



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>962 of 2019</b>
<b>Date of filing:</b>	<b>25.04.2019</b>
<b>Date of first hearing:</b>	<b>08.08.2019</b>
<b>Date of decision:</b>	<b>22.03.2023</b>

Shri Raman Bansal,  
S/o Sh. Ram Kumar Bansal,  
R/o House No. 48, Sector-13,  
Urban Estate, Kurukshetra- 136118

....COMPLAINANT(S)

VERSUS

Jagran Developers Pvt Limited  
DSM 609-610, 6<sup>th</sup> floor, DLF Tower,  
Shivaji Marg, Moti Nagar, New Delhi-110015

....RESPONDENT(S)

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

**Present: -**            Mr. Akshay Jindal, Counsel for the Complainant  
                         Mr. Raman Bansal, Complainant in person  
                         Mr. Drupad Sangwan, Counsel for the respondent through  
                         VC.

*Geeta Rathee*

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

1. Present complaint dated 25.04.2019 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	The Galleria, Kurukshetra Global City, Sector-29, Kurukshetra
2.	RERA registered/not registered	Registered vide no 304 of 2017 dated 16.10.2017
3.	DTCP License no.	License No. 288 of 2007 dated 29.12.2007

*Dr. Geeta Rathee*



	Licensed area	1.45 acres
4.	Unit (Shop) no.	LG-17 but later replaced with LG-42
5	Unit area	1050 square feet (Super Area)
6.	Date of booking	05.08.2011
7.	Date of builder buyer agreement	10.06.2014
8.	Due date of offer of possession	10.12.2017 (36+6 months-clause 27 a)
9.	Possession clause (27a)	<p>Time of handing over the Possession</p> <p>Subject to the terms of this clause, clause 46 and subject to Allottee having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the Allottee under this Agreement etc.. as prescribed by the Developer, the Developer</p>

*[Handwritten Signature]*

		proposes to hand over the possession of the Said Premises within a period of Thirty Six (36) months from the date of signing of this Agreement with a further grace period of Six months. It is however understood between the parties that the possession of various commercial units comprised in the Development/ The Galleria as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the allottees of different shops as and when completed.
10.	Basic sale price	₹ 20,88,845/-
11.	Amount paid by complainant	₹ 20,74,789/-
12.	Offer of possession	Possession offered on 20.01.2020
13.	Status of Occupation certificate	Received on 17.03.2020.

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that the complainant booked a built up shop in the real estate project floated by the respondent, namely, Jindal

*S. Kataria*



Galleria at Kurukshetra Global City, Sector 29, Kurukshetra by depositing Rs 95,446/- on 05.08.2011. Thereafter, builder buyer agreement was executed between the parties on 10.06.2014 and in terms of clause 27 (a) possession was supposed to be delivered upto 10.12.2017.

4. Complainant was allotted initially a unit no. LG-17 at lower ground floor which was unilaterally replaced with Shop No. LG-42. The area of the originally allotted shop was stated to be 248.42 Sq. feet which was unilaterally increased to 351.14 Sq. feet. The total sale consideration of the shop demanded by the respondent is Rs.21,23,959/- out of which the complainant has already paid Rs.20,74,789/- till date. The payment of sale consideration was agreed to be construction linked and it is a matter of record that the complainant has paid all installments as per the demand raised by the respondent from time to time. The respondent was supposed to handover the possession of the shop in question on 10.06.2017 with further grace period of 6 months i.e. on 10.12.2017.
5. It has been submitted that the respondent failed to complete the project within the stipulated period and by virtue of clause No.37.4 (ii) of the buyer agreement, the allottee has the option to terminate the agreement if the developer fails to hand over the possession to the allottee within the stipulated time and in that eventuality the developer





shall be liable to refund the entire money paid by the allottee under any head whatsoever, along with interest within 30 days of the receipt of such termination notice. The complainant had already sent a notice dated 15.06.2018 to the respondent to terminate the buyer agreement dated 10.06.2014 and requested for the refund of entire paid up amount along with interest. However, the respondent neither refunded the said amount along with interest nor replied the said notice. The respondent has failed to abide by the contractual terms stipulated in the buyer's agreement. Therefore, the cause of action is still continuing.

6. That the respondent has offered possession of the unit during the pendency of present complaint on 20.01.2020 without receipt of occupation certificate. Fact remains that occupation certificate was received by respondent after lapse of two months i.e. on 17.03.2020 but the complainant had already expressed his intention to withdraw from the project by sending a notice dated 15.06.2018 but respondent had not acted upon it. Hence, the present complaint.

