



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1426 OF 2022

Jaspal Singh

....COMPLAINANT No.1

Ved Parkash

....COMPLAINANT No.2

R/O 1028, sector 42 B, UT Chandigarh

VERSUS

Housing Board Haryana

...RESPONDENT(S)

R/O C-15, AWAS BHAWAN, SECTOR 6, PANCHKULA

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

**Member
Member**

Date of Hearing: 22.12.2022

Hearing: 3rd

Present: - Mr. Uttam Kumar, learned counsel for the complainant through video conference
None for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaints dated 13.06.2022 have been filed by complainants 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

G. Rathee

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. Succinct facts of the case as per pleading and annexures are as under:

S.N.	Particulars	Details
1.	Name of the project	Ex-defence and Para- Military Personnel of Haryana
2.	Nature of the Project	Multi-storied flats
3.	RERA Registered/not registered	Un-registered
6.	Flat Type	Type-A
7.	Allotment letter	06.02.2015
10.	Amount paid by the complainants	₹ 5,68,000/- no proper receipts attached
11.	Offer of Possession	Not made

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

3. That on 28.06.2014, complainants had applied for allotment of Type-A flat in the project of respondent being developed at Sector-28, Pinjore by depositing an amount of Rs 2,27,000/-. Vide draw of lots held on 29.12.2014, complainants were declared a successful applicant. An allotment letter dated 21.01.2015 was issued in favour of complainants.
4. That each complainant had deposited total amount of Rs 5,68,000/- for the booked unit with the respondent by the year 2015. However, in the year 2018, respondent informed the complainants that project in question could not be developed due to some technical reasons, and further sought approval of complainants to shift their booking for Type A or B flats in a different project situated at Sector -31, Panchkula.
5. That after complainants gave their approvals, second draw of lots for shifting of applicants was held and complainants were not declared successful in the new draw of lots. In the year 2020, respondent then sought willingness of complainants to shift to Type B flats at Sector 31, Panchkula. Complainant no.1 had initially given his willingness for type-B flats at sector 31, Panchkula, however the same was

withdrawn by him. Complainant no.2 was not interested in Type B flat and had not given his consent for the same.

6. That respondent has not yet acquired land at Sector 28, Pinjore. Therefore, construction of flats seems to be impossible in near future. Moreover, Type A flats at Sector 31, Panchkula are not available and both the complainants were not interested in Type B flats at Panchkula.
7. That the Hon'ble Authority has already decided cases of similarly situated allottees in complaint no.676 of 2021 titled as "Randhul Singh Sandhu versus Housing Board Haryana wherein respondent was directed to refund along with interest at the rate prescribed as per the provisions of RERA Act. Thus, complainants are entitled for the similar relief as granted by this Authority in complaint no.676 of 2021.

RELIEF SOUGHT

8. The complainants under section 18 of RERA Act,2016 has sought relief of refund of the deposited amount of ₹5,68,000/- along with interest as per Rule 15 read with Rule 16 of HRERA Rules, 2017.
9. As per office record, notice was successfully delivered to respondent promoter on 20.06.2022. But he has not filed his reply till date. On

last hearing dated 18.10.2022, respondent was given last opportunity to appear before the Authority and file reply failing which its defence will be struck off on the next date of hearing. Today, none has appeared on behalf of the respondent and reply has not been filed. Therefore, Authority decides to strike off their defence and proceed the case ex-parte, based on the record available in the Authority.

JURISDICTION OF THE AUTHORITY

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

I. 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. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

II. 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;*

So, 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 complainants at a later stage.

**ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT
AND RESPONDENT**

10. During oral arguments, complainant reiterated their arguments as were submitted by their writing in the complaint application. Learned counsel for complainant further requested to dispose this matter in terms of order passed by Authority in complaint no. 676 of 2021.

ISSUES FOR ADJUDICATION

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

OBSERVATIONS AND DECISION OF THE AUTHORITY

12. Considering the submissions of the complainant and perusal of the file, it is apparent that the respondent promoter has failed in his obligation to hand over the possession of the flat to the complainants within the time as stipulated in the allotment letter and their no possibility to complete and handover the Type-A flat in near future. Therefore, as per provisions of section 18(1) (a) of the RERA Act, the complainants are entitled to the relief of refund.
13. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors**, and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)** which is reproduced as below:-

25. The unqualified right of the allotter to seek refund referred Under Section 18(1)(0) 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 on 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

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project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

14. Furthermore, on perusal of file, Authority is satisfied that issues and controversies involved in this complaint are of similar nature as **Complaint no.676 of 2021 tilted as “Randhul Singh Sandhu versus Housing Board Haryana”**. Therefore, present complaint deserves to be disposed of in terms of said order passed by Authority in Complaint no. 676 of 2021 relevant part of the said order is reproduced below for ready reference:

Captioned complaints have been taken up together as grievances and facts of the matters are identical and against the same project of respondent. Taking complaint no 676 of 2021 titled “Randhul Singh Sandhu Vs Housing Board Haryana ” as lead case, facts averred are that complainant had applied for allotment of a Type-A flat in the project of respondent being developed at Sectore-28, Pinjore on 28.06.2014 by depositing an amount of Rs 2,27,000/-. Vide draw of lots held on 29.12.2014 complainant was declared a successful applicant. An allotment letter dated 21.01.2015 was issued in favour of complainant. By the year 2015 complainant had deposited an amount of Rs 5,68,000/- for the booked unit with the respondent. However, vide letter dated 17.02.2018, respondent informed the complainant that project in question could not be developed due to some technical reasons, and further sought approval of complainant to shift their booking for Type A or B flats in a different project situated at Sector - 31, Panchkula. After complainant gave his approval, second draw of lots for shifting of applicants from Sector 28, Pinjore to Sector 31, Panchkula for Type A flats, was held on 10.09.2019 in which complainant was not successful. Respondent then sought willingness of complainant to shift to Type B flats. Complainant was not interest in Type B flats and did not give his consent for the same. In such circumstances,

complainant has filed present complaint seeking relief of refund of deposited amount along with interest.

