



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1216 of 2020
Date of filing:	02.11.2020
Date of first hearing:	06.01.2021
Date of decision:	31.01.2023

Jayashri Gaur
R/o H.no.601, Millenium, Omaxe Heights,
Sector-86, Faridabad-121002.

....COMPLAINANT

VERSUS

Pivotal Infrastructure Private Limited
2nd Floor, Om Shubham Tower, Neelam Bata Road,
NIT, Faridabad-121001.

....RESPONDENT

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

Present: - Mr. Denson Joseph, Id. Counsel for the complainant
 through VC

 Mr. Vaibhav Grover, proxy Counsel for the respondent
 through VC

Dr. Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

Present complaint dated 02.11.2020 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, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Royal Heritage, Sector-70, Faridabad
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Registered (HRERA-PKL-FBD-47-2018)
4.	Allotment letter dated	28.05.2013
5.	Unit No.	RIDHI/1-404, 7 th floor
6.	Unit Area	2525 sq. ft.
7.	Payment plan	Construction linked plan

8.	Builder Buyer Agreement (BBA)	19.06.2013
8.	Total Sale Consideration	₹1,11,79,663/-
9.	Paid by the complainant	₹82,70,929/-
10.	Deemed date of possession	Within 42 months from date of execution of BBA i.e. 19.12.2016
11.	Offer of Possession	NA

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

2. Complainant was allotted a residential flat bearing no. RIDHI/1-404 on 7th floor (unit type: Luxury-Duplex) admeasuring an aggregate super area of approximately 2525 sq. ft. on 28.05.2013 by the respondent promoter in the project namely, Royal Heritage, Sector-70, Faridabad. Builder buyer agreement was executed on 19.06.2013. Total sale consideration of the flat was ₹1,11,79,663/- against which complainant had paid ₹85,38,326.95/-. As per clause 8.1 of the agreement, possession of the flat was to be delivered within 42 months from the date of execution of agreement or from the date of start of construction whichever is later i.e. up to 19th December 2016. Complainant further submitted that construction of the project stood completely towards the end of 2016. Complainant sent a letter on 19.07.2017 seeking refund of her hard-earned money but respondent did not respond to the same. A legal notice dated 19.12.2017 was

also sent seeking refund but the respondent did not respond to that also. On 17.09.2020, respondent sent a fresh demand of ₹26.29 lacs to the complainant on account of various charges. Learned counsel for the complainant stated that such a demand was not accepted to the complainant and she again sought refund of entire paid amount from the respondent but respondent reverted with an offer to exchange unit of the complainant with two cheaper units. Learned counsel for the complainant stated that complainant is a retired school principal and has no knowledge in dealing with real estate business in general. Therefore, she rejected the proposal of the respondent. It is further stated that project has been delayed almost 4 years beyond all reasonable limits and still not complete.

C. RELIEF SOUGHT:

3. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount of ₹85,38,326/- along with interest @18% per annum or interest as prescribed Under section 18(1) of HRERA Rules,2017;
 - ii. To direct the respondent to refund of litigation expenses of ₹1,50,000/- incurred by the complainant;
 - iii. Any other relief which is deemed fit by this Hon'ble Authority.

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D. REPLY:

4. Respondent in his written submissions, submitted that complainant had violated terms and conditions of the builder buyer agreement dated 19.06.2013 due to failure in making timely payments, therefore, she cannot seek timely delivery of possession of the flat. It is submitted that project has already been completed by the respondent and almost 600 families have been residing and enjoying their possession in the project. Learned counsel for the respondent stated that application for occupation certificate qua tower in question has already been filed before competent authority on 14.10.2019 and the same is still pending. Possession will be offered as and when occupation certificate will be obtained by the respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

5. Learned counsel for complainant argued that complainant was allotted a residential flat bearing no. RIDHI/1-404 on 7th floor admeasuring super area of 2525 sq. ft. on 28.05.2013 by the respondent promoter in the project namely, Royal Heritage, Sector-70, Faridabad. Builder buyer agreement was executed on the same date i.e. 19.06.2013. Total sale consideration of the flat was ₹1,11,79,663/- against which complainant had paid ₹85,38,326.95/-. As per clause 8.1 of the agreement, possession of the

flat was to be delivered within 42 months from the date of execution of agreement or from the date of start of construction whichever is later i.e. up to 19.12.2016. Further, it is argued that construction of the project stood completely delayed. Complainant sent a letter on 19.07.2017 seeking refund of her hard-earned money but respondent did not respond to the same. A legal notice dated 19.12.2017 was also sent seeking refund but the respondent did not respond to that also. It is submitted that on 17.09.2020, respondent sent a fresh demand of ₹26.29 lacs to the complainant on account of various charges. Learned counsel for the complainant stated that such demand was not accepted to the complainant and she again sought refund of entire paid amount from the respondent but respondent reverted with an offer to exchange unit of the complainant with two cheaper units. Learned counsel for the complainant stated that complainant is a retired school principal and has no knowledge in dealing with real estate business in general. Therefore, she rejected the proposal of the respondent. It is further stated that project has been delayed almost 4 years beyond all reasonable limits and still not complete. Thus, complainant is seeking refund of entire paid amount along with interest.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

