



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>928 of 2022</b>
<b>Date of filing:</b>	<b>09.05.2022</b>
<b>Date of first hearing:</b>	<b>14.07.2022</b>
<b>Date of decision:</b>	<b>15.03.2023</b>

Vaishali Aggarwal  
R/o H. No.C-301, Rishi Apartments,  
Near Golden Square, NH-21,  
Zirakpur, Distt- SAS Nagar (Pb)

....COMPLAINANT

VERSUS

M/s Samar Estates Pvt. Ltd.  
Registered office at #87, Sector-7, Panchkula.

....RESPONDENT

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

**Present: -**                      Mr. Vishal Madaan, ld. Counsel for the complainant  
   None for the respondent

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

Present complaint dated 09.05.2022 has been filed by complainant under Section 31 of the Real Estate (Regulation &

*Geeta Rathee*



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	Ess Vee Apartment, Sector-20, Panchkula
2.	Nature of the Project	Residential Group Housing Project
3.	RERA registered/not registered	Registered, HRERA-PKL-54-2018 and suspended by HRERA, Panchkula on 28.01.2020
4.	Date of booking	18.04.2011(copy of application attached at Annexure C-1)
5.	Builder buyer agreement	30.06.2011(copy attached at Annexure C-14)
6.	Unit No.	K-701
7.	Unit Area	1725 sq. ft.
8.	Payment plan	Construction link
9.	Basic Sale Consideration	₹60,00,000/- (mentioned in BBA at page no. 35)
10.	Paid by the complainant	₹63,65,620/- (as mentioned in pleadings)



11.	Deemed date of possession	June 2014 (as mentioned in pleadings at page no.7 para no.6)
12.	Possession clause as per builder buyer agreement	Clause 32 of the BBA stipulates that possession would be offered within 36 from the date of commencement of construction
13.	Offer of possession	Not offered till date
14.	Delay in handing over possession	11 years 2 months 14 days

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

3. Complainant in this case has sought refund apart from delay interest on paid amount of ₹63,65,620/- against booked flat bearing No. K-701 which he had agreed to purchase on 18.04.2011 in respondent's project named Ess Vee Apartments, Sector-20, Panchkula. Builder buyer agreement was executed between both parties on 30.06.2011. As per terms of builder buyer agreement, possession of the flat was to be delivered within 36 months from the date of commencement of construction. Time period to complete the project expired in the year 2014. Till date, neither possession has been handed over nor project is complete. Therefore, complainant pleaded for refund of paid amount along with interest on the ground that respondent has not completed the project even after lapse of 11 years 2 months 14 days from the date of execution of builder buyer agreement and it is not likely to be completed in near future due to mismanagement.

*G. Rattor*



**C. RELIEF SOUGHT:**

4. The complainant in her complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount of ₹63,65,620/- along with interest as prescribed Under section 18(1) of HRERA Rules,2017;
  - ii. To cancel RERA registration of the project, Ess Vee Apartment, Sector-20, Panchkula for violating the provisions of the RERA.
  - iii. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

5. Notice to the respondent was served on 13.05.2023. Despite being given ample opportunities, respondent did not file its reply nor any justified reasons have been given for delay in handing over possession. Today also, none has appeared on behalf of respondent. Hence, the Authority decides to proceed with this matter ex-parte.

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

6. At the outset, it has been argued by learned counsel for complainant that the complainant had booked an apartment bearing no. K-701 measuring 1725 sq. ft. in the project namely "Ess Vee Apartment", Sector-20, Panchkula of the respondent on 18.04.2011. Copy of application



has been annexed at Annexure C-1 with the complaint book. Total sale consideration of the flat was ₹60,00,000/- against which the complainant had paid an amount of ₹63,65,620/-. Assurance was given to the complainant that actual and complete possession of the apartment would be delivered up to June 2014. The respondent company has not completed the project till date. The complainant has constantly tried to communicate with respondent with regard to possession and status of the project but the complainant could not succeed in establishing communication with respondent company. Already 11 years 2 months 14 days have been lapsed from the date of booking, no work has been carried out at the site of said project.

