



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2877 of 2019
Date of filing:	27.11.2019
Date of first hearing:	14.01.2020
Date of decision:	18.01.2023

Ms. Neelam,
R/o B-3, PWD, B & R Colony,
Railway Road, Near Rest House,
Sonipat-131001

..... COMPLAINANT

Versus

M/s Ansal Properties and Infrastructure Ltd,
Regd Office: 115, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi- 110001

..... RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

had

Present through video call: - Sh. Vivek sethi, Learned counsel for the complainant

Sh. Karaninder Singh, proxy counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 27.11.2019 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 fulfill 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Sushant City, Kundli, Sonapat'
2.	RERA registered/not registered	Un-registered
3.	Date of application by complainant	17.02.2012
4.	Plot no.	0122-E-4019



5	Unit area	250 sq. mts.
6.	Date of builder buyer agreement	17.02.2012
7.	Deemed Date of Possession	5.1 clause of PBA(after paying full consideration)
8.	Basic sale price	₹29,90,000/-
9.	Amount paid by complainant	₹30,40,500/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that in the year 2012 plot bearing no. 0122-E-4019, admeasuring 250 sq.mts. was booked by complainant in a project named 'Sushant City, Kundli, Sonipat' being developed by respondent. Builder Buyer agreement was executed between the parties on 17.02.2012. A copy of original BBA has been annexed as Annexure C-3 with the complaint.
4. Basic sale price of plot was ₹29,90,000/-. In accordance with the payment plan, complainant by the year 2015 had paid a total amount of ₹30,40,500/-.
5. As per clause 5.1 of BBA, the respondent company would execute sale deed of the plot in favour of buyer/complainant and shall be granted after payment of administrative charges. Complainant approached the respondent several times and asked him to complete the project and hand over the possession of the unit but to no avail. Complainant had physically inspected the site and had come to know that there is no development on the site. It has also come to knowledge of



complainant that requisite approvals from the authorities have also not been taken by respondent. It has been alleged by complainant that the construction of the project is still pending and development of the project is into doldrums and project is far from completion. No offer of possession has been made despite lapse of more than 11 years from date of booking.

6. The respondent company has kept with itself illegally collected External Development Charges from the complainant even though there has been no development whatsoever by the state on or near the project site in question. Hence, present complaint has been filed.

C. RELIEF SOUGHT

7. The complainant in his complaint has sought following reliefs:
- (i) To direct the respondent to offer actual possession of the plot in question i.e. PLOT NO. 0122-E-4019, SUSHANT CITY, KUNDLI, SONIPAT, Haryana;
 - (ii) To direct the respondent to pay interest on delayed possession for more than 7 years as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 since 30.05.2015 to the complainant;
 - (iii) To direct the respondent to pay interest on delayed possession @ 24% per annum as the respondent company received payment from the complainant on same rate of interest vide receipt no. 262614 dated 10.11.2012;



- (iv) To direct the respondent to pay ₹10,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;
- (iv) To direct the respondent – company to pay ₹10,00,000/- as compensation to the complainant as part of deficiency of service on their part;
- (v) To direct the respondent – company to refund of all legal cost of ₹1,00,000/- incurred by the complainant;
- (vi) Any other relief -remedy which is deemed fit by this Hon'ble Authority in the present facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

8. Learned counsel for the respondent filed reply on 09.12.2019 in the registry of the Authority. On perusal of said reply, Authority vide its order dated 04.02.2021 had observed that said reply filed by the respondent was vague and full of ambiguities. Therefore, he was given opportunity to file a fresh reply along with all requisite documents. Since then, no reply has been filed by the respondent-company. However, respondent had filed certain documents dated 21.04.2006; 21.04.2010; 25.02.2012; pertaining to transfer of license in the name of respondent company and approval of zoning plans dated 11.03.2014; 21.05.2015. He also stated that the land wherein the present project was being developed has been frozen by the Town and Country Planning Department, Haryana in the year 2015. Therefore, respondent is unable to deliver the possession of the booked unit to the complainant and all the construction



activities are stopped and project is impossible to get completed in the near future.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

