



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1074 of 2021
Date of filing:	14.10.2021
Date of first hearing:	23.11.2021
Date of decision:	17.05.2023

Smt. Santosh Saroha,
w/o Sh. Rajiv Saroha,
r/o 64-65, Sunrise TVS Delhi Road, Sonapat
HARYANA-131001

....COMPLAINANT

VERSUS

1. Apex Buildtech Ltd.,
Office: 514, Aggarwal Millenium Tower, Netaji Subhash place,
Pitampura, NEW DELHI- 110034
2. Sh. Mohinder Dhall, Real Estate Agent
s/o Sh. Wadhya Ram,
Office: Shop No. 1, Omaxe Heights, Omaxe city,
Sonapat-

....RESPONDENTS

[Handwritten Signature]

CORAM:

Dr. Geeta Rathee Singh
Nadim AkhtarMember
Member

Present:

Mr. Akshat Mittal, learned counsel for the complainant
Mr. Shubham Jain, learned counsel for the respondent no.1
through video conference
None for respondent no.2**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint dated 14.10.2021 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 fulfill 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Apex Green, Sector-8, Sonapat



2.	RERA registered/not registered	Registered / RERA-PKL- SNP-324-2022
3.	Date of booking	16.02.2006
5.	Flat no.	F-11, 1 st floor
6	Flat area	1975 sq.ft.
7.	Date of allotment/ Transfer in the name of complainant	01.06.2007
8.	Date of builder buyer agreement	Not executed
9.	Deemed date of possession	01.06.2009 (two years from allotment) (as per complainant)
10.	Basic sale price	₹40,00,000/-
11.	Amount paid by complainant	₹12,46,875/-
12.	Offer of possession	Not offered

B. FACTS OF THE COMPLAINT

3. That the original allottee had booked a flat bearing no. F-11, 1st floor, measuring 1975 Sq.ft. in Project named "Apex Green" of respondent no. 1 at Sonapat, Haryana on 16.02.2006 for total sale consideration of ₹

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40,00,000/-. Said flat was transferred in the name of present complainant allottee on 01.06.2007. Endorsement letter dated 26.06.2007 in the name of present complainant is also placed on record vide application dated 31.07.2022, filed in registry on 03.08.2022. In said letter, it is mentioned that present complainant allottee name was substituted in place of original allottee namely Mr. Satbir Singh Dabas and Mahavir Singh Dahiya along with earlier paid amount by original allottee vide receipt no. 1063 amounting to ₹ 5,00,000/-, on 10.04.2006.

4. That Complainant states that after endorsement in his favor he has made following payments:

i. ₹ 2,46,875/- dated 02.06.2006 vide cheque no. 440954 and receipt no. 1347.

ii. ₹ 2,50,000/- dated 15.05.2007 by cash and receipt no. 1330.

iii. ₹ 2,50,000/- dated 01.05.2007 vide cheque no. 440953 and receipt no. 1346.

In this way, complainant had paid a total amount of ₹ 12,46,875/- to the respondent till 2007 against the total sale consideration of the booked flat.

5. That the complainant stated that Allotment of the flat was done on 01.06.2007 as per allotment letter annexed at 'C-1-colly'. However,

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respondent no. 1 has failed to get any Builder-Buyer Agreement executed till date.

6. That the complainant stated that respondent was under an obligation to hand over the possession of the booked flat within a period of two years from the allotment i.e. 01.06.2007, which comes out to be 01.06.2009. However, till date respondent no. 1 has failed to deliver possession of unit even after continuing delay of more than fifteen and half years since the booking and more than 11 years till date from the due date of possession. However, the promoter is duty bound to deliver the possession within reasonable time.
7. That, the Hon'ble Apex court in "M/S Fortune Infrastructure and Anr." 2018 STPL 4215 SC has held that where no written due date of offer of possession is forthcoming then 3 years has been taken to be reasonable time to hand over the possession. As per this cited case also, respondent was under an obligation to handover the possession of booked flat well by **01.06.2010**.
8. That the respondent no. 1 promised to deliver the flat admeasuring 1975 sq ft. to the complainant as per allotment letter dated 01.06.2007. However, the size of flat and size of balcony area has been drastically reduced against the original layout of the flat annexed as 'Annexure- C3'.