7. Aggrieved by the default on the part of the respondent, complainant has filed present complaint seeking refund of entire paid amount along with interest.

**F. JURISDICTION OF THE AUTHORITY:**

8. 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 Panchkula District. Therefore, this authority has complete 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 Officer, if pursued by the complainant at a later stage.



**G. 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?

**H. OBSERVATIONS OF THE AUTHORITY:**

9. Present case was heard at length during hearing dated 27.09.2022 respectively and detailed orders were passed by the Authority.

Relevant part of order dated 27.09.2022 is reproduced below:

3. *After hearing the parties, it has been observed that despite taking two opportunities, reply has not been filed. Therefore, last opportunity has been given to the respondent for filing his reply. However, Authority finds that it has already allowed refund to various allottees of the same project i.e. 'Ess Vee Apartments' in bunch of cases earlier decided on 09.10.2019 with lead case bearing Complaint No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd., due to the following reasons: -*

- i) *Promoter while seeking registration of the project had disclosed that first phase of the project which was earlier scheduled to be completed in December, 2009 will be completed by December, 2019, second phase of the project which was earlier scheduled for completion in August, 2014 would be completed by March, 2019 and third phase of the project which was earlier scheduled to be completed in December, 2015 would be completed by December 2019. However, the promoter in spite of seeking several adjournments has not been able to arrange funds for further investment in the project and therefore it is unlikely for him to complete the project and*



handover possession to the allottees on the time so projected;

- ii) Promoter has mismanaged his finances and due to non-payment of loans raised from the banks and financial institutions has already incurred huge interest liability;
- iii) That promoter's interest liability will also be huge towards allottees on account of already incurred delay of 4 to 10 years in completing the project and delivering possession. The allottees who have lost faith in the promoter and have been waiting of possession of their apartments for the last more than 4 to 10 years are unlikely to pay more money to the respondent.
- iv) The Town and Country Planning Department has already clarified that it cannot take over the project for completion and the department is only concerned with recovery of arrears of ₹98.65 lacs on account of Internal Development Charges.
- v) That the allottees of the project have also expressed their inability to join together for forming an association for the purpose of taking over and completing the project.

4. None of the reasons narrated above have changed and the project is still unlikely to see the light of the day. Thus, Authority is of the considered opinion that present complainant on parity with other allottees is also entitled to refund. Complaint deserves to be allowed in terms of the decision already rendered by this Authority in lead case No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.

5. In view of above, Authority is of the view that complainant will be entitled to refund entire paid amount 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 % (10%) from the actual date of payment till today i.e. 27.09.2022.

S.No.	Principal	Date	of	Interest	TOTAL
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	<i>Amount</i>	<i>payment</i>	<i>Accrued till</i> <i>27.09.2022</i>	
1.	₹6,80,000/-	18.04.2011	₹7,78,926/-	₹14,58,926/-
2.	₹8,20,000/-	01.06.2011	₹9,29,408/-	₹17,49,408/-
3.	₹6,80,000/-	04.01.2013	₹6,62,115/-	₹13,42,115/-
4.	₹2,39,270/-	25.03.2013	₹2,27,733/-	₹4,67,003/-
5.	₹70,000/-	25.03.2013	₹66,625/-	₹1,36,625/-
6.	₹3,09,270/-	03.05.2013	₹2,91,053/-	₹6,00,323/-
7.	₹3,09,270/-	17.08.2013	₹2,82,071/-	₹5,91,341/-
8.	₹3,09,270/-	12.11.2013	₹2,74,700/-	₹5,83,970/-
9.	₹2,06,180/-	21.04.2014	₹1,74,095/-	₹3,80,275/-
10.	₹1,03,090/-	21.04.2014	₹87,048/-	₹1,90,138/-
11.	₹3,09,270/-	12.11.2014	₹2,43,773/-	₹5,53,043/-
<b>Total</b>	<b>₹40,35,620/-</b>		<b>₹40,17,547/-</b>	<b>₹80,53,167/-</b>

6. It is hereby clarified that details of the payments provided by the complainant in tabular form along with complaint at page no.6 has been taken into consideration for calculation of interest. However, perusal of details of payments and copies of receipts reveals that as far as payment of ₹6,00,000/- dated 14.09.2011 and ₹17,30,000/- dated 18.04.2011, no proof have been placed on record. Therefore, it is not possible for the Authority to calculate interest for these amounts. Complainant is again directed to place on record documentary evidence/receipts for proving these two payments which he had made to the respondent.