6. Learned counsel for respondent contended that complainant had violated terms and conditions of the builder buyer agreement dated

19.06.2013 on account of failure in making outstanding dues on time. Therefore, she cannot seek timely delivery of possession of the flat. It is further argued that project has already been completed by the respondent and almost 600 families have already been residing and enjoying their possession in the project. Learned counsel for the respondent submitted that application for occupation certificate qua tower in question has already been filed before competent authority on 14.10.2019 and the same is still pending. Possession will be offered as and when occupation certificate will be obtained by the respondent.

G. JURISDICTION OF THE AUTHORITY:

7. 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-ITCP 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 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 Officer, if pursued by the complainant at a later stage.

H. 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?

I. OBSERVATIONS OF THE AUTHORITY:

8. Present case was heard at length during hearing dated 20.07.2022 and 22.09.2022 respectively and detailed orders were passed by the Authority. Relevant part of order dated 20.07.2022 is reproduced below:

“While perusing case file, it is observed that complainant sought relief for refund of her amount already paid to the respondent for purchase of flat in respondent’s project. Today, proxy counsel for the respondent sought adjournment on the ground that arguing counsel is not available to argue his case.

2. *Mr. Denson Joseph, learned counsel for complainant argued his case and submitted that complainant was allotted a residential flat bearing no. RIDHI/1-404 on 7th floor (unit type: Luxury-Duplex) admeasuring an aggregate super area of approximately 2525 sq. ft. on 19.06.2013 by the respondent promoter in the project namely, Royal Heritage, Sector-70, Faridabad. Builder buyer agreement was executed on 19.06.2013. Total sale consideration of the flat was ₹1,11,79,663/- against which complainant had paid ₹85,38,326.95/-. As per clause 8.1 of the agreement, possession of the flat was to be delivered within 42 months from the date of execution of agreement or from the date of start of construction whichever is later i.e. up to 19th December 2016. Complainant further submitted that construction of the project stood completely stalled towards the end of 2016. Complainant sent a letter on 19.07.2017 seeking refund of her hard-earned money but respondent did not respond to the same. A legal notice dated 19.12.2017 was also sent seeking refund but the respondent did not respond to that also. It is submitted that on 17.09.2020, respondent sent a fresh demand of ₹26.29 lacs to the complainant on account of various charges. Learned counsel for the complainant stated that such demand was not accepted to the complainant and she again sought*

refund of entire paid amount from the respondent but respondent reverted with an offer to exchange unit of the complainant with two cheaper units. Learned counsel for the complainant stated that complainant is a retired school principal and has no knowledge in dealing with real estate business in general. Therefore, she rejected the proposal of the respondent. It is further stated that project has been delayed almost 4 years beyond all reasonable limits and still not complete. Thus, complainant is seeking refund of entire paid amount along with interest.

3. On the other hand, respondent in his written submissions, submitted that complainant had violated terms and conditions of the builder buyer agreement dated 19.06.2013 due to failure in making timely payments, therefore, she cannot seek timely delivery of possession of the flat. It is submitted that project has already been completed by the respondent and almost 600 families have been residing and enjoying their possession in the project. Learned counsel for the respondent stated that application for occupation certificate qua tower in question has already been filed before competent authority on 14.10.2019 and the same is still pending. Possession will be offered as and when occupation certificate will be obtained by the respondent.

4. Arguments raised by the complainant have been carefully heard along with examination of records of the case. At the outset, it has been argued by learned counsel for the complainant that she was allotted a flat in the year 2013 measuring 2525 sq. ft. in the project of the respondent. Builder buyer agreement was executed between both parties on 19.06.2013. Total sale consideration of the flat was fixed as ₹1,11,79,663/- against which complainant paid ₹85,38,326.95/-. As per clause 8.1 of the agreement, assurance was given to the complainant that possession of the flat would be delivered within 42 months from the date of execution of agreement or from the date of start of construction whichever is later i.e. up to 19th December 2016. But possession has not been delivered by the respondent. Therefore, complainant had continuously tried to communicate with the respondent with regard to refund of entire paid amount but she could not succeed. Moreover, respondent had issued fresh demand of ₹26 lacs to the complainant as outstanding dues which was not accepted to the complainant. When complainant again prayed to the respondent for refund, respondent reverted with an offer to exchange the luxury unit of the complainant with two cheaper units. Complainant had rejected the proposal of the respondent. She wishes to withdraw from the project and wants her money back. Aggrieved

from the above facts, she filed present complaint seeking refund of the paid amount along with interest.

