



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 370 OF 2019

Usha Singh & Anr. ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

2. COMPLAINT NO. 460 OF 2019

Jogendra Yadav ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

3. COMPLAINT NO. 461 OF 2019

Sunita ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

4. COMPLAINT NO. 544 OF 2019

Rajveer Yadav ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 24.02.2022

Hearing: 9th (In complaint No. 370 of 2019)

8th (In complaint No. 460,461,544 of 2019)

Present: Mr. Prateek Rathi, Learned Counsel for the complainants.

Mr. Jatinder Nagpal, Learned counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Perusal of record files reveals that facts and grievances of all captioned complaints are more or less identical and against the same project of respondent. So, entire bunch of cases are heard on the basis of facts, relief, prayers and merits, of Compliant no. 544 of 2019 titled as Rajveer Yadav vs Ashiana Realtech Pvt. Ltd. as lead case.
2. While initiating his pleading Ld. counsel for the complainant submitted that complainant booked an apartment in the project of respondent namely 'The Cubix' situated at Dharuhera, Rewari by paying an amount of Rs. 2,00,000/- as booking amount on 21.02.2014. Total sale consideration of the flat was Rs.47,31,250/- against which complainant had paid Rs. 12,43,266/-. Both parties entered into a Builder Buyer Agreement on 24.12.2014. As per clause 6 (i) of the Builder Buyer Agreement, possession of the flat was to be delivered

by 24.12.2018. Time and again complainant approached respondent's office and made site visits but faced disappointment to know that site is far from completion. Complainant further, submitted that even after deemed date of possession, site was not even closer to completion. Feeling aggrieved, complainant filed present complaint, seeking refund of paid amount alongwith permissible interest on delayed period. From the deemed date of possession i.e.24.12.2018. In a separate development Possession of the flat was offered by the respondent on 10.11.2021 meaning thereby after a delay of more than 3 years. Further, counsel for the complainant apprised the Authority that he is not in a position to accept the same. Therefore he may be allowed to quit the project and get back his money along with permissible interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 read with section 18 of the RERA Act, 2016

3. On the other hand, respondent in his written submissions submitted that delay was due to force majeure circumstances as per following details-

(i) Interim orders dated 16.07.2012,31.07.2012 and 21.08.012 of the of Hon'ble High Court of Punjab and Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon;

(ii) Orders National Green Tribunal whereby mining of sand in haryana and Rajasthan was banned,



- (iii) Reservation agitation in Haryana,
- (iv) Orders of National Green Tribunal to stop construction to prevent emission of dust in the month of April 2015 and again in November 2016; demonetisation, GST,
- (v) Lockdown during Covid-19 pandemic has adversely affected the project.

It is further submitted by ld. counsel that they had applied for the occupation certificate on 07.12.2020 and the same was granted to them on 08.11.2021. As soon as they received occupation certificate, they issued offer of possession on 10.11.2021. As of today the unit stands complete and complainant can have possession of the same after paying outstanding dues. Therefore, Ld. counsel for the complainant still presses for refund of paid amount that is permissible under section 18 of RERA Act, 2016.

5. Per contra, learned counsel for the respondent submitted that delay was not intentional and rather it was due to force majeure circumstances mentioned above in para 3 of this order. Unit in question stands complete, and a valid offer of possession has already made to the complainants. So, he argued that no case is made out for refund of the amount.

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, Authority has passed a Resolution No. 164.06 dated 31.01.2022 the operative part of which is reproduced below:

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 judgement 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 judgement 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.

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.

7. After going through written submissions put- forth by both the parties and hearing their comprehensive verbal argument, Authority observes that Respondent has completed construction of the unit and received occupation certificate on 08.11.2021. Thereafter he has offered possession of the unit on

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10.11.2021. Relief of refund at this stage is not justified. Therefore, Authority has turned down the relief prayer of refund.

Authority further observes that it's admitted fact that offer of possession was given to the complainants of their respective units in year 2021 after a delay of three years, after obtaining occupation certificate from the competent authorities. Complainant are entitled to get delay delay interest as per Rule 15 of HRERA Rules, 2017. So Authority deems fit to direct complainants to take possession of unit along with interest on delayed period.

8. However, complainant is entitled to possession of the unit along with permissible interest for the delayed period ranging from deemed date of possession i.e. 24.11.2018 till the offer of possession 10.11.2021 calculated @ SBI MCLR + 2% as provided in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 i.e. @9.30%.

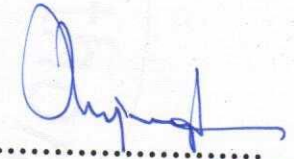
The Authority has got calculated, the interest payable to the complainant from Accounts branch in each case. Mentioned below in the following table.



Sr. No	Complaint No.	BSP	Paid	Deemed date of possession	Offer of possession	Interest	Amount to be given to complainant
1.	370 OF 2019	₹28,34,100/-	₹7,53,410/-	06.11.2018	10.11.2021	7.30% + 2.00% = 9.30	₹ 2,11,161/-
2.	460 OF 2019	₹7,97,812/-	₹11,99,805/-	23.06.2019	10.11.2021	7.30% + 2.00% = 9.30	₹ 2,66,268/-
3.	461 OF 2019	₹13,58,591/-	₹32,25,789/-	17.05.2018	10.11.2021	7.30% + 2.00% = 9.30	₹10,46,296/-
4.	544 OF 2019	₹8,29,000/-	₹12,43,266/-	24.11.2018	10.11.2021	7.30% + 2.00% = 9.30	₹3,33,250/-

If any of the parties finds any objection regarding calculated amount, he is at liberty to approach the Authority.

9. Disposed of. Files be consigned to record room after uploading of order on website of Authority.



RAJAN GUPTA
(CHAIRMAN)



DILBAG SINGH SIHAG
(MEMBER)