



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on : 17.01.2023

Name of Builder	M/s Green Space Infraheights Pvt. Ltd.
Project Name	Shree Vardhman (Group Housing)

Sr. No.	Complaint No.	Complainant
1.	1656 of 2022	Ankur Bakshi s/o Sh. Trilochand Singh, r/o House no. 1694, Sector - 7, Urban Estate, Kurukshetra, Haryana-136118
2.	1657 of 2022	Sanju Bakshi w/o Sh. Ankur Bakshi, r/o House no. 1694, Sector -7, Urban Estate, Kurukshetra, Haryana - 136118
3.	1565 of 2022	Raveesh Sabharwal s/o Sh. Virender Kumar Sabharwal, r/o Flat no. 207, GHS-34, Sector - 20, Panchkula
4.	1614 of 2022	Sanjeev Kumar s/o Dharamvir, r/o Village Jatheri, 307, Post Office Salimpur Bangar, District Yamunanagar
5.	1839 of 2022	Ashish Gupta s/o Ram Kumar Gupta, r/o 21/6, Jaidev Colony, Hailey Mandi, Patvadi District, Gurgaon -122504, Haryana - 134114
6.	1840 of 2022	Amit Goyal s/o Darshan Goyal, r/o House No. 567/5, Street no. 4A, Patel Nagar, Gurgaon - 122001, Sector-6, Panchkula, Haryana - 134114
7.	2036 of 2022	Aditi Bansal w/o Gaurav Goyal, permanent r/o Village Naggal, District Panchkula, currently r/o B-903, Brigade Exotica, Old Madras Road, Near Budigere Cross, Bangalore

Versus

Rathore

1. M/s Green Space Infraheights Private Limited, through its Director, having its registered office at 306, 3rd floor, Indraprakash Building, 21, Barakhamba Road, New Delhi – 110001

.....Respondent 1

2. Housing Development Finance Corporation Limited, a company registered under the Companies Act, 1956 having its registered office at Raman House, 169, Backbay Reclamation, Mumbai – 400020 through its authorised representative

.....Respondent 2

3. Housing Development Finance Corporation Limited, a company registered under the Companies Act, 1956 having its branch office at HDFC Ltd., SCO No. 153-155, Sector – 8C, Madhya Marg, Chandigarh through its Branch Manager

.....Respondent 3

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: Mr. A.D. Narula, learned counsel for complainant through video conferencing.(in complaint no. 1565, 1656 and 1657 of 2022)
Mr. Bhavdeep Singh learned counsel for complainant through video conferencing.(in complaint no. 1614 of 2022)
Mr. Gaurav Jindal, learned counsel for complainant through video conferencing.(in complaint no. 2036 of 2022)
Mr. Dharamveer Singh, learned counsel for respondent through video conferencing.(in all complaints)

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. This order shall dispose of all the 7 complaints titled as above filed before this Authority 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.
2. Captioned complaints are taken up together as facts and grievances of all these complaints are more or less identical and relate to the same project of the respondent, i.e., "Shree Vardhman", situated in Village Kot Billah, Panchkula, Extension II. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in all these cases pertains to failure on part of respondent promoter to deliver timely possession of units in question. Therefore, complaint no. 1656 of 2022 titled "Ankur Bakshi v/s M/s Green Space Infraheights Pvt. Ltd.", has been taken as lead case for disposal of all these matters.

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A. UNIT AND PROJECT RELATED DETAILS:

3. 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, in lead complaint case no. 1656 of 2022, have been detailed in following table:

Sr. 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	02.08.2017
5.	FBA dated	16.10.2017
6.	Unit No.	Flat No. 0606, 6 th Floor, Tower - G
7.	Carpet Area	511 sq. fts.
8.	Total Sale Consideration	₹22,03,303/-
9.	Paid by the complainant	₹17,17,080/-
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

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

4. 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 02.08.2017, Flat No.0606, 6th Floor, Tower - G, having carpet area of 511 sq. ft. and balcony area of 100 sq. ft. was allotted to him. Flat Buyers Agreement was executed between the parties on 16.10.2017 (Annexure C-5 of complaint book).
5. Complainant availed the Housing Loan facility from respondent 2 and 3 for which a Tripartite agreement dated 05.03.2018 was executed between the complainant, respondent 1 and respondent 2 and 3 wherein complainant and respondent 1 jointly approached respondent 2 and 3 for grant of loan facility towards the payment of sales consideration of residential flat in the project under the Installment Linked Option. Since the date of disbursement of loan amount particularly from the first amount paid by respondent no. 2 and 3, complainant is paying pre-EMI which is in the shape of simple interest on the amount disbursed. Thus, complainant is paying a sum of Rs.7500/- per month to respondent 2 and 3 for default committed by respondent 1. A sum of approximately Rs. 5,00,000/- is paid towards regular pre-EMIs.

