



Complaint no. 1257/19

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1257 OF 2019

SATNAM DHAMEJA

....COMPLAINANT

VERSUS

Ansal Properties and Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 02.03.2022

Hearing: 8th

Present through video call: - Sh. Vivek Sethi, learned counsel for the complainant

Sh. Ajay Ghangas, learned counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. While initiating his pleadings, learned counsel for the complainant argued that complainant booked flat in respondent project named, "Green Escape Apartment, Sonipat" in year 2011. As per Builder Buyer Agreement dated

16.09.2011, basic price of flat was ₹ 41,79,150/- against which complainant has already paid an amount of ₹ 34,41,820/- . As proof of payment, complainant has annexed receipts of payments made to the respondent in his complaint as Annexure C-6 at page no 62-78.

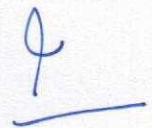
2. A flat bearing no.202, second floor in Tower 36 admeasuring 2259 sq.ft. was allotted to the complainant. Respondent was required to hand over possession of the booked apartment within 48 months from the date of execution of BBA and the same works out to 16.09.2015. Respondent has still not offered 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 seven 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, respondent in their reply have raised mostly technical objections like the complaint is not maintainable, RERA Act cannot be implemented with retrospective effect, Authority does not have jurisdiction of hearing the complaint, the complaint has not been filed on proper format etc. From a reading of para-9 of the reply submitted by the respondents it can be clearly made out that respondents have conceded that they are not in a position to complete the project and also no timeline can be assigned to complete the same.



Further, the respondents are ready to consider allotment of an alternate flat to the complainant in tower No.31 or 32 which are at advanced stages of construction and of which the possession can be offered in next 6-7 months. The respondents are even agreeable to transfer allotment of the complaint in some nearby project. The respondents, however, have not said anything in regard to completion of tower No.36 in which apartment of complainant is to be located.

5. 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.

6. 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.

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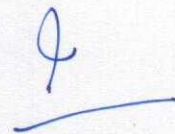
Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly.”

Since, basic issue of jurisdiction stands settled, therefore, Authority now will deal with the complaint on its merits.

6. Admittedly, apartment of complainant is meant to be located in tower No.36 of which the construction is yet to take place. The respondents have offered to re-allot unit of the complainant in some other under construction tower No.31 and 32, but the same is not acceptable to the complainant. The Authority has laid down a principle that an alternate unit can be offered to an allottee only with his express written consent. The allottees have a right to get possession of only the apartment booked by them. As per law they cannot be forced to relocate themselves to an alternate unit. Respondent have failed to show any progress of tower No.36 nor they are in a position to commit any time line to complete it. During oral hearings also the point was conceded by learned counsel for respondent that this tower is not possible to be completed in near future.

For the foregoing reasons the relief claimed by the complainant i.e. refund of the amount paid by them to the respondents along with interest @ Rule 15 of RERA, Rules, 2017 deserves to be granted.

8. Accordingly, Authority directs the respondent to refund entire principle amount of ₹ 34,41,820/- to the complainant. The Authority has got the interest payable to the complainant calculated from its Accounts Branch which works out to ₹ 29,39,209/-. This interest has been calculated from the date of making



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payments by 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.

Respondent shall pay total amount of ₹ 34,41,820/- + ₹ 29,39,209/-=₹ 63,81,029/- to the complainant within the period prescribed in Rule 16 of HRERA Rules i.e. 90 days.

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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]