



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	1214 of 2020
<b>Date of filing:</b>	04.11.2020
<b>Date of first hearing:</b>	24.02.2021
<b>Date of decision:</b>	15.02.2023

Dr. Sukhvir Singh Rathi  
S/o Sh. Bhale Ram aged around 80 years  
R/o House no.1446, Sonipat Road, Near Community Centre,  
HSVP, Sector-3, Rohtak-124001.

....COMPLAINANT

VERSUS

JOP International Ltd.  
Regd. Office at 84, Avtar Enclave, 1<sup>st</sup> Floor, Paschim Vihar, Rohtak Road,  
New Delhi-110026.

....RESPONDENT

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

**Present:**                    Mr. Sushil Malhotra, ld. counsel for the complainant  
   through VC

Ms. Deepika Chaudhary, proxy for Mr. Vishal Garg  
Advocate, ld. counsel for the respondent

*Rathee*

**ORDER (DR. GEETA RATHEE SINGH-MEMBER)**

Present complaint dated 04.11.2020 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 possession, delay period, if any, have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	JOP PALMS, Sector-28, Rohtak
2.	Nature of the Project	Residential Project
3.	RERA registered/not registered	Not registered
4.	Allotment letter dated	01.09.2014
5.	Unit No.	101, B-13, 3BHK
6.	Unit Area	1450 sq. ft.
7.	Payment plan	Construction link
8.	Builder Buyer Agreement	30.03.2016

*Dr. Geeta Rathee*

8.	Total Sale Consideration	₹34,31,000/-
9.	Paid by the complainant	₹33,49,197/-
10.	Deemed date of possession	01.09.2017
11.	Offer of possession	NA

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

3. Case of complainant is that he had booked a residential unit in the project "JOP Palms" of the respondent situated in Sector 28, Rohtak on 01.09.2014. Flat No. 101, Building B-13, measuring 1450 sq. ft. was allotted to him in the said project. Copy of allotment letter is attached at page no.47 of the complaint book. Flat Buyer Agreement dated 30.03.2016 was executed between both parties, copy of which has been placed at page nos.50-61 of the complaint book. Complainant has made a payment of ₹33,49,197/- against total sale consideration of ₹34,31,000/- till date. Copies of receipts have been attached at page nos.20-34. Complainant alleged that respondent was required to deliver possession of the unit within a period of 36 months from the date of allotment i.e., 01.09.2014. Therefore, deemed date of delivery of possession in this case comes to 01.09.2017. Respondent-promoter has not started construction of building so far, therefore he is not in a position to deliver possession of the flat. Complainant alleges that he is suffering due to undue delay on the part of the respondent in handing over possession of the flat.

*G. P. Patra*

Aggrieved by the same, complainant has filed present complaint with the prayer of refund of the paid amount along with interest.

**C. RELIEF SOUGHT:**

4. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount along with interest and compensation;
  - ii. To direct the respondent to refund of litigation expenses incurred by the complainant;
  - iii. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

5. Respondent filed his reply on 14.12.2022. Respondent admitted that complaint was allotted flat vide allotment letter dated 01.09.2014. Respondent company has started construction of the project in the year 2013-14 and floated a scheme for its customers who had paid registration amount for booking in the said project. As per the scheme offered by the respondent, the complainant had three options; "i. to pay 25% amount of the total sale consideration before construction on the said plot;" "ii. the members who do not wish to continue with the project can get refund of the registration amount paid;" "iii. in alternate who do not want to be part of the ongoing project can pay additional 10% amount and can change their allotment in another project." The complainant was not ready and willing to perform his part and did not pay

balance sale consideration despite demand notices and reminders. Further, respondent company could not complete the project due to non-payment by the allottees.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:**

6. Arguments raised by learned counsel for complainant have been carefully heard along with meticulous examination of the records of case. At the outset, it has been argued by learned counsel for complainant that respondents approached the complainant to purchase a unit in the project of respondent and assured timely delivery of possession of the unit. Believing the same, complainant booked a flat in the project. He was allotted Flat No. 101, Building B-13, measuring 1450 sq. ft. vide allotment letter dated 01.09.2014 against total sales consideration of ₹34,31,000/-. Copy of said allotment letter is annexed as page no. 47 of the complaint file. Complainant paid regular payments as demanded by the respondents. Till now, he has paid ₹33,49,197/- against booking of the flat. He further stated that despite making these payments, respondent-promoter has not given possession of the above-mentioned flat which was to be delivered in 36 months from date of allotment letter. However, the respondent-promoter has not even started construction of Tower B-1 in which complainant's unit is situated. For this reason, the complainant stopped making further payments.

