



Complaint no. 1467/20, 199, 255,256,
257,258, 481 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1467 OF 2020

Amit RawalCOMPLAINANT(S)

VERSUS

Splender Landbase Ltd.RESPONDENT(S)

2. COMPLAINT NO. 255 OF 2021

Ramesh MalikCOMPLAINANT(S)

VERSUS

Splender Landbase Ltd.RESPONDENT(S)

3. COMPLAINT NO. 256 OF 2021

Keerat KalraCOMPLAINANT(S)

VERSUS

Splender Landbase Ltd.RESPONDENT(S)

4. COMPLAINT NO. 257 OF 2021

Marry KalraCOMPLAINANT(S)

VERSUS

Splender Landbase Ltd.RESPONDENT(S)

5. COMPLAINT NO. 258 OF 2021

Madhu Malik & anr

....COMPLAINANT(S)

VERSUS

Splender Landbase Ltd.

....RESPONDENT(S)

6. COMPLAINT NO. 481 OF 2021

Saket Bhatia

....COMPLAINANT(S)

VERSUS

Splender Landbase Ltd.

....RESPONDENT(S)

7. COMPLAINT NO. 199 OF 2021

Subhash Chander Gandhir

....COMPLAINANT(S)

VERSUS

Splender Landbase Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 11.05.2022

Hearing:

3rd(in complaint no. 1467 of 2020)
5th (in complaint no. 481 of 2021)
7th (in complaint no. 255,256,257& 258 of 2021)
17th(in complaint no. 199 of 2021)

Present: -

Ms. Rupali Shekhar Verma, Counsel for the complainant
through video conferencing.
(in complaint no. 255,256,257,258 & 481of 2021)
None for the complainant
(in complaint no. 1467 of 2020 & 199 of 2021)
Mr. Shobhit Phutela, Counsel for the respondent

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ORDER (RAJAN GUPTA-CHAIRMAN)

1. When this matter had come up for hearing on 8.3.2022, Authority inter-alia had ordered as follows:-

“ Considering submissions of both parties, Authority directs the respondent to submit a detailed report of current status of construction of the project in question along with supporting evidence and latest photographs of the site. Specific report regarding construction of towers in which apartment of complainants are located should be submitted. Alongwith said report respondent shall also file quarterly progress report from date of registration of project till this order and the investments made therein. Said report should be placed before the Authority on next date with an advance copy supplied to the complainants. ”

2. This is a bunch of 7 complaints, complaint No. 255 of 2021 titled ‘Ramesh Malik Vs. Splendor Landbase’ is taken as lead case. Facts and circumstances of these cases are similar, therefore, entire bunch is being disposed of together.

3. Brief facts of the matter were recorded in the order dated 8.3.2022, relevant para no.2 of which is reproduced below:-

“Initiating her arguments, Ms Rupali Verma, learned counsel for complainant submitted that



complainant (in complaint no. 255 of 2021) had booked a unit in the project of respondent situated at Panipat in the year 2013. Total sale consideration of said flat was Rs 55,68,150/- against which complainant had paid a total sum of Rs 45,78,428. Complainant in the year 2013 was allotted flat no. 504 in tower A-3 of the project. Builder buyer Agreement was executed between the parties on 05.03.2014 and as per clause 11.2 of said agreement possession of the flat should have been delivered by 05.03.2018. However it has been more than three years and respondent has failed to deliver possession of booked unit till date. Feeling aggrieved, complainant has filed present complaint seeking refund of paid amount alongwith interest.

Learned counsel further submitted that at present only one of the proposed towers have been constructed at the site of project, which is not the one in which flat has been allotted to complainant. The remaining project is far from completion. Complainant who has already waited for long is not interested to wait any further for possession of unit. Therefore, his request may be accepted and relief of refund may be granted in his favour.”

4. Ms. Rupali Verma learned counsel for complainants today argued that due date of possession was March, 2018 but construction of the project is still not complete. Already a delay of more than 4 years has been caused and further more indeterminate time will be taken. For the reason of delay caused, the complainants are no longer interested in continuing in the project. They have

pressed for relief of refund as they are entitled to under Section 18 of the RERA Act. Learned counsel Ms. Verma argued that complainants have unqualified right to receive refund as per their choice in the event of delay occurring in completion of the project.