9. During oral arguments, learned counsel for complainant Sh. Vivek Sethi, apprised the Authority that although matter was adjourned for settlement vide order dated 06.05.2022, however, no settlement took place. Therefore, complainant pressed for relief of possession along with delay interest. Further he submitted that complainant is ready to wait till the project is complete and is not interested to withdraw from the project. However, for the harassment caused to the complainant, upfront delay interest may be awarded to him and further monthly interest be paid to him by respondent till the date possession is actually offered to him.
10. On the other hand, proxy counsel for the respondent Sh. Karanindeer Singh, apprised the Authority that vide order dated 16.11.2022 passed by Hon'ble National Company Law Tribunal, New Delhi, Interim Resolution Professional was appointed, proceedings under section 14 of Insolvency and Bankruptcy Code were started. However, the said orders are stayed by the Hon'ble National Company Law Appellate Tribunal, New Delhi and clarified that the Interim Resolution Professional are only limited to the "The Fernhill" project and not the entire company. He sought time as all the accounts and assets of the respondent-promoter have yet not been released by the Interim Resolution



Professional, due to which the respondent company is unable to proceed with the matter.

F. JURISDICTION OF THE AUTHORITY

11. 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 whole of 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 Sonipat. 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)

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

G. ISSUES FOR ADJUDICATION

12. Whether the complainant is entitled to possession of the plot in question i.e. PLOT NO. 0122-E-4019, SUSHANT CITY, KUNDLI, SONIPAT, Haryana in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) Captioned matter was already heard at length by the Authority vide its order dated 04.02.2021, whereby it has come to the knowledge of the Authority that respondent has already made a statement that project in question is frustrated and there is no likelihood of the completion of the project in the near future. Therefore, Authority in these circumstances had already given its prima facie view that captioned complaint is fit case for refund. However, learned

counsel for the complainant, as stated in para 7 & 9 of this order, has prayed for relief of possession along with delay interest.

- (ii) The Authority on considering the provisions of Section 18 of the RERA Act finds merits in complainant's prayer for awarding him interest for every month till handing over the possession. Proviso attached to Section 18(1) of the Act envisage that where an allottee does not intend to withdraw from the project, *he shall be paid by the promoter*, interest for every month of delay till handing over possession at such rate as may be prescribed. The complainant for the reason that he does not intend to withdraw from the project has undeniably a statutory right for obtaining interest for every month of delay from the respondent at the rate prescribed in Rule-15 of the HRERA Rules, 2017.
- (iii) Though the complainant has sought that interest be allowed @24% the same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. 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."

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. 18.01.2023 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. Thus, Authority decides to dispose of the present complaint with a direction to the respondent to pay complainant upfront delay interest on the amount already paid by complainant allottee from deemed date of possession till the date of this order and also future interest for every month of delay occurring thereafter till the handing over of possession, at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 10.6% (8.60%+2.00%).



18. Authority has got upfront delay interest calculated as per Rule 15 of HRERA, Rules 2017, to the tune of ₹ 25,54,503/- as delay interest payable to the complainant from deemed date of possession i.e. 17.02.2015 till 18.01.2023. Besides, the said amount of interest, complainant is also entitled to receive each month's interest on the paid amount of ₹30,40,500/- from 19.01.2023 onwards till the delivery of actual possession after obtaining Occupation Certificate. Such interest works out to ₹ 27,373/- per month as calculated by the Authority.
19. It is pertinent to mention that time for delivery of possession has not been stipulated in the builder buyer agreement. This Authority has been consistently observing in earlier decided cases where no timeline has been prescribed in builder buyer agreement that the deemed date of possession shall be reckoned as three years from the date on which Builder Buyer Agreement was executed. Thus calculated, deemed date of possession in the present complaint comes to 07.02.2015.
20. 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

21. 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 pay upfront delay interest of ₹ 25,54,503/- and monthly interest of ₹ 27,373/- to the complainant till actual handing over of the possession after obtaining Occupation Certificate.

(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.

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


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]