



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 14 OF 2022

Priya Bagga .....COMPLAINANT(S)

VERSUS

Green Space Infraheights Pvt. Ltd. ....RESPONDENT(S)

## 2. COMPLAINT NO. 939 OF 2021

Seema Mehta .....COMPLAINANT(S)

VERSUS

M/s Green Space Infraheights Pvt. Ltd. ....RESPONDENT(S)

## 3. COMPLAINT NO. 1191 OF 2020

Parul Jamwal .....COMPLAINANT(S)

VERSUS

Green Space Infraheights Pvt. Ltd. ....RESPONDENT(S)

## 4. COMPLAINT NO. 681 OF 2022

Geeta and Anr. ....COMPLAINANT(S)

VERSUS

M/s Green Space Infraheights Pvt. Ltd. ....RESPONDENT(S)

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**5. COMPLAINT NO. 703 OF 2022**

Kiran Giri

....COMPLAINANT(S)

VERSUS

M/s Green Space Infraheights Pvt. Ltd.

...RESPONDENT(S)

**6. COMPLAINT NO. 868 OF 2022**

Shashikala Pandey

....COMPLAINANT(S)

VERSUS

M/s Green Space Infraheights Pvt. Ltd.

...RESPONDENT(S)

**7. COMPLAINT NO. 1464 OF 2022**

Meenakshi and Rajesh Bhatia

....COMPLAINANT

VERSUS

Green Space Infraheights Pvt. Ltd.

....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh Member**

**Nadim Akhtar Member**

**Dilbag Singh Sihag Member**

**Date of Hearing: 28.09.2022**

**Hearing: 3rd in 14 of 2022**

2nd in 681,703,868 of 2022

10th in 939 of 2021

5th in 1191 of 2020

**Present:** Ms. Gagan Bagga, representative for the complainant through VC.

(in complaint no. 14 of 2022)

Mr. Piyush, Id. Counsel for the complainant through VC.

(in complaint no. 681,703 of 2022)

Mr. Yushu Sharma, Id. Counsel for the complainant through VC.

(in complaint no. 868 of 2022)

Mr. Alakh Bhatt, Id. Counsel for the complainant.

(in complaint no. 1191 of 2020)

Mr. Arjun Kundra, Id. counsel for the complainant.

(in complaint no. 1464 of 2020)

None for the complainant.

(in complaint no. 939 of 2021).

Mr. Aman, proxy counsel for the respondents through VC.

**ORDER (DILBAG SINGH SIHAG - MEMBER)**

1. On the last date of hearing held on 05.08.2022, above captioned complainants were heard in detail and Authority expressed its tentative view. Authority directed respondent to prove the progress of the project and to provide timelines for its completion. Order dated 05.08.2022 is reproduced below:

*"1. All Captioned complaints have been taken up together for disposal because their facts are similar and they relate to same project of the respondent company. Complaint No. 14 of 2022 titled 'Priya Bagga Vs. M/s Green Space Infraheights Pvt. Ltd.' has been taken as lead case*



and the facts of this case has been taken into consideration for disposal of this bunch of complaints.

2. The case of complainants is as follows: -

a. Case of the complainant is that he booked a unit in project of the respondent namely "Shree Vardhman Green Space" of respondent situated in sector 14 at Panchkula, Extension II in 2015. Vide allotment letter dated 26.08.2015, Flat no. 102, 1st Floor, Tower A, admeasuring super build up area of 780 sq. ft. was allotted to him. Builders Buyers Agreement was executed between the parties on 07.05.2016.

b. According to clause 8 (a) of the BBA, respondent committed to offer possession of said flat to allottee within period of 4 years from date of approval of building plans or grant of environmental clearance whichever is later. As per clause 2 (a) Basic Sale Price for the unit was fixed at Rs. 20,94,000/-. Complainant has paid Rs. 21,85,175/- till 06.10.2018. Complainant argued that since entire payment was made in 2018, possession should have been offered within reasonable period thereafter.

c. Complainant further alleges that even after receiving full Total sales Consideration for the said flat, respondent has failed to offer lawful possession



of the flat till date. Complainant alleges that inordinate delay has already been caused. Aggrieved by the same complainant has filed the present complaint. Complainant has prayed for refund of the paid amount along with delay interest.