  
S. Rathore

7. Counsel for the complainant further argued that there has been delay of more than five years in handing over possession and his client has decided to withdraw from respondent's project, as the project of the respondent is still not complete. In fact, it is far from completion and there is no sign of its completion in the foreseeable future. He has clear instructions from his client to only press for refund of the amount paid by him along with permissible interest on the ground that respondents have inordinately delayed completion of project.

**F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:**

8. It has been argued by learned counsel for respondent that the complainant was not ready and willing to perform his obligation and did not pay balance sale consideration despite demand notices and reminders. Therefore, respondent company could not complete the project due to non-payment by the allottees.

**G. JURISDICTION OF THE AUTHORITY:**

9. 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 Rohtak District. Therefore, this authority has completed 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.

**H. ISSUES FOR ADJUDICATION:**

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:**

10. Factual position reveals that possession has not yet been offered by the respondent even after of delay of 5-6 years from deemed date of possession i.e. 01.09.2017. Respondent has not provided any specific timeline within which it intends to hand over of possession of the unit. Complainant is no more interested in waiting for possession endlessly and insisting upon refund. Authority had granted various opportunities to the respondent to place on record progress report of the project. Even after availing numerous opportunities respondent failed to produce the same before the Authority.

11. In view of the above facts, it is observed by the Authority that by virtue of Section 18 of RERA Act,2016, allottee is within his right to ask for refund when unit is not ready and no timeline is committed by the respondent for handing over of possession. Allottee cannot be forced to wait for an indefinite period for possession of booked unit. Thus, Authority deems it a fit case for allowing relief of 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.”*

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 i.e. 15.02.2023 is 10.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

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.

*G. Sathee*

*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 ₹31,72,197/- 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 10.70% (8.70% + 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 of 10.70% till the date of this order and said amount works out to ₹59,04,342/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 15.02.2023	TOTAL
1.	₹4,00,000/-	26.07.2011	₹4,95,190/-	₹8,95,190/-
2.	₹4,84,255/-	20.05.2014	₹4,53,419/-	₹9,37,674/-
3.	₹3,53,702/-	01.06.2014	₹3,29,935/-	₹6,83,637/-
4.	₹1,76,400/-	05.11.2014	₹1,56,428/-	₹3,32,828/-

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5.	₹3,53,702/-	26.05.2015	₹2,92,711/-	₹6,46,413/-
6.	₹3,55,109/-	08.10.2015	₹2,79,822/-	₹6,34,931/-
7.	₹20,000/-	30.03.2016	₹14,740/-	₹34,740/-
8.	₹2,00,000/-	20.04.2016	₹1,46,165/-	₹3,46,165/-
9.	₹10,000/-	20.04.2016	₹7,308/-	₹17,308/-
10.	₹3,00,000/-	04.06.2016	₹2,15,290/-	₹5,15,290/-
11.	₹2,00,000/-	08.06.2016	₹1,43,292/-	₹3,43,292/-
12.	₹1,30,000/-	08.02.2017	₹83,803/-	₹2,13,803/-
13.	₹1,89,029/-	28.06.2017	₹1,14,042/-	₹3,03,071/-
<b>Total</b>	<b>₹31,72,197/-</b>		<b>₹27,32,145/-</b>	<b>₹59,04,342/-</b>

15. It is hereby clarified that copies of payment receipts provided by the complainant at Annexure C-2 to Annexure C-16 along with complaint file from page nos.20-34 has been taken into consideration for calculation of interest. Perusal of details of payments and copies of receipts reveals that as far as payment of ₹1,77,000/-, the complainant has annexed hand written receipt dated 22.12.2014 which does not bear signatures of any authorised signatory of the respondent company. Therefore, this receipt cannot be taken into consideration as proof of payment made to the respondent. Thus, interest has been calculated for the amounts for which authenticated receipts have been placed on record.



**H. DIRECTIONS OF THE AUTHORITY:**

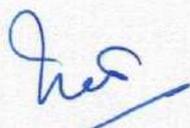
16. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹59,04,342/- to the complainant.

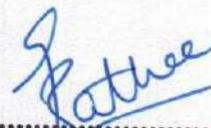
(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

(iii) Respondent is also directed to pay earlier imposed cost of ₹5000/- payable to the complainant and ₹10,000/- payable to the Authority.

17. 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)



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