6. 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. 17,17,080/- till 01.09.2018. Complainant argued that since she has made payment of 92% of BSP by September, 2018, possession should have been offered within reasonable period thereafter.

7. 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 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:

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent no. 1 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;

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- ii. Direct respondent no. 1 to pay charges paid by the complainant to respondent no. 2 and 3 towards the pre-EMI from the date when respondent no. 2 and 3 started charging till actual refund.
- iii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

9. Details of service of notice to respondent:

Particulars	Details
Notice sent on 17.03.2022	Successfully delivered on 27.07.2022

10. This is 3rd hearing of all the captioned complaint cases today and reasonable time was granted to respondent 1 to file his reply in each case. However, reply has not been filed in any of the captioned complaint cases by respondent 1, i.e., "M/s Green Space Infraheights Private Limited."
11. On the other hand, reply dated 16.08.2022 was filed on behalf of respondent 2 and 3, i.e., "Housing Development Finance Corporation Limited." (hereinafter referred to as 'HDFC')
12. It is submitted that the grievance of complainant is against the respondent 1, i.e., "M/s Green Space Infraheights Private Limited" and nothing substantial had been stated or claimed against HDFC Limited. Complainant is a borrower of

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HDFC Limited and their inter-se obligations are governed by Loan agreement(annexed as Annexure R-1 of reply book), dated 29.03.2018 and tripartite agreement(annexed as Annexure R-2 of reply book), dated 05.03.2018. The consequences of the default in repayment of loan are governed by the terms and conditions of the loan agreement, which are not in dispute. Furthermore, the obligation to repay the loan is only of complainant/borrower and said obligation is independent of any other agreement/understanding/dispute amongst the builder and the allottee. In the present case, complainant availed loan of Rs. 16,00,000/- out of which HDFC Limited has disbursed an amount of Rs. 10,47,000/- towards the sales consideration of the unit. Also, any default in repayment of regular EMIs would affect the CIBIL of the borrower who has availed the loan from HDFC Limited in his/her individual capacity.

13. Therefore, respondent 2 and 3 humbly prayed that since no relief has been claimed against them and there is no deficiency in services as far as they are concerned, so no cause of action arose in favour of complainant qua respondent 2 and 3. Thus, present complaint should be dismissed qua respondent 2 and 3.

E. JURISDICTION OF THE AUTHORITY:

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

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E.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.

E.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

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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.

F. 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 ?
- ii. Whether respondent no. 1 is liable to pay charges paid by the complainant to respondent no. 2 and 3 towards the pre-EMI from the date when respondent no. 2 and 3 started charging till actual refund ?

G. OBSERVATIONS OF THE AUTHORITY:

15. 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 16.10.2017. Basic sales consideration was agreed to be Rs.20.94 lacs. Complainant had paid over Rs. 17,17,080/- ,i.e., more than 92% of the total sales consideration by 1st September, 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 92% of sales 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 2017 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) Complainant also prayed that respondent 1, i.e., "M/s Green Space Infraheights Pvt. Ltd." should pay charges paid by the complainant to respondent 2 and 3, i.e., "HDFC Limited", towards the pre-EMI from the date when respondent no. 2 and 3 started charging till actual refund. In this regard, it is pertinent to mention here that this relief cannot be granted along with the relief of refund for the reason that in case of refund, total decretal amount is inclusive of total amount paid by the complainant along with interest on that amount with effect from payment made to respondent till its actual realisation @ SBI MCLR Rate + 2%. So, in this way, respondent 1 is already being put to pay the interest on the amount received from complainant in lieu of allotment of unit. Allowing Pre-EMI and refund of total amount paid by complainant along with interest would amount to double penalty on respondent 1, which is not permissible as per Section-2(za) of RERA Act, 2016, which defines interest. The term 'interest' as defined under Section 2(za) of the Act, 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;"

v) Also, 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 progress has been made by respondent. Currently nobody is working at the project site and projects seems to be abandoned.

16. 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.

17. 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."

18. 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.
19. 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. 17.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be SBI MCLR + 2% , i.e., 10.60%.
- 20 . 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 in all the captioned complaints; details are given in the table below -

Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.60% till 17.01.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	1656 of 2022	17,17,080/-	8,88,525/-	26,05,605/-
2.	1657 of 2022	17,17,080/-	8,88,525/-	26,05,605/-
3.	1565 of 2022	21,85,475/-	13,50,201/-	35,35,676/-
4.	1614 of 2022	16,08,840/-	7,70,996/-	23,79,836/-
5.	1839 of 2022	18,02,588/-	10,96,134/-	28,98,722/-
6.	1840 of 2022	20,47,838/-	12,74,112/-	33,21,950/-
7.	2036 of 2022	21,20,175/-	10,15,489/-	31,35,664/-

H. 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 refund the entire amount along with interest of @ 10.60 % to the complainant as is specified in the table above.
- (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. These complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.


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NADIM AKHTAR
[MEMBER]


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