5. Respondent in his reply has not opposed the payments already received from the complainant. Respondent submitted that project has already been completed and more than 600 families have been residing there. He has already applied for obtaining occupation certificate in respect of tower in which complainant's flat is situated and is in process of getting the same. Possession will be handed over soon as and when occupation certificate will be obtained.

6. From perusal of record and arguments put forward by learned counsel for the complainant, it is observed that admittedly, complainant was allotted a flat in respondents project against which she had made a payment of ₹85,38,326.95/- to the respondent which is proved from the statement of account dated 17.09.2020 issued by the respondent, copy of which has been placed at Annexure C-5, page 69 of complaint book. Respondent was under an obligation to hand over possession up to 19th December 2016. Complainant has been waiting for possession of her flat since the year 2016. But respondent has not complied with his obligations. Complainant had requested the respondent many times to refund her money but respondent had reverted the request of the complainant with an offer to take two alternate units in lieu of booked luxury flat. Complainant has not been ready to take alternate offer made by the respondent. So, Authority is of the tentative view that complainant cannot be forced to accept alternate offer and to wait more for her relief. From perusal of facts and circumstances of the case, it made clear that complainant is entitled for refund of her entire paid amount of ₹85,38,326/- along with interest as per provisions prescribed under Rule 15 of HRERA Rules 2017. However, proxy counsel for respondent sought adjournment due to unavailability of arguing counsel. On request of proxy counsel for respondent, one opportunity is being given to the respondent to argue his case, failing which order allowing refund along with interest will be finalized on the next date.

7. Adjourned 22.09.2022."

9. Further, the case was listed for hearing on 22.09.2022, when following observations were given by the Authority:

"2. Mr. Rohan Gupta, learned counsel for respondent has appeared through video conference and stated that flat booked by the complainant is ready for taking over possession. Regarding occupation certificate, it is submitted that all compliances have been done by the respondent but occupation certificate is still to be received. On being asked whether any shortcomings/compliances have been communicated by the concerned department, ld. counsel for the respondent stated that they have received no communication after February 2020 but failed to produce any cogent document to prove his contention. Authority cannot rely upon mere verbal contentions. Authority is of the view that complainant cannot be asked to wait for indefinite period. He has a right to choose under Section 18 of the RERA Act, 2016 whether he would like to continue with his allotment after expiry of deemed date of possession i.e. 19.12.2016 or asked for refund. Therefore, Authority disposed of present case allowing refund along with interest as per Rule 15 of HRERA Rules, 2017. Complainant claimed that he had paid an amount of ₹85,38,326.95/- but complete details has not been attached with file. Due to lack of exact payment receipts, it is not possible for the Authority to calculate interest on the amounts paid by the complainants as in case of refund, interest has to be calculated from the date of respective date of payments. Therefore, Authority decides to relist this case for hearing providing opportunity to the complainant for submitting payment details along with receipts issued by the respondent."

10. As directed by the Authority, learned counsel for complainant has placed on record receipts during court proceedings with respect to payment of ₹82,70,929.24/- paid by the complainant to the respondent. All the issues and grievances have already been discussed by the Authority in detail in above para(s) 8 and 9. In view of above facts and records placed before the Authority, 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.”

11. 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.

12. 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

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i.e. 31.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

13. 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;

14. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹82,70,929/- 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 at the rate

[Signature]

of 10.60% till the date of this order and said amount works out to ₹1,56,26,833/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 31.01.2023	TOTAL
1.	₹7,38,563/-	11.09.2012	₹8,13,977/-	₹15,52,540/-
2.	₹9,02,644.24/-	24.11.2012	₹9,75,415/-	₹18,78,059/-
3.	₹8,62,981/-	08.03.2013	₹9,06,489/-	₹17,69,470/-
4.	₹8,68,155/-	28.07.2014	₹7,84,099/-	₹16,52,254/-
5.	₹8,52,009/-	11.02.2015	₹7,20,524/-	₹15,72,533/-
6.	₹9,13,832/-	15.04.2015	₹7,56,087/-	₹16,69,919/-
7.	₹7,50,052/-	02.06.2015	₹6,10,123/-	₹13,60,175/-
8.	₹9,14,058/-	18.09.2015	₹7,14,863/-	₹16,28,921/-
9.	₹7,54,175/-	27.11.2015	₹5,74,491/-	₹13,28,866/-
10.	₹7,14,460/-	28.06.2016	₹4,99,836/-	₹12,14,296/-
Total	₹82,70,929/-		₹73,55,904/-	₹1,56,26,833/-

I. DIRECTIONS OF THE AUTHORITY:

15. 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 ₹1,56,26,833/- 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.

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



.....
NADIM AKHTAR
(MEMBER)



.....
DR. GEETA RATHEE SINGH
(MEMBER)

