



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	246 of 2022
Date of filing:	11.03.2022
Date of first hearing:	10.05.2022
Date of decision:	17.01.2023

Indu Sharma

R/o B-27, Ashoka Apt, 36/2, Sector – 9, Rohini, Delhi- 110085.

....COMPLAINANT

VERSUS

M/s Green Space Infraheights Pvt. Ltd.
registered office at 306, 3rd Floor, Indraprakash Building,
21- Barakhamba Road, New Delhi - 110001

....RESPONDENT

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

Member
Member

Present: Mr. Harshad Batra, learned counsel for complainant through video conferencing.
Mr. Dharamveer Singh, learned counsel for respondent through video conferencing.

Handwritten signature in red ink.

ORDER (NADIM AKHTAR - MEMBER)

Present complaint dated 11.03.2022 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	Shree Vardhaman Green Space
2.	Nature of the Project	Group Housing
3.	RERA registered/not registered	Registered
4.	Allotment letter dated	11.07.2016
5.	Unit No.	B - 0502, 5 th Floor, Tower - B
6.	Carpet Area	511 sq. ft.
7.	Total Sale Consideration	₹20,94,000/-



9.	Paid by the complainant	₹19,26,480/-
10.	Deemed date of possession	Within 4 years from date of approval of building plans or grant of environmental clearance whichever is later
11.	Offer of possession	Not Made

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

3. Complainant booked a unit in project of the respondent namely "Shree Vardhman Green Space" situated in Sector 14 Panchkula, Extension II in 2016. Vide allotment letter dated 11.07.2016, Flat no. B-0502, 5th Floor, Tower B, having carpet area of 511 sq. ft. and balcony area of 100 sq. ft. was allotted to him. Builders Buyers Agreement was executed between the parties on 11.07.2016 (Annexure C1).
4. According to clause 8 (a) of the BBA, respondent committed to offer possession of said flat to allottee within a 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. 19,26,480/- till 24.01.2019. Complainant argued that since she has made payment of 92% of BSP by January, 2018, possession should have been offered within reasonable period thereafter.



5. Complainant further alleges that even after receiving 92% of 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 possession of the booked unit along with delay interest. Later an application dated 16.01.2023 has been placed on record wherein complainant amended his relief from relief of possession to relief of refund of the amount paid by complainant till date along with the prescribed rate of interest from respective dates of payment till the actual realization.

C. RELIEF SOUGHT:

6. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount paid by complainant till date along with the prescribed rate of interest from respective dates of payment till the actual realization;
 - ii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

7. Details of service of notice to respondent:

Particulars	Details
Notice sent on 17.03.2022	Successfully delivered on 19.03.2022



8. Respondent company filed its reply on 22.08.2022 wherein it is stated that 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.

9. 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 15.03.016. 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.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

10. During the previous hearing dated 28.09.2022, learned counsel for complainant sought adjournment on the ground that he want to amend his prayer of relief from possession to refund. An application dated 16.01.2023 was placed on



record seeking amendment in relief clause. Therefore, complainant is now pressing for the relief of refund.

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. Matter was heard on 05.08.2022, and the Authority gave its tentative view that refund is admissible in this case. Relevant order is reproduced below:

“4. After perusing the case file and going through facts and circumstances of the case, Authority observes that several other complaints have been filed before the Authority against this project of respondent, for similar issues. Complainants in those complaints are seeking relief of refund. During the course of proceeding of those matters Authority inquired about status of construction of the project. Complainants apprised the Authority that in 2017 only bare structure was developed. Even after 3 years in January 2022 not much improvements were made by respondent. Currently nobody is working at the project site and projects seems to be abandoned. Considering facts and circumstances of the cases, Authority gave its tentative view in the bunch matter with lead case no. 14 of 20222 titled as **“Priya Bagga v. Green Space Infraheights Pvt. Ltd.”** operative part of the order is reproduced below:

“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.

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."

13. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in Appeal no. 6745-6749 of 2021, decided on 11-11-2021, 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.

14. 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.”

15. 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.

16. 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%.

17. 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;

18 . The matter has been tentatively decided on 05.08.2022, and, therefore the view taken by the Authority in its order dated 12.08.2022 stands confirmed since respondent promoter has placed nothing on record highlighting the latest status of construction of project and the time within which it would be completed. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.60% till the date of this order and the said amount works out to be Rs. 30,29,688/- as per details given in the table below -

Sr. No.	Principal Amount	Interest @10.60% till 17.01.2023	Total
1	Rs. 19,26,480/-	Rs. 11,03,208/-	Rs. 30,29,688/-

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:

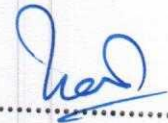
(i) Respondent is directed to refund the entire amount of ₹19,26,480/- along with interest of Rs. 11,03,208/- to the complainant.

(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.

20. 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]