



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	272 of 2021
Date of filing:	01.03.2021
Date of first hearing:	01.04.2021
Date of decision:	07.02.2023

Suman Gupta widow of Late Sh. Ajay Gupta
r/o 206, Dharam Kunj Apartments,
Sector 9, Rohini,
Delhi 110085

....COMPLAINANT

VERSUS

Ansal Properties & Infrastructure Pvt.
Office: 15, Ansal Bhawan, 16 KG MARG,
NEW DELHI- 110001

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: Mr. Roopak Bansal, learned counsel for the complainant
through video conference

None for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 01.03.2021 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, kundli, Sonipat
2.	RERA registered/not registered	Registered/ 173-2019
3.	Date of booking and booking amount	07.01.2006 by paying 2.5 lacs
5.	Flat no.	18-02-02



6	Flat area	1225 sq.ft.
7.	Date of allotment	01.11.2006
8.	Date of builder buyer agreement	Not executed
9.	Deemed date of possession	Cannot be ascertained
10.	Basic sale price	₹19,29,375/-
11.	Amount paid by complainant	₹2,50,000/-
12.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Complainant had booked a flat vide application dated 07.01.2006 by paying booking amount of Rs. 2,50,000/- to the respondent-promoter. Vide allotment letter dated 01.11.2006, flat bearing no. 18-02-02, admeasuring 1225Sq. ft. in project "Green Escape Apartments", kundli, Sonipat was allotted to the complainant. A copy of the receipt issued by the respondent promoter is annexed as Annexure C-1 with the complaint.
4. That, till date there is no agreement for sale between the parties wherein the date of delivery of possession might have been stipulated. The promoter cannot indefinitely defer the delivery of possession after



receiving the booking amount. The promoter is duty bound to deliver the possession within reasonable time.

5. That, further because of inordinate delay in completion of the project the applicants wish to get the refund of the amount paid by complainant along with the prescribed rate of interest from respective dates of payment till the actual realization and same has also been held by this Authority in the complaint no. 2745 of 2019, titled as "Ashok Kumar & Anr. Versus Ansal Properties and Infrastructure Pvt. Ltd". A copy of order dated 28.10.2020 is annexed as Annexure C-3 with the complaint.
6. That, the Hon'ble NCDRC in "Shalabh Nigam versus Orris Infrastructure Pvt. Ltd. & Anr." in Consumer Case no. 1702 of 2016 has held that the allottee can seek refund if there is inordinate delay of more than one year in delivery of possession.
7. That, due to delay in possession, the complainant has suffered huge mental stress and harassment and as such the complainant on account of mental harassment caused for delay in possession of the flat quantifies his claim as ₹5,00,000/- under this head. Hence, present complaint has been filed.

C. RELIEF SOUGHT

8. The complainant in his complaint has prayed that the respondent be directed to:



- (a) To refund the full deposited money which is withheld with the respondent along with interest @ 18% p.a. from the date of deposit till realization in accordance with section 18(1), Section 19(4) of the Real Estate (Regulation and Development) Act 2016 and Rule 15 and 16 of Haryana Real Estate (Regulation and Development) Rules 2017.
- (b) To pay interest @ 18% per annum on the amount paid by the complainant to the respondent from the date of payment to the date of realization.
- (c) To direct the respondent to pay ₹5,00,000/- to the complainant on account of mental harassment caused for delay in possession of the shop.
- (d) To direct the opposite party to pay ₹5,00,000/- under section 12 of the Real Estate (Regulation and Development Act 2016).
- (e) To direct the opposite party to handover 10% of the estimated cost of the real estate project to the complainant under section 59 of the Real Estate (Regulation and Development), Act 2016.
- (f) To direct the opposite party to pay the costs to the complainant equivalent to the cost of similar property in the area at the present prices.
- (g) To direct the opposite party to reimburse litigation cost of ₹1,00,000/- to the complainant.
- (h) Any other relief which this Hon'ble authority deems fit be passed in favour of complainant.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 30.09.2021 pleading therein:

9. That, the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, allotment of flat was made on 01.11.2006 but the complainant failed to deposit the amount and so the respondent-promoter cancelled the allotment vide letter dated 17.09.2007. Copy of cancellation letter dated 17.09.2007 is annexed at page no. 6 of the reply.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

10. During oral arguments learned counsel for the complainant reiterated arguments as mentioned in Para 3-8 of this order. On the other hand, none appeared for the respondent-promoter.

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 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 Kundl 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)

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.

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 complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

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 that the captioned matter was earlier heard at length on 20.07.2022, wherein tentative view of the Authority was already expressed and recorded. Operative part of the said order is reproduced below for the ready references:

"While initiating his arguments, learned counsel for the complainant submitted that complainant had booked a flat in respondent's project "Green Escape Apartments", Sonapat on 07.01.2006. As per para 4(vi) of the complaint, respondent was under an obligation to handover the possession of the booked flat by 31.12.2015. However, no builder buyer agreement has been executed between parties till date. Total sale consideration of the flat was Rs. 19,29,375/- against which complainant had already paid an amount of Rs. 2,50,000/- by year 2006. In support of the amount paid of Rs. 2,50,000, he has annexed a copy of receipt issued by the respondent-promoter at page no. 10 of the complaint book.