7. Case is adjourned to 16.11.2022.

10. As directed by the Authority, learned counsel for complainant has placed on record copy of ledger account statement of complainant maintained by respondent, copy of pass book showing entry of cheque of ₹6,00,000/- and copy of letter dated 04.02.2015 acknowledging payment of ₹46,35,620/- during court proceedings. Learned counsel for complainant

*J. K. Kattre*



pleaded that complainant has paid ₹63,65,620/-. However, perusal of copy of ledger account statement and letter dated 04.02.2015 issued by the respondent, shows that a payment of ₹46,35,620/- was received from the complainant. No receipt has been placed on record regarding payment of ₹17,30,000/-.

Since the complainant has failed to prove payment of ₹17,30,000/-, the prayer of the complainant for refund of ₹63,65,620/- is declined. Revised interest has been calculated by the account branch of the Authority for the amount of ₹46,35,620/- from actual dates of payments.

12. Further, complainant is seeking relief regarding cancellation of RERA registration of the project namely, Ess Vee Apartments, Sector-20, Panchkula under RERA read with relevant rules, for violating the provisions of the RERA. In this regard, it is observed that said relief has not been pressed by the complainant during arguments. Therefore, this relief is hereby declined as not pressed.

13. All the issues and grievances have already been discussed by the Authority in detail vide order dated 27.09.2022 in para 9 which is unchallenged and unrebutted in record. In view of above facts and records placed before the Authority, Authority finds it to be fit case for allowing refund of the paid amount 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 (1) 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.”*

13. 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. 15.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

14. 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;*

15. Accordingly, respondent will be liable to pay the complainant interest from the dates amount of ₹46,35,620/- was paid by her till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹46,35,620/- 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 ₹98,73,244/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 15.03.2023	TOTAL
1.	₹6,80,000/-	18.04.2011	₹8,67,140/-	₹14,58,926/-
2.	₹8,20,000/-	01.06.2011	₹10,35,092/-	₹17,49,408/-
3.	₹6,80,000/-	04.01.2013	₹7,42,152/-	₹13,42,115/-

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4.	₹2,39,270/-	25.03.2013	₹2,55,528/-	₹4,67,003/-
5.	₹70,000/-	25.03.2013	₹74,756/-	₹1,36,625/-
6.	₹3,09,270/-	03.05.2013	₹3,26,748/-	₹6,00,323/-
7.	₹3,09,270/-	17.08.2013	₹3,17,138/-	₹5,91,341/-
8.	₹3,09,270/-	12.11.2013	₹3,09,251/-	₹5,83,970/-
9.	₹2,06,180/-	21.04.2014	₹1,96,496/-	₹3,80,275/-
10.	₹1,03,090/-	21.04.2014	₹98,248/-	₹2,01,338/-
11.	₹3,09,270/-	12.11.2014	₹2,76,159/-	₹5,85,429/-
12.	₹6,00,000/-	14.09.2011	₹7,38,916/-	₹13,38,916/-
<b>Total</b>	<b>₹46,35,620/-</b>		<b>₹52,37,624/-</b>	<b>₹98,73,244/-</b>

### I. DIRECTIONS OF THE AUTHORITY:

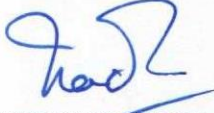
16. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹98,73,244/- 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.

*Kattar*



17. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading of order on the website of the Authority.



.....  
**NADIM AKHTAR**  
(MEMBER)



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

