



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	909 of 2022
Date of filing:	06.05.2022
Date of first hearing:	07.07.2022
Date of decision:	14.02.2023

Rakesh Kumar Tiwari s/o Sh. Bhudatt Sharma

R/o Houseno. 151, Sector- 21 D, Faridabad, Haryana - 121012

....COMPLAINANT

VERSUS

Jotindra Steel and Tubes Limited

14/3, Mathura Road, Faridabad – 121003 (Haryana)

....RESPONDENT

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

Member
Member

Present: Mr. Deepak Gautam, learned counsel for complainant through video conferencing.

Mr. Amrit Singh, learned counsel for respondent through video conferencing.

ORDER (NADIM AKHTAR - MEMBER)

Present complaint dated 06.05.2022 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 of possession have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Shree Homes by Sarvome
2.	Nature of the Project	Affordable Group Housing
3.	RERA registered/not registered	Registered
4.	Allotment letter dated	10.08.2019
5.	Unit No.	Flat no. 201, Tower - N
6.	Carpet Area	645.40 sq. ft.
7.	Total Sale Consideration	₹13,28,960/-



9.	Paid by the complainant	₹2,66,000/-
10.	Deemed date of possession	Not mentioned since Builder Buyer Agreement was not entered into between the parties.
11.	Offer of possession	Not Made

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

3. Complainant applied for allotment of an apartment under Affordable Group Housing Policy, 2013 in project of the respondent namely "Shree Homes" by Sarvome (A unit of JSTL), situated in Village Mewla Maharajapur, Sector – 45, Faridabad vide application no. 2423. Thereafter, vide allotment letter dated 10.08.2019 (annexed as Annexure P2 of complaint book), Flat no. 201, Tower N, having carpet area of 645.40 sq. ft. and balcony area of 100 sq. ft. was allotted to him. Builders Buyers Agreement was not executed between the parties.
4. The total cost of the flat is Rs. 13,28,960/-, out of which complainant had paid an amount of Rs. 2,66,000/- till 25.08.2019 by way of cheque(annexed as Annexure P3 of the complaint book). Thereafter, on 10.07.2020, respondent promoter sent a demand letter(annexed as Annexure P4 of complaint book) to complainant for payment of remaining amount of Rs. 10,62,920/-. However, during that time, pandemic Covid – 19 spread and nationwide restrictions were imposed to

prevent the spread of virus. Complainant was going through a tough time both financially and physically. Entire family of complainant got infected with Covid and was hospitalized. Complainant also dealt with some post Covid complications too. Therefore, complainant was not able to pay the net payable amount at that time.

5. Thereafter, when the situation was normal, complainant tried to reach respondent promoter to accept balance payment of Rs. 10,62,960/- vide letter dated 13.12.2021(annexed as Annexure P5 of complaint book), but no response had been received from respondent promoter.

4. Complainant is still interested in taking possession of flat and is ready to pay the outstanding amount of Rs. 10,62,960/- at the earliest. However, if respondent promoter does not want to accept the balance payment of Rs. 10,62,960/-, then they may refund Rs. 2,66,000/- paid by the complainant against the allotment of said flat in question.

C. RELIEF SOUGHT:

5. The complainant in his complaint has sought following reliefs:
- i. To accept the outstanding dues from complainant as he is still ready and willing to pay the balance amount of Rs. 10,62,920/-or to refund the amount received from complainant along with interest, if respondent does not want to accept the balance amount;



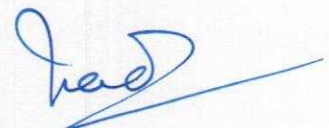
- ii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

6. Details of service of notice to respondent:

Particulars	Details
Notice sent on 09.05.2022	Successfully delivered on 01.06.2022

