



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1435 of 2022
Date of filing:	15.06.2022
Date of first hearing:	09.08.2022
Date of decision:	14.03.2023

Satyabir Singh

R/o V. P. O PAKSHMA

Tehsil Sampla, Distt. Rohtak

...COMPLAINANT(S)

VERSUS

Housing Board Haryana

Office: Plot no. C-15, Awasthawan

Sector-6, Panchkula- 134109

...RESPONDENT (S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Mr Sudeep Singh Gahlawat, learned counsel for the complainant
through video conference

None for the respondent

ORDER (NADIM AKHTAR-MEMBER)

Present complaint dated 15.06.2022 have 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.

2. **UNIT AND PROJECT RELATED DETAILS:**

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 the following table:

S.N.	Particulars	Details
1.	Name of the project	Flat for serving//ex-defence and para, military personnel of Haryana
2.	Location of the project	Sampla, Distt Rohtak
3.	Nature of the Project	Multi-storied flats



4.	Name of the respondent/ promoter	Housing Board Haryana
5.	RERA Registered/not registered	Un-registered
6.	Categories of Houses	Type-A
7.	Allotment letter	02.02.2015
8.	Total Sale Consideration	16,90,000/-
9.	Amount paid by the complainants	₹4,23,000/-
10.	Offer of Possession	NOT MADE

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

3. That complainant had applied for allotment of respective categories of flat i.e., "Type A" category of houses in residential group housing project of respondent situated at Sampla, District, Rohtak for which he had got a loan of ₹1,69,000/- from Haryana Gramin Bank, Branch Rohtak for making the payment to the respondent.
4. That the respondent made the draw of lots on 29.12.2014 and the petitioner was allotted a flat of type-A at Sampla, Distt Rohtak vide provisional registration number 591/Sampla/ T-A/HGB and final registration no. 272.



5. That the letter of allotment was issued to the complainant vide allotment letter dated 02.02.2015. Copy of the letter is annexed as Annexure P-2.
6. That the complainant made a payment of instalment of ₹ 2,54,000/- to the respondent vide DD no. 574345 dated 02.03.2015 issued by Haryana Gramin Bank. A copy of demand draft is annexed as Annexure P-3.
7. That the respondent has sent a letter dated 08.02.2018 to the complainant, however due to some technical reasons, the flat could not be constructed at Sampla, District Rohtak and to avoid further delay in construction/ allotment of flats, complainant were asked to take allotment of flat at Jhajjar instead of Sampla, District Rohtak. It was further asked to the complainant that if he does not want an alternate flat at Jhajjar, he may opt for the refund of the amount deposited by him which would be refunded with interest as per policy of Housing Board Haryana. Copy of the letter dated 08.02.2018 is annexed as Annexure P-4.
8. That pursuant to the letter dated 08.02.2018 sent by the respondent, the complainant has sent his request on 19.02.2018 through registered post to the respondent for refund of his deposited amount along with interest. Copies of letter dated 19.02.2018 and postal receipt are annexed herewith as Annexure P-5.
9. That even after passing of a period of four years, the respondent has not refunded the amount to the complainant till date.



10. That respondent is bound by the promise made itself and liable to refund the amount of ₹4,23,000/- alongwith interest upto date.
11. That since the respondent could not develop the project in time and handover physical possession of the flat, complainant is entitled for refund of the amount along with interest.

RELIEF SOUGHT

12. The complainant in his complaint has sought relief of refund of the amount paid along with interest.

REPLY SUBMITTED ON BEHALF OF RESPONDENT

Civil Revenue Officer (PM) of respondent filed a short reply on 22.07.2022 pleading therein:

13. That the refund of the amount of ₹5,04,981/- vide cheque no. 186289 dated 30.06.2022 has been made to the complainant through registered post.
14. That the refunded amount has been made in favour of the complainant as per the order passed by Hon'ble Punjab and Haryana High Court, Chandigarh vide CWP no. 19124 of 2021 titled as Rajpal Singh Gehlot v/s Housing Board Haryana and others in its order dated 30.05.2022 wherein refund has been allowed to the petitioners along with mean saving bank interest of State Bank of India running from the date of the closing of the registration till 30.06.2022. Copy of the judgment dated 30.05.2022 has been annexed with the reply.



ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments, learned counsel for the complainant admitted that the complainant has received the payment of ₹5,04,981/- from the respondent. However, he further submitted that the order passed by the Hon'ble High Court in CWP no.19124 of 2021 tilted as Rajpal Singh Gehlot versus Housing Board Haryana and others is applicable only in case of those petitioners who have filed the civil writ petitions against the respondent before the Hon'ble High Court. Complainant is not a petitioner in the said case, therefore the order passed by the Hon'ble High Court is not applicable in the present case and therefore he is entitled to refund along with interest as prescribed under section 18(1) read with Rule 15 of HRERA Rules, 2017.