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9. That respondent no. 1 and respondent no. 2 have deceived the complainant by making him entering into booking of different flat by assuring the same would be of right size as promised by respondent no. 1 and payment of the earlier booked flat will be adjusted towards new flat i.e. Flat no. C-103, 10th floor, Block-C, Apex Green, Sector 8, Sonapat, Haryana against which payment of ₹5,00,000/- on 19.01.2021 was made by the complainant. Receipt of the paid amount is annexed as 'Annexure C-4'.
10. That the complainant was not offered possession of either of the booked flats despite of repeated requests by the complainant. In response to this, the complainant had also sent a legal notice dated 15.05.2021 to the respondents annexed as 'Annexure-C-5' colly.
11. That aggrieved from the respondents unethical conduct, complainant prays for relief of possession of the booked flat along with delayed possession charges, interest and compensation.

C. RELIEF SOUGHT

12. In view of the facts mentioned above, the complainant prays for the following relief(s):-

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- a) To direct the respondent no. 1 to immediately hand over the physical and uncompromised possession of the unit in question i.e. F-11, 1st Floor, to the complainant allottee.
- b) To direct the respondent no. 1 to compensate the complainant for the delay in offer of possession of the unit/flat complete in all respects, by paying interest @24% per annum for the delay with effect from 01.06.2009 (assured due date of possession) till actual handing over of possession of the flat complete in all respects.

OR/ALTERNATIVELY,

in case the Ld. Authority observes that the interest @24% per annum for delay is outside the purview and jurisdiction,

To direct the respondent no. 1 to compensate the complainant for the delay in offer of possession of the unit/flat complete in all respects, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, with effect from 01.06.2009 (assured due date of possession) till actual handing over of possession of the flat complete in all respects, on the entire deposited amount of Rs. 17,46,875/- (Rupees Seventeen Lakh, Forty Six Thousand, Eight Hundred and Seventy Five


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only) qua the said flat which has been deposited with the respondent no. 1 promoter by the complainant.

c) To direct the respondent to adjust the amount of Rs.5,00,000/- received by them from the complainant allottee qua a different unit/ flat i.e. Flat no. C-103, 10th Floor, Block-C, Apex Green, towards the payment qua the original flat in question i.e. F-11, 1s Floor, for the reasons mentioned in the complaint.

d) To direct the respondent to set-aside/rectify the changed/reduced size of the flat in question, as against the assurances and initial promises; and to compensate the complainant allottee for the same as per compensation deemed fit by learned Authority.

e) To set aside the cancellation, if any, of the unit i.e. F-11, 1st Floor, under proviso to Section 11(5) of the Act, for the reasons mentioned in the complaint.

f) To direct the respondent to pay a sum of Rs. 10,00,000/- on account of grievance, frustration, caused to the complainant by the miserable attitude of the respondent and deficiency in service and for causing acute mental agony to the complainant, along with interest from the date of filing the present complaint till its realization.



- g) The registration, if any, granted to the Respondent for the project namely, "Apex Green", situated in the revenue estates of Sonapat, District Sonapat, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.
- h) To impose penalty on the respondent no. 1 under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.
- i) To impose penalty on the respondent no. 2 under section 62 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.
- j) The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-.
- k) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

Learned counsel for the respondent filed reply dated 23.11.2021, filed in registry on 07.04.2022 pleading therein:


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13. That present complainant is not entitled for the indulgence of this Hon'ble Authority and grant of any relief from this Hon'ble Authority. Respondent has alleged that complainant has concealed material facts of the matter that complainant had opted for construction link plan for flat no. F-11 and respondent no. 1 has sent various reminder for making due payment of due instalments annexed as 'Annexure R-1'.
14. That due to default in making payments, respondent no. 1 forfeited the booking amount of the complainant as per clause 9 of terms and conditions of allotment letter annexed as 'Annexure R-2'.
15. That respondent no. 1 submitted that complainant has mislead the court by placing on record the deposit slip of someone else and complainant has only deposited ₹7,46,875/- with the respondents and also the booking receipt of ₹5,00,000/- issued in the name of Satbir Singh Dabbas and Mahavir Singh Dahiya annexed as 'Annexure C-2' are not related to this complaint.
16. That respondent no. 1, further submitted that new booking was made by the complainant for flat no. C-103 on 19.01.2021, which is not related to the earlier booked Flat bearing no. F-11 in the year 2006. Hence, denies the aversion made by the complainant that amount paid qua earlier flat i.e., Flat no. F-11 should be adjusted for the new flat i.e., Flat no. C-103. Respondent no.1, states that these are two separate bookings and are not

related with each other. He also states that complainant has deposited no other payment than the booking amount against new booked flat bearing no. C-103. Therefore, prays for the dismissal of present compliant.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 2

17. That present complaint filed by the complainant against respondent no. 2 is liable to be dismissed as the only contention against respondent no. 2 is that he has not registered himself as an agent. Further he states that respondent no. 2 is not agent or dealer of the respondent no. 1 company so question of getting registered as an agent is vague.