### **C. RELIEF SOUGHT**

7. The complainant in his complaint has sought following reliefs:
  - (i) To direct the respondent to refund the paid up amount of Rs.20,74,789/- along with compound interest @24% pa. from

*Rathee*



dates of respective installments/payments to the complainants till actual realization.

- (ii) To compensate the complainant for a sum of Rs.10,00,000/-as damages on account of mental agony, torture and harassment;
- (iii) To compensate the complainant for a sum of Rs.10,00,000/-as damages on account of deficiency in service on part of respondent.
- (iv) To compensate the complainant for a sum of Rs.20,00,000/- as escalation costs towards the similar property;
- (v) In the event that the registration has been granted to the respondent for the project namely, Jindal Galleria, Kurukshetra Global City, Sector 29, Umri Road, Kurukshetra under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.
- (vi) In exercise of powers under section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 22.05.2019 pleading therein:

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8. That respondent is a highly reputed builder and is known for its top class construction and best practices. Respondent has admitted the execution of Shop cum office buyer agreement with complainant on 10.06.2014.
9. Complainant has defaulted on balance payments towards sale consideration to the tune of Rs 84,028/- including interest as on 02.05.2019 subject to final offer of possession. Further it is stated that the complainant himself submitted a letter dated 27.12.2011 whereby complainant duly accepted the change of unit from LG-17 to LG-42 and also accepted the increased area without any protest.
10. That construction of the project has already been completed in respect of whole structure all external works including road, sewer line, storm water line, water supply, stair case, corridor, flooring works of common area, internal painting work, external painting work, fire fighting work, plumbing work, electrical panels, rainwater harvesting work and landscaping etc. Further respondent has also applied for occupation certificate for the entire 'Galleria' project which includes the shop of the complainant. As soon as the respondent will receive the occupation certificate from the department of Town and Country planning, Haryana the respondent will handover/offer possession of the shop subject to clearance of dues and other charges by the





complainant. Therefore, refund at this stage is not maintainable and would jeopardize the entire project which will be unreasonable and illegal.

11. That possession was supposed to delivered within 42 months from the date of execution of builder buyer agreement but it was subject to force majeure conditions stated in clause 46 and 27 of the said agreement.
12. That occupation certificate was received on 17.03.2020 and respondent had issued offer of possession on 20.01.2020 to complainant during pendency of this complaint but it is the complainant who has not come forward to accept it by making payment of due amount.

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

13. During oral arguments ld. counsel for complainant contended that possession was not offered to complainant within the stipulated time in terms of agreement i.e. 10.12.2017 and, therefore, present complaint was filed on 25.04.2019 seeking relief of refund. Till the time of filing of reply i.e. upto may,2019 the respondent was not in receipt of occupation certificate and no offer was made to complainant. Prior to filing of present complaint, the complainant has

*S. Patree*



already exercised his right to terminate the builder buyer agreement by virtue of clause 37.4 of builder buyer agreement by issuing a legal notice dated 15.06.2018 but it is the respondent who has not acted upon said notice even after receiving it. In support of his contention he placed reliance on judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan. He has also stated that a letter dated 17.02.2020 was also sent to respondent as reply to offer of possession dated 20.01.2020 mentioning therein that complainant has already expressed his intention in terminating BBA dated 10.06.2014. In rebuttal, learned counsel for the respondent's reiterated arguments as were submitted in written statement. He further stated that respondent herein is a reputed developer and has invested whole amount collected from all allottees into the project and got the construction and development works completed. It is not the case whereby respondent is shirking away its responsibility, the respondent is ready to pay the delay interest for the delay caused. As a matter of fact, a delay of 2-3 years in any real estate project is always expected. So, he requested that complainant be directed to accept the possession by making payment of due amount.





**F. ISSUES FOR ADJUDICATION**

14. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

15. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Respondent was under obligation to deliver possession within the time stipulated in clause 27 (a) of builder buyer agreement dated 10.06.2014 but possession was offered to complainant on 20.01.2020 that too without receipt of occupation certificate and said occupation certificate was received 2 months thereafter on 17.03.2020. As per version of respondent, the construction work and development works of the entire project got completed in year 2019 and occupation certificate was also applied in the same year. Complainant after expiry of deemed date of possession had sent a notice dated 15.06.2018 annexed as Annexure C-3 of complaint file whereby the subject is written as 'Notice to terminate the buyer agreement dated 10.06.2014 with regard to proposed unit No. 42, lower ground floor in Galleria Kurukshetra and for refund of the amount alongwith interest' and further in para 5 of it is

*J. Lathre*



clearly written as 'That I hereby as per terms 37.4 (ii) of the buyer agreement dated 10.06.2014 exercise my option to terminate the buyer agreement dated 10.06.2014 executed between me and your goodself and you are hereby called upon to refund the entire amount of Rs 20,74,783/- alongwith interest'. Vide said letter complainant has already expressed his intention to withdraw from the project by exercising his right to terminate the BBA. Receipt of said letter has not been denied by the respondent.