3. Respondents have submitted in their reply as follows:

a. Respondent-company has been developing the project "Shree Vardhaman Green Space" which is an affordable housing project floated under Affordable Housing Project, 2013 of the Government of Haryana. Respondent submits that as per clause 8 (a) of the Agreement, date of delivery of possession was tentative and subject to force majeure. Due to emergence of Covid - 19 pandemic, real estate sector and construction of the projects got seriously hampered.

b. They further submitted that as per agreement, respondent was to start construction of the project from the date of receipt of environmental clearance which was granted on 15.03.2016. From January 2020 onwards things started going out of control of respondent due to covid-19 pandemic. Therefore, delay whatsoever has been caused in completing the project is due to covid- 19 and is covered under the force majeure circumstances. Hence, respondent has not made any breach of any clause of the

*Agreement executed between the parties and is not at fault. Present complaint deserves to be dismissed.*

4. *Both parties have put forward their oral arguments and also have submitted their arguments in writing.*

5. *During the hearing, Authority enquired about current status of the project to which complainant apprised the Authority that complainant have been visiting the site to see status of construction of their unit. He referred to photographs clicked by him of the project site. Copies of photos are annexed as Annexure III & IV. Complainant stated that as per Annexure III which shows construction of project in 2017 that only bore structure was developed. Even after 3 years in January 2022 not much improvements were made by respondent. Even now only structural shell stands as shown in photos placed at Annexure IV. He further stated that project is not being constructed at all. Nobody is working at the project site and respondents have stopped the work for past one and a half year.*

6. *Ld. counsel for respondent has filed written submissions whereby they have stated firstly, that as per clause 4(a) of the agreement, timely payment of installments shall be essence of the agreement, but*

*complainant failed to make timely payment several times. Further, respondent submitted that no timelines for delivery of possession was agreed between the parties which means at the time of execution of BBA it was understood by allottees that in case there occurs any unforeseen circumstances beyond the control of respondent, any timeline may not be adhered to. Secondly, that respondent could not complete the project due to force majeure circumstances of covid-19.*

7. *After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes and orders as follows:*

i) *Builder-buyer agreement between complainant and respondent was executed on 07.05.2016. Basic sales consideration was agreed to be Rs.20.94 lacs. Complainant had paid over Rs.21.85 lacs i.e. more than the Basic sales price by 06.10.2018.*

ii) *This is an affordable group housing colony. Allottees of such projects are middle class or lower middle class persons. It is assumed that they arranged funds with great difficulty. After payment of entire consideration amount, legitimate expectations of complainant would be that possession of the apartment will be delivered within*

*a reasonable period of time. With agreement having been executed in 2016 and full substantial payment having been made by 2018, legitimate expectation is generated that possession will be delivered within next 1-2 years.*

*iii) Authority understands that considerable time was lost in the years 2020-2021 due to outbreak of COVID-19 pandemic. A grace period of say another one year can legitimately granted in such situation. However, it has to be demonstrated by the promoters that they are making sincere and adequate efforts for completing the project. Complainant alleges that structure of the project as was there in 2017 is in same condition even now. No further work has been carried out and there is nobody working at the project site. The project is lying abandoned.*

*iv) Authority observes that in the written reply as well as in written arguments submitted by respondents have stated nothing in regard to timelines for completion of the project. If indeed the project is not being constructed at all, confidence of allottees is bound to be defeated and they are bound to get apprehensive about fate of their investments. In such circumstances, complainants will be very much within their rights to seek refund of the money paid to them.*

*2*



*In regard to stage of construction, Authority has checked factual position from its Project Section. This project was registered with the Authority vide Registration No. 87 of 2017 dated 23.08.2017. One of the conditions of registration is that promoter has to submit quarterly progress report. Information available with project section reveals that respondents have submitted quarterly progress report up to June 2022, however, the report does not specify how much construction work of the project is complete. In all the quarterly reports since 2018, they have only written "Work in Progress".*

*v) Writing "Work in Progress" in all the quarterly reports of last 4 years in an evasive reply. It gives rise to presumption that work is actually stopped. Plea for refund is liable to be accepted. Authority had during the hearing announced that the matter is disposed of and judgment is reserved. Order was to be passed after studying written arguments of both sides. Authority hereby grants one last opportunity to both the parties to argue their case in the light of above tentative conclusion arrived at by the Authority. One last opportunity is granted to respondents to prove the progress of the project and that too within time bound manner it will be*



*completed. If they are not able to prove, prayer of complainants for allowing refund, will be accepted.*

*vi) Accordingly, Authority decides to re-list the matter giving one last opportunity to parties to argue the matter.*

*8. Adjourned to 28.09.2022 for final arguments."*

2. Today during the hearing following averments were made by complainant:-

- (i) Complainant visited the project site in the month of september and found no construction activity is going on at the project site. Complainant showed photographs of the project site taken on 26.09.2022 in the hearing through video conferencing which clearly shows only a bare structure shell is standing at site. He further stated that no construction work is going on in the said project. Nobody is working at the project site and respondents have stopped the work for past one and a half year. The situation is same as it was 6-9 months before. Mr. Alakh Bhatt, Id. counsel for complainant in complaint no. 1191 of 2020 stated that even the license of the respondent has expired in 2021 and respondents have not got their license renewed which shows their intention of defrauding the buyers.



