



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

<b>Complaint no.:</b>	<b>1509 of 2022</b>
<b>Date of filing:</b>	<b>27.06.2022</b>
<b>Date of first hearing:</b>	<b>09.08.2022</b>
<b>Date of decision:</b>	<b>14.03.2023</b>

Krishan Kumar Galawat  
S/o Sh. Rattan Singh  
R/o V.P.O. Kheri Sadh, Tehsil Sampla,  
District Rohtak-124021.

....COMPLAINANT

VERSUS

1. JOP International Ltd. through its Director/Managing  
Director/Authorized Signatory  
Regd. Office at 45/77, Punjabi Bagh, New Delhi-110026.

....RESPONDENT (1)

2. Bharat Aggarwal, Director of JOP International Ltd.  
45/77, Punjabi Bagh, New Delhi-110026.

....RESPONDENT (2)

3. Shyama Aggarwal, Director of JOP International Ltd.  
45/77, Punjabi Bagh, New Delhi-110026.

....RESPONDENT (3)

4. Ram Niwas Bangra, Director of JOP International Ltd.  
4/78, West Punjabi Bagh, New Delhi-110026.

....RESPONDENT (4)

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

**Present:** Mr. Sudeep Singh Gahlawat, Advocate, counsel for the complainant  
Mr. Vishal Garg Advocate, Advocate, counsel for the respondent

**ORDER (NADIM AKHTAR-MEMBER)**

Present complaint dated 27.06.2022 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.	Name of the promoter	JOP International Ltd.
3.	Nature of the Project	Residential Project
4.	RERA registered/not registered	Registered (HRERA-PKL-ROH-226-2021)
5.	Date of booking	03.09.2011
6.	Allotment letter dated	28.07.2014
7.	Unit No.	A1-307, 2BHK
8.	Unit Area	1100 sq. ft.
9.	Payment plan	Construction link
10.	Builder Buyer Agreement	Not executed
11.	Total Sale Consideration	₹26,75,000/-
12.	Paid by the complainant	₹17,63,095/-
13.	Deemed date of possession	Within 36 months as per allotment letter i.e., 28.07.2017
14.	Offer of possession	Not offered

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

3. Case of complainant is that he had booked a unit in the project namely, "JOP Palms", Sector-28, Rohtak to be developed by the respondent on 03.09.2011. Vide allotment letter dated 28.07.2014, unit bearing no. A1-307, measuring 1100 sq. ft. was allotted to him in the said project. Copy of allotment letter is attached at Annexure-P1, page no.15 of the complaint book. Complainant, till date, has made a payment of ₹17,63,095/- against total sale



consideration of ₹26,75,000/-. Copies of receipts have been attached at page nos.19-21. 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. by 28.07.2017. From the deemed date of possession, 5 years have been lapsed, however, respondent-promoter has not even started construction of building. Respondent promoter is not in a position to deliver possession of the unit. Respondent unlawfully grabbed huge profits by cheating and harassing complainant/allottee after deposit of huge amount. The respondent has failed to honour its obligations cast upon it by the terms and conditions of allotment letter. Complainant alleged that he is suffering due to inordinate delay on the part of the respondent in handing over possession of the unit. Aggrieved by the same, complainant has filed present complaint with 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 of ₹17,63,095/- along with interest at the rate of 18% per annum from the respective dates of payments till actual realization;
  - ii. Any other relief which is deemed fit by this Hon'ble Authority.

**D. REPLY:**

5. Respondent admitted that complaint was allotted 2BHK residential apartment bearing no. A1-307 vide allotment letter dated 28.07.2014. It is submitted that delay in completion of the project is due to delay in getting the necessary approvals from the concerned authorities and there is no delay on the part of the respondent. At the initial stages of the project, respondent started facing financial crunch since most of allottees stopped making timely payments as per payment plan. It is further submitted that respondent company has also approached several banks to get loan in order to complete the project but all in vain. The license granted to the respondent company got expired in the year 2017 and possession was also to be delivered in the same time. Respondent company could not carry out construction work due to expiration of license.

6. It is further stated that HRERA, Authority has granted conditional registration no. HRERA-PKL-ROH-226-2021 dated 08.02.2021 expressly mentioning that loan amount secured shall be strictly invested in completing Phase-I of the project comprising of 258 apartments. After obtaining conditional registration, respondent has approached SWAMIH investment funds in order to obtain finance to get the project completed. SWAMIH investment funds has financed the respondent company to the tune of ₹80 crores after mortgaging its properties including residential



accommodation of the respondent. Respondent company has not wilfully delayed the project. It has occurred due to force majeure conditions. It is contended that prayer made by the complainant is not tenable in the eyes of law.