7. Respondent company filed its reply on 07.07.2022, wherein it is stated that total cost of flat in question is Rs. 26,31,600/- plus GST, however, complainant has wrongly averred that total cost of flat is Rs. 10,62,920/-. Demand letter dated 10.08.2019 is crystal clear and states that the demand of Rs. 5,31,479/- is 20% of the BSP and therefore, complainant is making a false averment. Also, complainant has deliberately defaulted in making payment of installments even prior to notification for lockdown owing to Covid -19 pandemic issued by the government. Therefore, complainant is seeking a false refuge under the excuse of pandemic to conceal his own default.
8. Further, both the complainant/allottee and respondent promoter are governed by Affordable Housing Policy, 2013 notified on 19.08.2013 by the Town and Country Planning Department, Government of Haryana and all its subsequent amendments as is clearly admitted by the complainant. It is important to quote Clause 5(iii)(i) of the Policy here, which is as under -



*“If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, **failing which allotment may be cancelled.** In such cases also, an amount of Rs. 25,000/- may be deducted by the colonizer and the balance amount shall be refunded to the applicant.”*

After deliberate defaults in making payment by complainant, public notice in the newspaper ‘The Pioneer’ was issued on 20.08.2020 with a request to pay amount due within 15 days from date of publication of public notice failing which allotment shall be cancelled. Period of 15 days expired on 04.09.2020. Complainant continued his default and thus, allotment has been cancelled. Cancellation of allotment of unit of complainant has been duly done under the confines of the Affordable Housing Policy, 2013.

9. The complainant was also re-informed about cancellation of allotment as he continued his default of non- payment of outstanding amount on 19.05.2021. Complainant was requested to complete the formalities for refund of amount deposited by him subject to deductions governed by the Affordable Housing Policy,

2013 issued by the Government of Haryana. The Policy does not allow reinstating a legally cancelled allotment.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

10. Mr. Deepak Gautam, learned counsel for complainant reiterated the factual matrix of case and submitted that complainant is still interested in taking possession of flat and is ready to pay the outstanding amount of Rs. 10,62,960/- at the earliest. However, if respondent promoter does not want to accept the balance payment of Rs. 10,62,960/-, then they may refund Rs. 2,66,000/- paid by the complainant against the allotment of said flat in question.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

11. Mr. Amrit Singh, learned counsel for respondent promoter submitted that cancellation of allotment of unit of complainant has been duly done under the Affordable Housing Policy, 2013 issued by the Government of Haryana and the Policy does not allow reinstating a legally cancelled allotment. Therefore, respondent promoter prayed that complainant be directed to complete the formalities for refund of amount deposited by him after deductions. Respondent promoter will refund amount of Rs. 2,66,000/- subject to deduction of Rs. 25,000/- as per Clause 5(iii)(i) of the Affordable Housing Policy, 2013.

G. JURISDICTION OF THE AUTHORITY:

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

G.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 over State of Haryana except district Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Sector- 45, Faridabad District. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

G.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.

H. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the amount deposited by him, i.e., Rs. 2,66,000/-, along with interest in terms of Section 18 of Act of 2016?

I. OBSERVATIONS OF THE AUTHORITY:

13. 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 (I) 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.

14.02.2023 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. 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 after deduction of ₹ 25,000/- as per Clause 5(iii)(i) of the Affordable Housing Policy, 2013 which works out to be ₹ 3,62,342/- as per details given in the table below -

Sr. No.	Principal Amount	Interest @10.60% till 14.02.2023	Amount to be refunded	Total amount to be refunded after deduction of ₹ 25,000/-
1	₹ 2,66,000/-	₹ 1,02,664/-	₹ 3,68,664/-	₹ 3,43,664/-

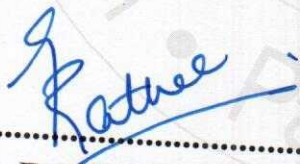
J. DIRECTIONS OF THE AUTHORITY:

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:

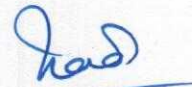
(i) Respondent is directed to refund the entire amount of ₹ 3,62,342/- to the complainant.

(ii) A period of 90 days is given to the respondent promoter 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]