- (ii) Contention of respondent with respect to default of payment by complainant is false and vague. Payments have been made regularly by complainants as and when demanded by respondent. Even total amount has been paid to respondent in the year 2018.
- (iii) No specific information has been submitted by respondent in his reply or written arguments regarding the status of construction of project. Authority in its last order dated 05.08.2022 recorded that respondent has failed to provide information regarding status of project. All Quarterly reports filed by respondent on the website of Authority, merely mentions "work-in-progress" which is not a satisfactory explanation.
- (iv) Complainants have prayed for refund as no trust is left between buyers and promoter due to evasive behaviour of respondent. Complainants prayed that relief of refund be granted to them along with delay interest.

3. On the other hand, Mr. Aman, proxy counsel for respondents argued that construction at the project site is going on, whole structure has been completed and only internal work is left. Further, counsel for respondent raised certain objection in complaint no. 681, 703, 868 of 2022. He stated that in these complaints, complainants made default in payment. He referred to one demand letter dated

08.02.2018 annexed as Annexure B to show default of payment by complainants in these complaints. He further stated that in these complaints tripartite agreement has been executed with the bank. According to clause 6 if borrower withdraws from the scheme or fails to pay the balance amount representing the difference between the housing loan allowed by the bank and the actual cost of the house/flat (including escalation), the entire amount standing to the credit of borrower will be refunded by the builder to the bank.

4. After considering the facts and circumstances of the case and going through the oral as well as written statements by both the parties, Authority observes and orders as follows:

- (i) Vide order dated 05.08.2022 Authority gave detailed observations in paragraph 7 of the order whereby Authority observed that relief of refund deserves to be allowed subject to last opportunity to respondent to prove construction status at the site and to give timeline for its completion. However, even today, counsel for respondent failed to bring on record any documents proving his contention that the construction activity is going on at the site. On the other hand, complainants showed photographs in the hearing through video conferencing taken on 26.09.2022 of the project site

which shows no construction activity is going on the site, no work force is working on the site. The project seems to be abandoned.

- (ii) Authority observes that the project is not being constructed at all, respondent has miserably failed in completing the project and delivering possession to complainants of their respective unit. There is no hope of the project being completed even in near future due to which allottees have lost their faith in the promoter. Authority cannot force complainants to endlessly wait for respondents to complete the project and deliver possession. They are well within their rights to seek refund of the money paid by them by the virtue of Section 18 of the RERA Act, 2016.
- (iii) As far as the objection of the respondent with regards to the default in payment by complainants in complaint no. 681, 703, 868 of 2022, Authority observes that complainant paid substantial amount of Rs. 19,26,680/- (in complaint no. 681/2022), Rs. 18,73,320/- (in complaint no. 703/2022) and Rs. 17,25,200/- (in complaint no. 868/2022) by 2019. With regards to tripartite agreement, concerned clause is reproduced below:

“If the Borrowers desire to withdraw and/or in case of death of Borrowers and/or if Borrowers fail to pay the balance amount representing the difference between the Loan sanctioned by PNBHFL

and the actual purchase price of the Property, the entire amount advanced by the PNBHFL will be refunded by the Builder to PNBHFL forthwith.”

This clause pertains to situation when complainant fails to pay the total amount or withdraws from the project due to his failure to pay the agreed consideration. However, in the present case, complainant is seeking refund from respondent-promoter of the amount paid to him due to his failure to complete the project and hand over the possession to complainant. This clause is not applicable in the present scenario. Therefore, Authority rejects this contention of respondent and confirm its observation given in the preceding paras that complainants deserve refund of amount paid by them.