Further learned counsel for the complainant argued that there is no possibility of getting the project completed in near future on the

ground that no construction has taken place till date on the site of the project. On very ground of inordinate delay of over seven years and no hope of its completion in near future, complainant has sought relief of refund of the amount paid along with permissible interest as per Rule 15 of HRERA Rules, 2017.

2. On the other hand, learned counsel for the respondent, Sh. Ajay Ghangas, denied the contention raised by the learned counsel of complaint and argued that complainant had only paid a booking amount of Rs. 2,50,000/-, thereafter, various demand letters were issued to the complainant to pay pending amount but complainant had never replied to any of them. So, after delay of almost fifteen years, complainant has filed present complaint before Authority which is hopelessly time barred as his allotment stands cancelled vide letter dated 17.09.2007 itself. So, complainant prayer cannot be allowed and complaint deserves to be dismissed. As per learned counsel for the respondent current status of the project is yet to be disclosed as per best of his knowledge, project is under construction.

3. After hearing both parties, a specific question was raised before learned counsel for the respondent if the allotment of the complainant was cancelled in the year 2007 itself, then why paid amount of Rs. 2,50,000/- by the complainant was not refunded to him along with said cancellation letter. Further, after perusal of the records, Authority observes that said cancellation letter dated 17.09.2007, attached at page no. 6 of the reply, is not a cancellation letter rather it is another demand letter for two fold reasons that it shows a demanded of Rs. 3,86,694/- from the complainant rather refunding of paid amount of Rs. 2,50,000/- to the complainant. Therefore, respondent's stand that complainant's allotment was cancelled way back in year 2007 is not acceptable. Therefore, Authority decides to treat said cancellation letter as another demand letter sent by the respondent-promoter. Another inquiry was put forth before the learned counsel for the respondent about the current status of construction of the tower in which complainants flat was situated and the same as per complainant, no builder buyer agreement was executed, therefore, his allotment and other settled terms cannot be verified and without knowing the exact status of the tower allotted to the complainant, relief prayed by him cannot be granted. However, learned counsel for the respondent sought time to file current status of the project and tower wherein complainant allotted flat is situated.



4. in view of above findings, Authority tentatively is of the view that if the Tower in which complainant flat is situated found to be complete, then relief prayed by the complainant cannot be granted but in case tower is still incomplete, this case will be considered as a fit case of refund and complainant will be entitled to refund of paid amount along with permissible interest.

On request of learned counsel for the respondent, case is adjourned to 29.09.2022 with a direction to the respondent to file current status of the tower along with coloured photos of the site in which complainant's flat is situated along with fresh statement of account of the complainant failing which tentative view expressed by the Authority will stand confirmed on next date of hearing"

14. It is further observed that Authority has offered numerous opportunities to respondents to file the current status of the project and the booked flat of the complainant. However, he has failed to comply with the directions till date. Furthermore, plea of respondent-promoter that allotted flat was cancelled way back in the year 2007 had already been rejected by the Authority for the two fold reasons that amount paid by complainant was never refunded to him and respondent even today has failed to apprise the Authority with regard to the current status of the project in question, which further concludes that when booking of flat was made in the year 2006, due date of offering possession approximately comes in year 2009. Already delay of more than 13 years has taken place. After such inordinate delay, innocent allottees who have invested their hard earned money cannot be made to wait endlessly for grant of possession.
15. 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.

16. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Though the complainant has sought that interest be



allowed @18% however 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.”

17. 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.

18. 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. 07.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

19. The definition of term 'interest' is defined under Section 2(z) 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;

20. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹ 2,50,000/- 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 calculated at the rate of 10.60% till the date of this order and said amount works out to ₹4,40,408/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 07.02.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹2,50,000/-	07.01.2006	₹4,40,408/-	₹ 6,90,408/-

21. The complainant is seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.



Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

22. Further, complainants are seeking relief that 10% of the estimated cost of project be handed over to them under Section 59 of RERA Act, 2016. In this regard it is observed that as per provisions of Section 59, the complainants are not entitled to any penalty under this Section. Further, said relief has nowhere been claimed by the complainants in their complaint nor pressed by them during arguments. Hence, complainant prayer to hand over 10% of estimated cost of project to them is rejected.

I. DIRECTIONS OF THE AUTHORITY

23. 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 ₹ 6,90,408/- to the complainants.
- (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.

24. Disposed of. File be consigned to record room and order be uploaded on the website of the Authority.

Geeta Rathee

.....
Dr. GEETA RATHEE SINGH
[MEMBER]

Nadim Akhtar

.....
NADIM AKHTAR
[MEMBER]