(ii) In furtherance of requisition of terminating the buyer agreement and seeking refund of paid amount with interest, the complainant has again reiterated his claim by way of another letter dated 17.02.2020 sent as reply to the offer of possession dated 20.01.2020 issued by the respondent. Complainant had taken effective and reasonable steps to disclose his intention of withdrawing from the project.

(iii) Relevant clauses 37.3 and 37.4 of the BBA reads as follows:-

*"37.3 Subject to clause 27 and 46 of this Agreement, the Developer shall be in default, if it fails to meet any of the following milestones:*

*(i) Developer delays the construction and misses two consecutive construction linked milestones.*

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(ii) Developer fails to provide the possession to the Allottee within the time period specified.

37.4 In case of default on the part of Developer as mentioned above, Allottee shall be entitled to:

(i) Stop making any more payments to Developer as demanded by the Developer. If the Allottee stops making payments, the Developer shall correct the situation by achieving the milestones and thereafter the Allottee shall promptly make the next payment without any penal interest or

(ii) The Allottee shall have the option of terminating the Agreement, in that eventuality the developer shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the Said Premises, along with simple interest @ 8% per annum within 30 days of receipt of such termination notice."

(iv) Complainant by sending a notice seeking termination of builder buyer agreement and claiming refund on 15.06.2018 has duly exercised his right to seek refund of paid amount with interest as till the said date the respondent/ developer had not received the occupation certificate and was at fault by not giving possession within stipulated time. Builder buyer agreement executed between the parties exclusively provides for the right of complainant to terminate builder buyer agreement by issuing a termination notice which has been duly complied with in this case. Respondent after receipt of said notice should have acted in compliance of said clause and refunded the paid amount with interest but respondent has

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neither delivered possession within stipulated time nor refunded paid amount with interest in terms of builder buyer agreement . Now, complainant cannot be forced to accept possession. It is noteworthy to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

*"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."*

*Ratna*



(v) 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 terms agreed between them. Para 25 of this 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.

*G. Athre*



16. This project did not get completed within the time stipulated as per agreement and got delayed by few years. Meanwhile, complainant has already exercised his right to terminate the builder buyer agreement in terms of clause of said agreement and said termination was duly communicated by issuance of notice to the respondent well within time, therefore, Authority finds it to be fit case for allowing refund alongwith interest in favor of complainant. The complainant has sought the relief of interest @ 24% per annum, however, 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

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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. 22.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.
19. The definition of 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

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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 complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of Rs 20,74,789/- 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 calculated at the rate of 10.70% till the date of this order and total amount works out to Rs 3944152/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 15.02.2023
1.	110000	20.07.2011	137499
2.	70000	11.08.2011	12087
3.	25446	11.08.2011	4394
4.	318278	26.12.2013	314806
5.	232389	28.04.2014	221474
6.	195736	18.06.2014	193616
7.	195736	08.08.2014	180690
8.	248752	06.10.2014	225328
9.	248752	02.12.2014	221172
10.	195736	20.01.2015	171222
11.	135632	09.03.2015	116737
12.	98332	05.08.2015	80338
13.	Total=2074789/-		Total=1869363/-

*[Handwritten Signature]*



14.	Total Payable to complainant (2074789 +1869363)	3944152/-
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21. The complainant is seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. 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. Complainant is also seeking revocation of registration if any granted to respondent under section 7 of RERA Act,2016 and under Section 35 of RERA Act,2016 to direct the respondent to place on record all statutory approvals and sanctions of the project. Said reliefs are mentioned at serial no. 5 and 6 of relief sought. It is pertinent to mention here these two reliefs have neither been argued by the complainant at the time of hearing nor any

*G. Kattree*



documentary evidence has been placed to adjudicate upon the same. Further, said reliefs have nowhere been claimed by the complainant in his complaint nor pressed by him during arguments. Hence, complainant's prayer to award them is rejected.

#### H. 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 ₹ 39,44,152/- to the complainant.
  - (ii) A period of 90 days is given to the respondents 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 after uploading of order on the website of the Authority.

  
.....  
NADIM AKHTAR  
[MEMBER]

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