In support of her arguments, learned counsel cited para 25 of the judgment of Hon'ble Supreme Court passed in Civil Appeal No. 6745-6749 of 2021 titled ' M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.' Said para 25 of the judgement is reproduced below:-

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer; the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

5. In further support of her arguments learned counsel cited following order passed by the Hon'ble Haryana Real Estate Tribunal in cross Appeals No. 39 and 683 of 2021 titled 'EMAAR India Ltd. Vs. Brig. Atul Kumar Singh'.

"20. In the latest judgment M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (Supra), which is the authoritative landmark judgment of the Hon'ble Apex Court with respect to the interpretation of the provisions of the Act, the Hon'ble Apex Court has dealt with the rights of the allottees to seek refund as referred under Section 18(1)(a) of the Act. The Hon'ble Apex Court has laid down as under:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the



period of delay till handing over possession at the rate prescribed."

21. *As per the aforesaid ratio of law, the allottee has unqualified right to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act, which is not dependent on any contingencies. The right of refund of payment has been held to be as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events. Thus, the present allottee has unqualified and unconditional absolute right to seek the refund as the promoter has failed to deliver the possession of the unit by 14.11.2016 the stipulated date as per the buyer's agreement dated 10.05.2016. In view of this latest judgment of the Hon'ble Apex Court and the fact that the rights of the parties have crystallised on 06.07.2018 with the registration of the complaint, case Ireo Grace Realtech Pvt. Ltd. Versus Abhishek Khanna & Others (Supra) relied upon by learned counsel for the promoter will be of no help to it. Once the allottee has become entitled for the refund of the amount the contentions raised by Ms. Rupali Shekhar Verma, to assail the findings of the learned Authority with respect to the grant of delayed possession charges has no relevancy and becomes inconsequential.*

22. *Thus, keeping in view our aforesaid discussion, the impugned order dated 22.01.2019 passed by the learned Authority is not sustainable. Consequently, appeal no.683 of 2021 filed by the allottee is hereby allowed, the impugned order*



dated 22.01.2019 is hereby set aside. Allottee Brig. Atul Kumar Singh is entitled for the refund of the entire amount paid by him i.e. Rs.1,14,27,043/- along with interest at the prescribed rate i.e. 9.3% per annum prevailing as on today, as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The interest shall be calculated from the dates of respective deposits by the allottee, till the date of realization.”

Learned counsel for complainant, on the basis of ratio of law laid down by Hon'ble Supreme Court in Newtech matter and followed by Hon'ble Appellate Tribunal, requested for refund of the amount paid by complainants along with applicable interest.

6. Rebutting the arguments put forward on behalf of complainants, Sh. Shobhit Phutela learned counsel for respondents, argued that RERA Act 2016 has been enacted to achieve dual purpose, namely, promotion of the Real Estate sector, and protection of interests of allottees. Learned counsel stressed that Authority has to strike a balance between the two interests. The right to refund, just on account of some delay having been caused cannot be allowed as it would jeopardise future of the project which will surely adversely affect rights of numerous non-complainant allottees.

7. Ld. counsel Sh. Phutela referred to para 4 of the order dated 08.03.2022 of this Authority (quoted in para 1 of this order) and placed before the Authority a detailed report to prove the point that good progress has been achieved

towards completing the project and now the project is set to be completed within prescribed time schedule.

8. Learned counsel for respondent discussed the report in detail and drew attention of the Authority towards following issues:-

i) That apartment of 6 out of 7 complainants are located in Tower A-3 and one is located in Tower-B-1. In Tower-A-3 13 floors have been constructed containing 78 units out of which 66 have been sold. Further, out of total 298 units, 145 have been sold, out of which 6 allottees are before the Authority by way of captioned complaints. Remaining allottees wish to continue in the project.

ii) Respondent has already invested Rs.163.87 crores in the project upto 30.4.2022 and has fully paid EDC and IDC to the State Government amounting to Rs.40.32 crores.