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

7. Arguments raised by learned counsel for complainant have been heard along with meticulous examination of the records of case. At the outset, it has been argued by learned counsel for complainant that respondent approached the complainant to purchase apartment in the project of respondent and assured timely delivery of possession of the same. Believing the same, on 03.09.2011, complainant booked an apartment in the project. He was allotted A1-307, measuring 1100 sq. ft. vide allotment letter dated 28.07.2014 against total sales consideration of ₹26,75,000/-. Copy of said allotment letter is annexed as page no. 15 of the complaint file. Complainant paid regular payments as demanded by the respondent. Till now, he has paid ₹17,63,095/- against sale price of ₹26,75,000/-. He further stated that despite making these payments, respondent-promoter has not given possession of the above-mentioned apartment which was to be delivered in 36 months from date of allotment letter. The respondent-promoter has not even started construction. For this reason, the complainant stopped making further payments.



7. Counsel for the complainant further argued that there has been delay of five years from the deemed date of possession in handing over possession of the apartment 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. Respondent promoter is arranging funds and trying to complete the project and delivery of possession. After obtaining conditional registration, respondent promoter has approached SWAMIH investment funds in order to obtain finance to get the project completed. SWAMIH investment funds has financed the respondent company to the tune of ₹80 crores after mortgaging its properties including residential accommodation of the respondent. Respondent promoter is making its best to complete the project.



**G. 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?

**H. OBSERVATIONS OF THE AUTHORITY:**

9. Factual position reveals that complainant had booked the unit in the year 2011 and allotment of unit no. A1-307 was made to him on 28.07.2014. Despite making payment of ₹17,63,095/- against total sale consideration of ₹26,75,000/-, complainant is waiting for possession of his unit since 28.07.2017. Possession has not been offered by the respondent even after of delay of 5-6 years from deemed date of possession i.e., 28.07.2017. Respondent is taking plea that it has approached SWAMIH investment funds to finance the distress project so that construction can be completed and the allottees be given their units/apartments. SWAMIH investment funds has financed the respondent company to the tune of ₹80 crores for completion of the construction works. However, respondent has not provided any specific timeline within which it intends to complete the project and hand over of possession of the unit to the complainant. further, there is nothing on record whether the sanctioned amount has been disbursed for the completion of the project or not. Authority had granted various opportunities to the respondent





to place on record progress report of the project as well. Even after availing numerous opportunities respondent failed to produce the same before the Authority. It appears that due to inordinate delay of more than 5 years in handing over possession the complainant has lost faith in the respondent to complete project and is no more interested in waiting for possession endlessly and that is why he insisted upon refund.

10. The promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of the allotment or duly completed by the date specified therein and accordingly, it is observed by the Authority that by virtue of Section 18 of RERA Act, 2016, allottee/complainant is well within his right to ask for refund. He cannot be forced to wait for an indefinite period for possession of the booked unit. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others" ..... has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant Para 25 of ibid 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.”*

11. 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 non-delivery of possession of the unit on agreed date. Thus, in terms with the judgment, Authority deems it a fit case for allowing relief of refund in favour of complainant. Though the complainant has sought that interest be allowed @18% however same cannot be allowed as interest can only be awarded in terms of RERA Act of 2016 and HRERA Rules of 2017. 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. 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.

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

14. Thus, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹17,63,095/- 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 ₹34,00,577/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 14.03.2023	TOTAL
1.	₹3,00,000/-	03.09.2011	₹3,70,337/-	₹6,70,337/-
2.	₹3,89,415/-	30.04.2013	₹4,11,651/-	₹8,01,066/-
3.	₹2,76,000/-	28.05.2014	₹2,59,963/-	₹5,35,963/-
4.	₹2,17,215/-	01.01.2015	₹1,90,712/-	₹4,07,927/-
5.	₹5,80,465/-	08.09.2016	₹4,04,819/-	₹9,85,284/-
Total	₹17,63,095/-		₹16,37,482/-	₹34,00,577/-

#### **I. DIRECTIONS OF THE AUTHORITY:**

15. 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 ₹34,00,577/- 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 Authority and ₹2,000/- payable to the complainant failing which suo motu complaint may be registered for recovery of costs imposed.

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

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

  
.....  
NADIM AKHTAR  
(MEMBER)