

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Omaxe Galleria, Sector-3 , Bahadurgarh
2.	Nature of the project.	Commercial colony
3.	RERA Registered/not registered	Registration vide registration no. 167 of 2017 dated 29.08.2017
4.	Details of unit.	GBS/ First/ Service Flat-33



5.	Date of Builder buyer agreement	None
6.	Due date of possession	Not mentioned
7.	Total sale consideration	₹.19,64,972/-
8.	Amount paid by complainant	₹ 7,16,663/
9.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a commercial unit in the project of the respondent namely "Omaxe Galleria" situated in Sector-3, Bahadurgarh for total sale consideration of ₹ 19,64,972/- against which complainant has paid a total amount of ₹ 7,16,663/- by the year 2017. No builder buyer agreement has been executed between both the parties till date. It is alleged by the complainant that the respondent has failed to construct and develop the project in question. Complainant had sent various emails/representations to the complainant from 02.05.2018 to 14.10.2018 annexed as Annexure P-3 in the complaint file, for refund of the paid amount along with interest since respondent failed to deliver possession of booked unit. However, complainant received no response from the respondent regarding the



same, rather respondent issued further demand letters for payment of due instalments annexed as Annexure P-4 & P-5 in the complaint file.

Ms Isha Janjua, learned counsel for the complainant submitted that complainant has paid a huge amount of ₹ 7,16,663/- to the respondent in lieu of booked unit but despite taking more than 25 % of total sale consideration respondent has failed to develop the project in question. Since, the unit booked by the complainant does not exist, complainant is left with no choice but to seek refund of the paid amount along with interest. Therefore, she requested that directions be issued to respondent to refund the amount of ₹ 7,16,663/- paid by the complainant along with interest at the rate of SBI MCLR + 2%.

D. RELIEF SOUGHT

4. In such circumstances, complainant has file present complaint seeking refund of the paid amount of ₹ 7,16,663/- along with interest.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions submitted that in present case it is the complainant who is choosing to withdraw from the project and not coming forward to execute the builder buyer agreement. Complainant has made a total payment of ₹ 7,16,663/- against total sale consideration of ₹ 20,44,997/-, last payment being made in

December 2012. Thereafter, complainant has made no further payment towards the booked unit despite being issued various demand letters.

Today, Mr. Munish Gupta, learned counsel for the respondent stated that he has no further submission to make before Court other than already made vide written submissions.

F. JURISDICTION OF THE AUTHORITY

6. 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 ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari 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:

Section 11(4)(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;

Section 34-Functions of the Authority

34(f) of the Act provides 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.

So, 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 learned Adjudicating Officer if pursued by the complainants at a later stage.



G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS OF THE AUTHORITY

8. After hearing both parties, Authority observes that complainant had booked a unit in the project of the respondent in the year 2016 for a total sale consideration of ₹ 19,64,972/- against which he had deposited an amount of ₹ 7,16,663/- i.e more than 25 % of the total sale consideration by December 2012, even before executing a buyers agreement. No builder buyer agreement was executed between both parties and no specific allotment of unit was made in the favour of the complainant. Rather respondent has failed to develop the project in question. A bare perusal of the written submission filed by the respondent would reveal that respondent has failed to apprise the Authority with regard to the status of the construction of the progress along with the unit booked by the complainant. Further, learned counsel for the respondent has chosen not to argue the matter and whatever are the submission on behalf of the respondent the same have been submitted in the reply. In such circumstances, it is apparent that the respondent has failed to develop the project in question and is



not in a position to deliver possession. Amount deposited by complainant on account of booked unit has been wrongfully utilised by respondent for many years and now respondent is not in a position to deliver possession, 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 (1) 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."

9. 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.
10. 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%.
11. The definition of 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;

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 ₹ 7,16,663/- 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 of 10.60% till the date of this order and said amount works out to ₹ 11,56,287/-.


I. DIRECTIONS OF THE AUTHORITY


12.Hence, 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 ₹ 11,56,287/-..to the complainant.
- (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.

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


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Dr. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]