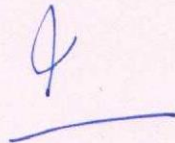


effect which will highly jeopardize the whole project. A balance has to be struck between the interest of the individuals and the interest of the entire group of allottees as well as the project. For these reasons, the Authority is not inclined to allow the prayer for refund of the money paid. The Authority, however, will direct the respondent to strictly abide by the schedule of construction for completion of the project by December, 2019 and to offer the possession of the apartment by that time.

- (ii) If the respondent has charged interest at the rate of 24% for delay of only two days in making payments, it is unreasonable and unethical. A delay of a few days can happen for variety of circumstances. The respondent has to stay flexible on this account. Further, the interest at the rate of 24% for delay in making payment is highly un-reasonable and un-conscionable. It cannot exceed more than nine percent per annum. If the delay was only of two days, the interest should be waived off and if the number of days were higher in number, then the interest shall be calculated at the rate of 9% only.
- (iii) Admittedly, the deemed date of delivery of possession was 14.03.2016. The likely date of delivery of possession is November, 2019. Accordingly, a delay of about three years and nine months will occur before the apartment is actually delivered



to the complainant. As per clause 4 of the agreement, the compensation for delayed delivery of possession shall be determined at the rate of Rs.5 per Sq. ft. In my dissenting judgement in **complaint case No.49 of 2018-Parkash Chand Arohi Versus Pivotal Infrastructure Pvt. Ltd**, I order that for the delayed delivery of possession for first two years, the compensation shall be in accordance with the provisions of the agreement and for the period beyond that it will be determined at reasonable interest which is 9% per annum. The majority members of this Authority in **complaint case No.113 of 2018 titled Madhu Sareen Versus BPTP Ltd** have however opined that for the entire period of delay even prior to coming into force of RERA Act, the compensation shall be determined at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 %. Accordingly, the delay compensation in the present case shall be determined in accordance with the views of the majority members. However, views of the minority members shall remain applicable as expressed in complaint case No.49 of 2018.



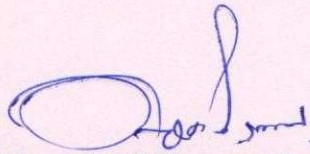
- (iv) The respondent shall prepare a fresh statement of account in accordance with this order and furnish the same to the complainant within a period of thirty days.

Both the complaints are **disposed of** in the above terms.

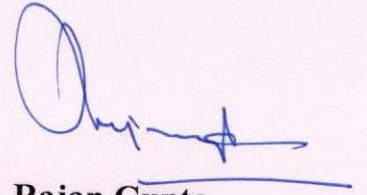
The orders be uploaded on the website of the Authority and the file be consigned to the record room.



**Dilbag Singh Sihag**  
Member



**Anil Kumar Panwar**  
Member



**Rajan Gupta**  
Chairman