iii) Since project was facing shortage of funds, they had approached SWAMIH investment fund set up by Government of India for grant of loan for completion of the project. Government of India has set up this fund for facilitating completion of numerous stuck projects in the country in the overall interest of

economy of India as well as for protecting interests of allottees of the projects.

iv) SWAMIH fund has sanctioned an amount of about Rs.62 crores for completion of project out of which Rs.6.67 crores have already been disbursed, and that amount has been invested in construction work of the project till 30.4.2022. Now construction of the project is in full swing.

v) Learned counsel took Authority through a large number of photographs presented in the report to demonstrate that the project is at very advanced stage of completion and large number of workers and labourers are working for its completion.

vi) Learned counsel for respondent also pressed upon the point that admittedly delay interest for the period for which delay has been caused in offering possession is admissible to the complainants but a discount on such period of delay should be applied on account of force majeure conditions. He stated that admittedly due date of possession was march 2018, but actually possession will be offered in the year 2022, out of which for nearly 2 years construction work was severely hampered on account of



COVID pandemic, ban by NGT and large numbers of allottees having defaulted in making payments of due instalments.

vii) In view of the above, Sh. Phutela argued that refund cannot and should not be allowed to the complainant-allottees in the larger interest of remaining allottees as well as overall project.

9. Authority has gone through the rival arguments. It has gone through the judgement of Hon'ble Supreme Court delivered in Newtech matter as well as ratio of judgement followed by Hon'ble Real Estate Appellate Tribunal and in cross appeals No. 39 and 683 of 2021. Authority after due consideration observes and orders as follows:-

i) Scope of the judgement in Newtech matter has been encapsulated by Hon'ble Supreme Court in para 31 of the judgement, in which five questions have been framed for answering in the judgement. None of the question which defines the scope of the judgement relates to right of allottees for seeking refund in the event of delay caused by the promoter in completing the project. Provisions of Section 18 of the Act have been touched upon in the judgement only for determining jurisdiction of the Authority in those complaints in which relief of refund has been sought. No part of the judgement deals with the question whether



refund should be allowed only upon asking of the allottees when there is delay in completing the project.

ii) In paras 1 to para 30, Hon'ble Supreme Court has considered " ..it appropriate to take bird eye view of the scheme of the Act, 2016appropriate for proper appreciation of the submissions made by the parties.." (para 5 of the judgement).

This Authority observes that para 6 to 25 are general observations made by Hon'ble Apex court in regard to broad scope of the Act. In these paras no specific question of law or fact was before the Hon'ble Apex Court. Para 25 of the judgement therefore, may not be considered to be having binding force on all subordinate Courts in the country.

iii) Proviso to Sub Section (2) of Section 3 of the RERA Act mandates that all on going project on the date of commencing of the Act for which completion certificate has not been issued shall be got registered with the Authority. Accordingly, respondents have got their projects duly registered vide registration No. 362(a) of 2017. Further, sub section (c) of sub section (I) of sub section (2) of Section 4 of the Act provides that promoter while getting the project registered shall state "... the time period within which he

undertakes to complete the project". Respondent company has accordingly disclosed the date of completion of the project.

iv) Section 6 of the Act provides for extension of the registration for one year. Further by virtue of notification issued by Ministry of Urban Areas; Government of India, and Town & country Planning Department, Haryana and the Resolution No.HRERA-PKL/ED/2020/3167-73 dated 26.05.2020 passed by this Authority vide Item No. SPL-I dated, 02.08.2021, an additional time period of 9 months has been granted to all the projects on account of COVID situation. Authority further observes that Hon'ble Supreme Court in in Suo Moto Writ Petition(Civil) No. 3 of 2020 had extended the limitations of all the cases to be filed before any court in the country upto 14.03.2021 because of COVID situation.

v) It is also relevant to refer to, provisions of Sub section (3) and section (4) of Section 19 of the RERA Act as are reproduced below :-

“(3) The allottee shall be entitled to claim the possession of apartment,plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given

by the promoter under sub-clause (C) of '[clause ()] of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."

