



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1385 OF 2020

SUMIT SHARMA

....COMPLAINANTS

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENTS

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 02.03.2022

Hearing: 2nd

Present through video call: - Sh. Roopak Bansal, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for the respondent.

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. While initiating his pleadings, learned counsel for the complainant argued that complainant booked flat in respondent project named, "Green Escape Apartment, Phase-II Sonipat" in year 2012. As per Builder Buyer Agreement dated 04.09.2012, total sale price of flat was ₹ 40,80,490/- against which complainant has already paid an amount of ₹ 13,57,806/- . As proof of payment, complainant has annexed statement of account dated 24.02.2020 as Annexure C-4 at page no 49-53.
2. A flat bearing no.03, 10th floor in Tower 21 admeasuring 1694 sq.ft. was allotted to the complainant. Respondent was required to hand over possession of the booked apartment within 48 months from the date of execution of BBA and the same works out to 04.09.2016. Respondent has still not offered possession to the complainant.
3. Averment of the complainant as made in the written complaint is that project is nowhere near completion nor it is not likely to be completed in near future. There is already inordinate delay of five years in completion of the project. Therefore, he prayed for refund of his money along with interest as per Rule 15 of HRERA Rules 2017 and compensation on account of damage having been suffered along with cost of legal expenses.
4. On the other hand, respondents in their reply have challenged the jurisdiction of Authority to deal with this matter on the ground that in this case,



relief of refund has been sought. Respondents have also pleaded that they were unable to commence construction of booked unit due to circumstances beyond their control. However, he agreed to offer an alternate unit to the complainant.

5. Sh. Roopak Bansal, learned counsel stated that they do not wish to have an alternate apartment and complainant pressed for relief of refund along with interest and compensation.

6. This Authority had kept sine die all refund cases for more than a year or so on the ground of disputed jurisdiction of Authority to deal with such cases. Now law, on the question has been settled by Hon'ble Supreme Court and by Hon'ble High Court as well. Recently Hon'ble Punjab and Haryana High Court has disposed of a bunch of CWPs vide its order dated 13.01.2022 passed in case no. 6688 of 2021. Considering said orders this Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority is reproduced below:-

4. " The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction



and had decided await outcome of SLPs pending before Hon'ble Apex Court.

Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

7. Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate

orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly."

Since, basic issue of jurisdiction stands settled, therefore, Authority has started hearing all the complaints relating to refund which were kept sine die.

8. Now, deciding the matter on its merit, respondents have clearly conceded that they have neither completed the project nor they are in a position to complete the project for reasons beyond their control. For all practical purposes, this is a failed project and as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority grants relief of refund to the complainant along with interest as per Rule 15 of HRERA Rules, 2017 from the respective dates of making payment till the actual realization of the amount.

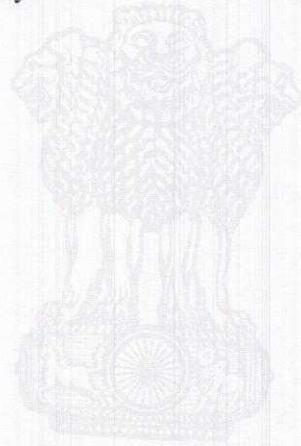
After perusal of the documents placed by complainant with regard to amounts paid to the respondent, it is observed that he has paid an amount of ₹ 12,57,806/- instead ₹ 13,57,806/-. Therefore, Authority after considering the proof of payment, decides to calculate interest on principle amount of ₹ 12,57,806/-.

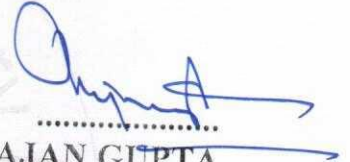
Accordingly, Authority directs the respondent to refund the entire principle amount of ₹ 12,57,806/- to the complainant. The Authority has got the

interest payable to the complainant calculated from its Accounts Branch which works out to ₹ 13,59,192/-. This interest has been calculated from the date of making payments to the complainant upto the date of passing this order at the rate applicable MCLR + 2% as provided in Rule 15 of the RERA Rules 2016.

9. Now, respondent has to pay total amount of ₹ 12,57,806/- + ₹ 13,59,192/- = ₹ 26,16,998/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days.

Disposed of. File be consigned to record room after uploading of this order on the website of the Authority.





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]