



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	84 of 2022
Date of filing:	03.02.2022
Date of first hearing:	05.04.2022
Date of decision:	15.12.2022

Kedar Nath Sharma
through his special Power of Attorney Holder, Sh. Krishan Lal
S/o Sh. Kartar Chand
R/o A-25, Sheesha Ram Park, Uttam Nagar, West Delhi.

....COMPLAINANT

VERSUS

SRS Real Estate Ltd.
registered office at SRS Tower, 3rd Floor, 14/5,
Mathurs Road (Near Mewla Maharaj Pur Metro Station) Faridabad-121003.

....RESPONDENT

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

Hearing: 4th

Present: Mr. Akshat Mittal, Id. Counsel for the complainant
 through VC

None for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

Present complaint dated 03.02.2022 has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	SRS Palm Homes, Sector-7, District-Palwal, Haryana
2.	Nature of the Project	Affordable Group Housing
3.	RERA registered/not registered	Not registered
4.	Allotment letter dated	26.08.2015
5.	Unit No.	304, Type-A, Tower-F1
6.	Unit Area	645.836 sq. ft.
7.	Payment plan	Construction link

Geeta Rathee

8.	Total Sale Consideration	₹23,74,815/-
9.	Paid by the complainant	₹11,87,408/-
10.	Deemed date of possession	Within 4 years from date of booking i.e. 23.04.2018
11.	Offer of possession	NA

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

3. Case of the complainant is that he was allotted a residential flat bearing no.304, type- A, tower- F1 in the project namely, "SRS Palm Homes", Sector 7, Palwal, Haryana vide allotment letter dated 26.08.2015. A copy of allotment letter has been annexed as Annexure C-3 with the complaint.

4. Total sale consideration of the flat was ₹23,74,815/- against which the complainant paid an amount of ₹11,87,408/- till the year 2016.

5. In terms of detailed allotment letter dated 26.08.2015 for registration of the flat, copy of which has been placed at Annexure C-3, was in the nature of an agreement whereby the respondent was duty bound to hand over possession within four years from the date of booking of the flat but the respondent company has failed to complete the construction of the project and to deliver possession even after continuing delay of almost eight years. The complainant has constantly tried to communicate with the respondent qua status of construction but all in vain.

C. RELIEF SOUGHT:

6. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount of ₹11,87,408/- along with interest @15% per annum or interest as prescribed Under section 18(1) of HRERA Rules,2017;
 - ii. To direct the respondent to pay adequate compensatory interest on entire deposited amount of ₹11,87,408/- for delayed offer of possession;
 - iii. To direct the respondent to pay ₹20,00,000/- on account of grievance and frustration caused to complainant;
 - iv. To direct the respondent to refund of litigation expenses of ₹1,50,000/- incurred by the complainant;
 - v. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

7. Details of service of notice to respondent:

S. No.	Particulars	Details
1.	First notice sent on 04.02.2022	Not delivered due to shifted address
2.	Second notice sent through jail superintendent on 29.04.2022	Not delivered due to receiver refused delivery
3.	Third notice served through publication in newspaper	12.05.2022

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8. The complaint was filed before the Authority in February, 2022. The matter was listed for hearing on three different dates. Efforts were made to get the service effected on the respondent. It transpired that Directors of the respondent company were confined in District Jail, Faridabad. Therefore, notice of the complaint ordered to be served through Superintendent of Neemka Jail, Faridabad and through publication in newspaper. Notice sent through Jail Superintendent could not be served as receiver refused to accept notice. Notice through publication has been got served on 12.05.2022. Despite service of notice, respondent neither appeared nor filed his reply till date and have failed to assist the Authority in this matter. Hence, the Authority decides to proceed with this matter ex-parte.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

9. Arguments raised by learned counsel for complainant have been carefully heard along with meticulous examination of the records of case. At the outset, it has been argued by learned counsel for complainant that the complainant had booked a flat no. 304, Type-A, tower- F1 measuring carpet area of 645.836 sq. ft. and balcony area of 99.61 sq. ft. in the project namely SRS Palm Homes, District Palwal, Haryana of the respondent on 26.08.2015. Copy of allotment letter has been annexed at Annexure C-3 with the complaint book. Total sale consideration of the flat was ₹23,74,815/-

against which the complainant had paid an amount of ₹11,87,408/-. Copies of receipts issued by respondent have been attached at Annexure C-2 from page nos.29-32 of the complaint book. Assurance was given to the complainant that actual and complete possession of the flat would be delivered within 4 years after the date of booking of the flat. The respondent company has not completed the project till date. The complainant has constantly tried to communicate with respondent with regard to possession and status of the project but the complainant could not succeed in establishing communication with respondent company. 8 years have already passed from the date of booking, no work has been carried out at the site of said project.

10. Aggrieved from the default conducted by respondent, the complainant has filed present complaint seeking refund of entire paid amount along with interest.

F. JURISDICTION OF THE AUTHORITY:

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint

F.1: Territorial jurisdiction



As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Palwal District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.2: Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

34. Functions of Authority.—The functions of the Authority shall include—(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

In view of the Provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint

regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating Office, if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY:

12. From perusal of the record and documentary evidence adduced by the complainant and also on the basis of arguments advanced by learned counsel for complainant, the project is far from completion and there has been no construction since 2015. The Directors of the company being in judicial custody. In these circumstances, this is a distress project and there appears negligible hope of its completion in foreseeable future. Therefore, Authority cannot keep the complainant waiting endlessly and compel him to wait for release of Directors from judicial custody. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is

not done as per agreed state, Para 25 of ibid 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.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

13. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at

such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

14. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

15. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date

i.e. 20.12.2022 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

16. The term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. -For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

17. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹11,87,408/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate

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of 10.60% till the date of this order and said amount works out to ₹20,76,174/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 15.12.2022	TOTAL
1.	₹5,73,500/-	11.08.2015	₹4,47,022/-	₹10,20,522/-
2.	₹20,000/-	02.09.2015	₹15,461/-	₹35,461/-
3.	₹2,97,056/-	16.12.2015	₹2,20,588/-	₹5,17,644/-
4.	₹2,96,852/-	04.06.2016	₹2,05,695/-	₹5,02,547/-
Total	₹11,87,408/-		₹8,88,766/-	₹20,76,174/-

18. Regarding relief of compensation sought by the complainant under the heads: grievances and frustration and litigation expenses, it is made clear that nothing stated in this order shall debar the complainant from filing a complaint before the Adjudicating Officer to claim such compensations as he may be entitled under the law.

I. DIRECTIONS OF THE AUTHORITY:

19. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹20,76,174/- to the complainant.

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(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

20. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority details:

Geeta

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DR. GEETA RATHEE SINGH
(MEMBER)

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.....
NADIM AKHTAR
(MEMBER)