ISSUES FOR ADJUDICATION

16. 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

17. In light of the facts of the case and perusal of document placed on record, Authority observes as follows:
- i) It is an undisputed fact that complainant has booked a flat in the project of the respondent and subsequently respondent has issued the allotment



letter on 02.02.2015. Complainant has paid the amount of ₹ 4,23,000/- to the respondent till date.

ii) Since the flat could not get constructed at Sampla, District Rohtak due to some technical reasons, respondent has asked the complainant to choose an alternate flat at another project or opt for the refund of the amount deposited by him. Consequent to which complainant has requested via letter dated 19.02.2018 for refund of the deposited amount along with interest. But respondent has not refunded the deposited amount even after lapse of 4 years.

iii) Subsequently, Hon'ble Punjab and Haryana High Court in CWP no.19124 of 2021 titled as "Rajpal Singh Gehlot versus Housing Board Haryana and others" has passed the order dated 30.05.2022 in respect of the two scrapped schemes of the respondent namely the defence scheme Type-A Sampla and the Employees Scheme Jind Road, Rohtak of the respondent, pursuant to which on 30.06.2022, respondent has refunded the amount of ₹5,04,981/- in favour of the complainant.

iv) Respondent has taken the plea that said amount has already been refunded to the complainant in the present case in accordance with the orders passed by the Hon'ble High Court and therefore the present complaint is not maintainable. Ld. counsel for the complainant had admitted the fact that his client has received the amount of ₹5,04,981/-. However, ld. counsel for the complainant contended that the amount so



refunded is not in consonance with the provisions of the RERA Act 2016 and the Rule or regulations made thereunder. He further contended that the order passed by the Hon'ble High Court is an order in personam i.e., application to the petitioner to the civil writ petition.

Perusal of the order passed by the Hon'ble Punjab and Haryana High Court in CWP no. 19124 of 2021 reveals that respondent was directed to refund the deposited amount to "each petitioners", alongwith the mean saving bank interest of the State Bank of India, running from the date of closing of the registration in respect of each scheme by 30.06.2022 in case of the defence Scheme Type-A, Sampla and till 31.10.2022 in case of the Employees Scheme, Jind Rohtak.

v) In view of the above, it is observed that vide its order dated 30.05.2022, Hon'ble Punjab and Haryana High Court granted the relief of refund only to the petitioners to the CWP. Since, the complainant was never before the Hon'ble Punjab and Haryana High Court in CWP no. 19124 of 2021. Therefore, he is entitled to seek refund as per provisions of section 18 RERA Act, 2016 read with read with section 15 of HRERA Rules 2017 for delay in handing over of possession by the respondent.



As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 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;

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."

18. 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. 14.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

Thus, the complainant is entitled to refund of the entire amount paid by him along with interest as 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 of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

21. It is pertinent to mention here that complainant claimed to have paid ₹ 4,23,000/- to the respondent and he has taken a loan from the Haryana Gramin Bank of ₹1,69,000/- for the booking of the flat, however, no proof of the payment of ₹ 1,69,000/- has been annexed in the complaint file. Consequently, ld. counsel for the complainant was asked to provide the proof of the amount i.e., ₹1,69,000/- and he has provided the statement of the bank account of the complainant showing the withdrawal of the amount

of ₹1,69,000/- dated 14.02.2015, which cannot be taken as correct evidence. However, perusal of file shows that the period of registration of the said scheme was started from the date 17.02.2014 till 15.06.2014 and as per the registration policy of the respondent, the complainant was bound to pay 10% i.e., ₹ 1,69,000/- to the respondent along with the application. So, it is evident that complainant has paid the amount of ₹1,69,000/- i.e., 10 % of the total amount during the period of registration. Afterwards, the allotment letter was issued to the complainant on 12.02.2015.

Therefore, since no cogent proof has been placed on record, interest accrued on the amount of ₹1,69,000/- will be calculated from the date of closing of registration of the scheme i.e., 15.06.2014 till the date of the order i.e., 14.03.2023.

Thus, Authority allows the refund of the amount of ₹4,23,000/- and the accrued interest will be calculated upon the same amount which comes out to ₹ 3,76,829/-.

34. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants including interest calculated at the rate 10.70% till the date of this order and said amount works out to ₹ 3,76,829/- is depicted in table below:

Sr. No.	Date of Payment	Principal Amount	Interest accrued till 07.02.2023	Total
1.	02.03.2015	₹2,54,000/-	₹2,18,541/-	₹ 4,72,541/-



2.	15.06.2014	₹1,69,000/-	₹1,58,288/-	₹ 3,27,288/-
	Total	₹4,23,000-	₹3,76,829/-	₹7,99,829/-

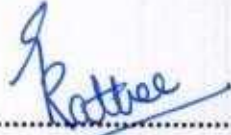
22. Since the respondent has already refunded the amount of ₹5,04,981/-, the amount payable to the complainant is ₹ 2,94,848/- after adjusting the paid amount of ₹5,04,981/-.

DIRECTIONS OF THE AUTHORITY

35. 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 ₹2,94,848/- 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.



36. Complaint is, 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]