(vi) A conjoint reading of above citations and quoted provisions of the RERA Act leads to a conclusion that all those projects which were ongoing on the date of commencement of the Act have to get themselves registered, accordingly respondents have complied with the said provisions and have got themselves registered vide registered No. 362 of 2017. Further, in accordance with provisions of Section 19 (3) they have declared the date by which project will be completed. While the provisions 19 (3) entitles the promoter to declare the date by which the project will be completed, the provisions of Sub Section (4) of Section 19

entitles an allottee to claim refund in the event of delay being caused.

vii) At this stage, the Authority would draw the distinction between the objectives of the RERA Act, and the Consumer Protection Act and Indian Contract Act. While Consumer Protection Act and Indian Contract Act are meant to settle disputes between two individuals i.e. individual consumer/party Vs. the promoter, These Acts do not provide for protecting interests of larger group of allottees of the project. They do not provide for registration of the projects or responsibility of the authority/court to get the project completed, by monitoring their progress. Numerous provisions have been incorporated in the RERA Act to ensure that interest of larger group of allottees is also protected and project is eventually completed. The RERA Act even provides for handing over of entire project to the Association of allottees for completion at their own level in the event of promoter not being able to complete the same at his level.

viii) Looked at from this angles, RERA Act is a unique law. It is a regulatory as well as dispute resolution statute. The very objectives of the Act, as well as express provisions of the Act

makes it mandatory for the Authority to strike a balance between the interests of individual allottees and interest of remaining group of allottees.

ix) This can be viewed from another angle. Execution of a real estate project is an arduous task. Numerous approvals from myriad authorities of State Government and Central Government have to be obtained for completion of the project. In the event of any of those approvals being delayed, whole of the project comes to a stand still. When an allottee decides to become part of an under construction project, he understands such risk factors. (Cost of such risks is factored in the agreement). If an allottee wishes to avoid such risk and wants absolute certainty about delivery of possession, he could purchase a ready to move in apartment rather than become a part of an under construction project. These factors cannot be ignored by the Authority in terms of objectives of the Act as well as express provisions of the Act. Needless to mention that allottees are entitled to delay interest for the entire period of delay caused in handing over possession. However, every delay may not justify allowing refund.



(x) The Authority has to evaluate facts and circumstances of each case. The most important evaluation and determination has to be in regard to whether promoters have intention and capabilities to complete the project or not. In the event where project is not likely to see light of the day, or there are no definite plan of action available for its completion, Authority has no hesitation in allowing refund even when delay of a short period has been caused. However, when project is being completed, funds are available for its completion, and Authority is convinced that the promoters are on track to complete the project, responsibility of the Authority to watch overall interest of the project comes into play.

xi) Authority at this stage would observe that to allow refund to some allottees could jeopardise entire project because it could lead to similar demands from other allottees. In this case, there are 135 allottees of the project out of which only 6 have approached the Authority for refund. Rest of allottees are continuing with the project. This project is being financed under SWAMIH funds. The fund will not allow their loan money to be diverted towards refund to be granted to the allottees. Further, remaining allottees would like that their money is invested for completion of the project rather than allowing refund to some allottees. It is, therefore, a

difficult situation. Considered view of this Authority in these circumstances is to adopt a balanced approach as mandated by objectives and provisions of the Act.

10. For above reasons, Authority is unable to agree with contentions of the complainants. The complainants however, will be entitled to delay interest for the entire period of delay caused, from the due date of offer of possession upto the date when actual offer of possession made to them after obtaining Occupation Certificate. It is added that the amount of interest admissible as per Rule 15 of HRERA Rules 2017 shall be calculated by respondent in each case and duly reflected in the statement of accounts to be issued at the time of offering possession to the allottees. Regarding the arguments of Sh. Phutela that some period of delay should be discounted on account the period of force majeure conditions which were applicable in this case due to COVID situation, the Authority is unable to agree with the arguments put forward by learned counsel for respondent because due date of completion of the project was in March 2018. The force majeure conditions kicked in much later i.e. in March 2020. For this reason, benefit of the COVID period for discounting from delay period cannot be accepted.

11. Mr. Parveen Mehta, learned counsel for complainant in Complaint no. 1467 of 2020 has filed an application dated 12.05.2022 to mark his presence in the order dated 11.05.2022 as he was unable to join proceedings due to lagging internet connection.

12. Disposed of in above terms.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