5. In view of the above observation, Authority is disposing of these complaints with the order of refund along with delay interest as per Rule 15 of RERA Rues, 2017. The upfront interest is being calculated from the respective date of payments up to the date of passing this order i.e. 28.09.2022, @ SBI MCLR rate + 2% i.e., 10.00% upfront interest payable to each complainant is shown in the table below:-

SERIAL NO.	COMPLAINT NO.	DATE OF AGREEMENT	TOTAL AMOUNT PAID BY THE COMPLAINANT AS PER RECEIPTS PLACED ON RECORD (In Rs.)	INTEREST @ 10% (In Rs.)	TOTAL AMOUNT TO BE REFUNDED BY RESPONDENT (In Rs.)
1.	14/2022	07.05.2016	21,86,175/-	12,45,661/-	34,31,836/-
2.	681/2022	16.02.2018	19,26,680/-	7,89,338/-	27,16,018/-
3.	703/2022	24.02.2018	18,73,320/-	7,80,473/-	26,53,793/-
4.	868/2022	16.01.2018	17,25,200/-	7,34,774/-	24,59,974/-
5.	939/2021	04.02.2016	20,47,435/-	11,56,542/-	32,03,977/-
6.	1191/2020	02.04.2016	21,85,183/-	12,53,009/-	34,38,192/-
7.	1464/2022	14.03.2016	19,09,335/-	10,32,937/-	29,42,272/-

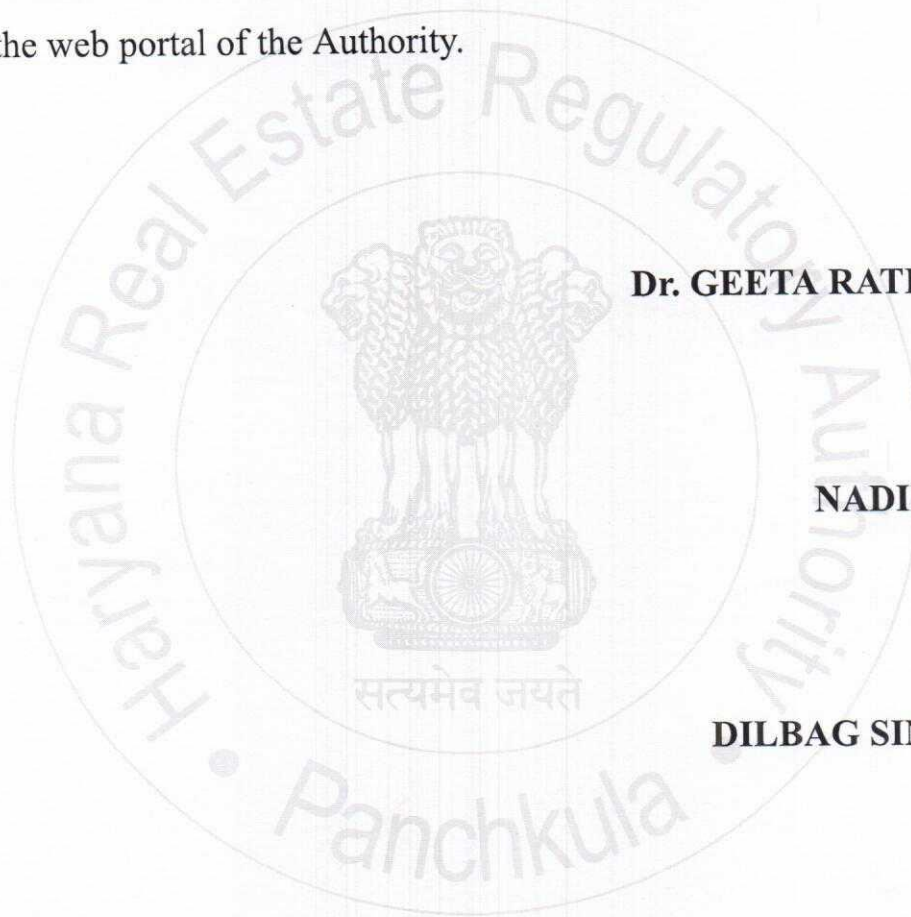
6. It is pertinent to mention that complainant in the prayer clause in complaint no. 681/2022 has prayed for refund of Rs. 17,17,080/- however upon perusal of annexed receipts, the total paid amount works to Rs. 19,26,680/- and the same is being taken as final amount for calculation of interest.

7. It is pertinent to mention that complainant in the prayer clause in complaint no. 703/2022 has prayed for refund of Rs. 17,17,080/- however upon perusal of

annexed receipts, the total paid amount works to Rs. 18,73,320/- and the same is being taken as final amount for calculation of interest.

Respondents shall refund the money along with interest within period prescribed in Rule 16 of the RERA Rules of 2017.

8. **Disposed of.** Files be consigned to the record room after uploading of this order on the web portal of the Authority.



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**Dr. GEETA RATHEE SINGH**  
[MEMBER]

.....  
**NADIM AKHTAR**  
[MEMBER]

.....  
**DILBAG SINGH SIHAG**  
[MEMBER]