2. Learned counsel for the complainant further argued that respondent has retained an amount of approx Rs. 5,36,000/- for more than five years without even acquiring land at Pinjore. Thus he prayed that directions may be issued to respondent to refund the paid amount of Rs. 5,36,000/- alongwith permissible interest as per provision of Rule 15 of HRERA Rules 2017.

3. On the other hand, respondent in its written submissions pleaded that as per planning, flats were planned to be ready for allotment by 28.02.2017, however, due to technical reasons, construction of the project could not be started. The respondent authority however, has already started process of refund of the deposited amount to the applicants. Complainant in this case had requested for refund on 19.01.2021.

Mr. V. P Singh, learned counsel for respondent further confirmed that since the project could not take shape, respondent board has already started the process for refund of amount deposited by various applicants. As complainant has already filed an application before respondent seeking refund, his application will be processed in due time. In the light of above facts, present complaint is not maintainable.

4. In view of above submissions, Authority observes that complainant in present complaint had booked a flat in the project of the respondent, and against said booking had deposited an amount of approx Rs 5 lakh with the respondent by the year 2015. As per submission of respondent construction of said project could not be started due to some technical reasons. Even after giving his approval to shift to another project of the respondent situated at Sector-31, complainant was unable to take possession of suitable flat. It is submitted that respondent board has begun the process to refund paid amount to all applicants due to failure in developing the project in question. However, respondent has failed to produce on record any document pertaining to complainant in particular from which it could be ascertained that process for refund of paid amount has formally been initiated. Therefore, Authority deems it fit to issue directions to the respondent Housing Board Haryana to refund the amount paid by complainant alongwith delay interest

calculated in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % .

5. *In complaint no. 676 of 2021, complainant had deposited an amount of Rs 5,68,000/- with the respondent. The amount of interest payable to the complainant has been calculated at the rate of 9.40% and same works out to Rs 3,99,477/- Therefore, respondent is directed to pay an amount of Rs 9,67,477/- as refund of deposited money alongwith interest to the complainant.*

6. *In complaint no. 747 of 2021, complainant had deposited an amount of Rs 5,68,000/- with the respondent. The amount of interest payable to the complainant has been calculated at the rate of 9.40% and same works out to Rs 4,02,722/- . Therefore, respondent is directed to pay an amount of Rs 9,70,722/- as refund of deposited money alongwith interest to the complainant.*

7. *With above directions, cases are disposed of. Order be uploaded on the website of Authority and files be consigned to record room.*

15. Authority in exercise of its mandate under section 34(f) read with section 37 of RERA Act disposes of the present complaint with a direction to respondent Housing Board Haryana to refund the amount paid by complainants alongwith delay interest calculated as per the provisions of Rule 15 of HRERA Rules 2017.
16. Hence, Authority has got calculated the interest payable to the complainants 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 today.

17. Complainant no.1 and complainant no.2 claimed to have paid ₹5,68,000/- to the respondent in respect of each flat, but no proper proof of payments has been attached in the complaint file. For the proofs of payments, reminder was sent via email to the learned counsel for the complainant. In respond to which, learned counsel for the complainant had sent an email wherein he has attached proof of payments amounting to ₹5,68,000/- in case of complainant no.1 and ₹5,69,364 in case of complainant no.2. Therefore, considering the proof of payments submitted by the learned counsel for the complainant, Authority is hereby allowing refund of the claimed amount along with interest to each complainant. Accordingly total amount payable to the complainants including interest calculated at the rate 10.60% is depicted in table below:

In case of complainant no.1

S.No.	Date of the Payments	Amounts paid by complainant no.1	Interest Accrued till 22.12.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT NO.1
1.	30.06.2014	₹2,27,000/-	₹2,04,230/-	₹4,31,230/-
2.	03.03.2015	₹3,41,000/-	₹2,82,434/-	₹6,23,434/-
	TOTAL			₹10,54,664/-

In case of complainant no.2

S.No.	Date of the Payments	Amounts paid by complainant	Interest Accrued till	TOTAL AMOUNT PAYABLE TO
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		no.1	22.12.2022	COMPLAINANT NO.2
1.	21.03.2014	₹2,27,000/-	₹2,10,889/-	₹4,37,889/-
2.	18.02.2015	₹3,42,364/-	₹2,84,856/-	₹6,27,220/-
	TOTAL			₹10,65,109/-

DIRECTIONS OF THE AUTHORITY

18. Respondent is directed to make entire payment to the complainants as depicted above within 90 days from the date of the order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.
19. Complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]