18. That in present complaint respondent no. 1 has failed to deliver possession to the complainant despite lapse of time. Therefore, the dispute is between complainant and respondent no. 1 and respondent no. 2 is not a necessary party as he is not a part of any transaction that took place between them. Therefore, prays for the dismissal of present compliant.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

16. During oral arguments learned counsel for the complainant reiterated arguments as mentioned in Para 3-11 of this order. Further, counsel for complainant stated that complainant is still ready to pay the outstanding amount with regard to flat bearing no. F-11 and is pressing for the relief

of possession along with permissible delay interest. On the other hand, counsel for respondent no.1 has also reiterated the facts mentioned in para 12-16. None has appeared for respondent no.2

F. JURISDICTION OF THE AUTHORITY

17. 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/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat, 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 tor sale Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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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;

Section 34-Functions of the Authority

34(f) of the Act provides 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 learned Adjudicating Officer if pursued by the complainants at a later stage

G. OBSERVATIONS OF THE AUTHORITY

18. The complainant has impleaded two parties as respondents i.e. Apex Buildtech Ltd & Sh. Mohinder Dhall. On perusal of file and reply filed by respondent no.2, it is revealed that project has been developed and marketed by respondent no.1 only. Respondent no.2 has never taken any payment from the complainant nor has any involvement in


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the project in question. Therefore, he prayed for his discharge from the captioned complaint. Taking into consideration the facts mentioned above, Authority observes that complainant has neither argued nor has placed on record any document which proves any liability of respondent no.2. Therefore, Authority deems appropriate to dispose off this matter by the directing this order towards respondent no.1 only and declare respondent no.2 as perform respondent.

19. After hearing the submissions of both parties, Authority observes that the main grouse of the complainant is that as per allotment letter dated 01.06.2006, possession of the booked flat bearing no. F-11 should have been delivered by 01.06.2010. However, respondent had failed to execute the builder buyer agreement in favour of the complainant even after receiving an amount of ₹ 12,46,875/- from her till date. It has also been alleged by the complainant that the construction of the project has not been completed by the respondent till date. On the other hand, respondent in its reply has submitted that allotment letter issued to the complainant was cancelled by the respondent, as per clause 9 of the allotment letter after forfeiting the booking amount as complainant has defaulted in making further outstanding instalments of the booked flat and had never replied to any of the reminders issued from year 2008 to 2010. However, respondent has not attached any cancellation letter with the reply. It is pertinent to mention that both


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the parties have failed to apprise the Authority with regard to the current status of construction of the project and the flat booked by the complainant.

20. Admittedly there has been a delay of more than twelve years in delivery of possession. Even at present, respondent no.1 has not apprised the Authority with regard to the status of grant of occupation certificate. However, it has come to the knowledge of Authority from its project branch that project in question is registered with the Authority vide registration ID no. RERA-PKL- SNP-324-2022, wherein it is mentioned that extension to the project from time to time is granted by the Authority and completion date for the project is 31.12.2026, which is yet to come. Respondent no.1 has claimed that allotment was cancelled after forfeiting booking amount. However, respondent neither attached the cancellation letter nor has provided any proof of refunding the already paid amount by the complainant. Mere stating in the reply that cancellation of allotment letter was done under clause 9 will not suffice to prove cancellation or it may be considered to be a reasonable cancellation by respondent before this Authority. Therefore, ground raised by the respondent no.1 that allotment was cancelled as per clause 9 of allotment letter is rejected and first relief prayed by the complainant for possession of flat bearing no. F-11 is hereby allowed.



21. Since the complainant wishes to wait for delivery of possession of flat till respondent offers possession after obtaining Occupation Certificate, therefore, Authority deems it fit to issue directions to respondent to make a legal offer for possession of booked flat complete in all respects and in terms of allotment letter issued to the complainant after obtaining Occupation Certificate. Said offer letter shall be accompanied with a detailed statement of account showing lawful payables and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority in complaint no. 113 of 2018 titled as "Madhu Sareen Versus BPTP". Complainant shall be entitled to delay interest on account of delay in delivery of possession from deemed date of possession till a legally valid possession will be offered by respondent after obtaining Occupation Certificate from concerned department.
22. Though the complainant has sought that interest be allowed @24% however same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. 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

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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."

23. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date of this order i.e. 17.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

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24. The definition of term 'interest' is defined under Section 2(z) 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;

Accordingly, respondent will liable to pay upfront delay interest to the complainant on account of delay caused in delivery of possession from deemed date of possession i.e. 01.06.2010 till a legal offer of possession after obtaining occupation certificate.

25. Authority has got calculated the delay interest payable to the complainants from deemed date of possession i.e. 01.06.2010 till date of order i.e 17.05.2023 and further monthly interest till a legal offer of

J. K. Jaiswal

possession is made after obtaining occupation certificate at the rate 10.70% is depicted in table below:

S.no	Complaint No.	Paid amount	Interest accrued till 17.05.2023	Monthly Interest
1.	1074/2021	₹ 12,46,875/-	₹ 17,57,133/-	₹ 11,331/-

26. Further, in the relief sought, complainant has prayed for various relief as mentioned in para 12 of this order. Authority after going through all records, further observes and orders as follows:

- i. Complainant has prayed to adjust the paid amount of Rs.5,00,000/- received by respondent with respect to a different flat bearing no. C-103, 10th Floor, Block-C, Apex Green, towards the outstanding amount for earlier booked flat bearing no.F-11 for the reasons mentioned in the complaint. Authority observes that the above mention amount of ₹ 5,00,000/- paid by the complainant in the year 2021 for a different flat no. C-103 cannot be adjusted for the earlier booked flat for the reason that there are no provisions given under RERA to club the charges paid for two different flats even booked by one complainant as the facts of the both flats will differ in many aspects such as- booking dates, total sale consideration, size of the flat, status of the construction of the flat. Therefore,

S. Patil

taking into consideration full facts of one flat cannot be applied to the other flat without having its proper details. So, this relief prayed by the complainant is not allowed. Although complainant is at liberty to file a fresh complaint before Authority with regard to the other Flat no. C-103 along with its required and detailed documents.

- ii. Secondly, complainant has prayed to set-aside or rectify the reduced size of the flat in question, as against the initial promises along with compensation to the complainant for the same. Authority observes that in the whole complaint no specific detailed of reduced area of the flat is given by the complainant neither the respondent had given any averment with regard to the same. Therefore, Authority decides to direct the respondent to handover the possession of the booked flat bearing no. F-11 to the complainant as per RERA Act and in consonance to the allotment letter issued in the year 2006.
- iii. Thirdly, complainant has prayed for direction to be given to respondent for setting aside cancellation, if any, of the unit i.e. F-11, 1st Floor. With regard to this relief sought by complainant, it is observed that same stands adjudicated in para 20 of this order.
- iv. Fourthly, complainant has sought compensations under various heads such as grievance, frustration, costs and litigation expenses

amounting to ₹ 10,00,000/- and ₹ 1,50,000/- respectively. Authority deems appropriate to refer to judgment passed by 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), wherein it was 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

- v. Further, complainant has also prayed for cancellation of registration, if any, granted to the project in question and to impose penalty on the respondent no. 1 under section 61 of the Act and upon respondent no. 2 under section 62 of the Act for contravention of the provisions of the Act. Authority observes that this relief sought by complainant was neither argued during hearing nor anything is mentioned in the pleadings. Therefore, this



relief cannot be allowed. However, complainant is at liberty to file afresh complaint for adjudication of these issues with better particulars.

H. DIRECTIONS OF THE AUTHORITY

27. 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 no.1 is directed to issue a legal offer for possession to the complainant for the booked flat bearing no. F-11, complete in all respects after obtaining Occupation Certificate and in terms of allotment letter. Said offer letter shall be accompanied with a detailed statement of accounts showing lawful payables and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority in complaint no. 113 of 2018 titled as "Madhu Sareen Versus BPTP".

(ii) Respondent no.1 is directed to make upfront payment of delay interest from deemed date of possession i.e.



01.06.2010 (till date of this order i.e 17.05.2023) on account of delay caused in delivery of possession and further payment of monthly interest of ₹ 11,331/- till the date a valid offer of possession is issued to the complainant. 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.

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


.....
NADIM AKHTAR
[MEMBER]


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