



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Date of Decision: 09.02.2023

Sr. No.	Complaint No.	Complainant's Name and address
1.	660 of 2022	Anurag Choudhary R/O A2/1108, SRS Royal Hills Sector-87, Faridabad, Haryana
2.	665 of 2022	Deepak Kumar R/o 1107/A2, SRS Royal Hills, Sector 87, Faridabad
3.	689 of 2022	Prikshit Tripathy R/o D1 801, SRS Royal Hills Sec 87 Faridabad
4.	1585 of 2022	Deepak Sharma R/o A2/1105, SRS Royal Hills Sector-87, Faridabad
5.	1552 of 2022	Kishan Sahu R/o A2/708, SRS Royal Hills Sector-87, Faridabad

**Versus**

Sr. No.	Respondent no.	Respondent's Name and address
1.	1	SRS Real Estate Ltd. SRS Tower, 124-126, 1 <sup>st</sup> Floor, Near Mewla Maharajpur metro Station, Delhi Mathura Road, Faridabad-121003.
2.	2	SRS Real Infrastructure Ltd. SRS Multiplex, Top floor, City Centre, Sector-12, Faridabad.
3.	3	Canara Bank, Mid Corporate Branch, 8-A, 1 <sup>st</sup> Floor, NIT, Nehru Ground, Faridabad.
4.	4	Enforcement Directorate, 1 <sup>st</sup> Floor, U.T. Govt. Press Building, Madhya Marg, Sector-18, Chandigarh.

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

**Date of Hearing: 09.02.2023**

**Present: -**                    Mr. Akshat Mittal, ld. Counsel for the Complainants  
   in complaint nos.660,665,689, 1552 of 2022  
   None for complainant in complaint no.1585 of 2022  
   None for respondent no.1 and 2  
   Rahish Pahwa, ld. counsel for the respondent no.3  
   None for respondent no.4

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

Present complaints have been filed by complainants 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.                    Above captioned five complaints have been taken up together as bunch matters as facts of the cases and grievances of the complainants are similar in nature and also concerns the same project of the respondent

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promoter i.e. SRS Royal Hills, Phase-1, Sector-87, Faridabad. Facts of complaint no.660 of 2022 titled as Anurag Choudhary versus SRS Real Estate Ltd. and others have been taken as lead case.

3. Initially, present complaints have been filed against respondent no.1 i.e. SRS Real Estate Ltd. However, Mr. Akshat Mittal, ld. counsel for complainants have filed application in complaint nos. 660, 665, 689, 1552 of 2022 requesting Authority to implead M/s SRS Real Infrastructure Ltd. as respondent No.2, Canara Bank as respondent No. 3 and Enforcement Directorate through authorised officer as respondent No.4. Vide said applications it has also been prayed that complete amended four complaints along with Annexures thereto may also be taken on record.

4. Upon consideration, Authority accepted the prayer and four complaints were allowed to be amended. Accordingly, M/s SRS Real Infrastructure Ltd., Canara Bank and Enforcement Directorate were allowed to be impleaded as respondents no.2, 3 and 4.

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

5. 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, in the lead case no. 660 of 2022 titled as

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“Anurag Choudhary versus SRS Real Estate Ltd. and others” have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	SRS Royal Hills, Phase-1, Sector-87, Faridabad
2.	Nature of the Project	Group Housing
3.	RERA registered/not registered	Unregistered
4.	Allotment dated	20.11.2010(as per first payment receipt attached with complaint)
5.	Unit No.	1108, 11 <sup>th</sup> floor, Tower-A2
6.	Unit Area	1025 sq. ft.
7.	Builder buyer agreement	Not mentioned
8.	Total Sale Consideration	₹21,09,695/-
9.	Paid by the Complainants	₹21,09,695/-
10.	Deemed date of possession	Not mentioned
11.	Date of handing over possession	22.11.2015

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

5. Case of the complainant is that flat bearing no.1108, 11<sup>th</sup> floor in Tower A2 of the project namely, “SRS Royal Hills” situated at Phase-1, Sector-87, Faridabad was allotted to the complainant. Total sale consideration of the flat was fixed as ₹21,09,695/- and the complainant had paid entire amount. Zero balance ledger was issued by the respondent on 19.10.2015,

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copy of which has been placed at Annexure A-1. After receiving total sale consideration, respondent had handed over possession to the complainant vide letter dated 22.11.2015, copy of which has been attached at Annexure A-2. Complainant alleged that even after delay of almost 7 years after handing over possession, respondent has failed to execute and register conveyance deed in favour of complainant.

6. Further, complainant submitted that as per directions given by Hon'ble Supreme Court of India in Writ Petition no.1243 of 2019 titled as "Gulshan Arora and others versus SRS Real Estate Ltd. and others" vide order dated 01.04.2022, grievances of present complainant can be redressed by this Authority in the light of dictate of this court in Bikram Chatterji and Ors versus Union of India and ors.

**C. RELIEF SOUGHT:**

7. The complainant in his complaint has sought following relief:

- i. To direct the respondent to execute conveyance deed and transfer the title of above-mentioned flat in favour of complainant or direction to competent authority to execute conveyance deed and transfer the title in favour of complainant.

**D. REPLY:**

8. Notices were issued to respondent no.1, 2, 3 and 4 in all five cases, however, notices could not be delivered to respondent no.1 and 2 at the address provided by complainants. Delivery courier provider reported that notices could not be delivered "due to shifted address/receiver refused delivery". Notices to the respondents No.3 and 4 i.e. Canara Bank and Enforcement Directorate were delivered in all five cases. Reply has only been filed on behalf of respondent no.3, Canara bank. Respondent no.3 has submitted following reply:

- i) Project in question was originally financed by State Bank of India in the year 2009. Land underneath the project was mortgaged to State Bank of India. Promoters-respondent No.1 settled its account with State Bank of India and redeemed the mortgage by the month of June, 2013. In September 2013, respondent No.1 approached Canara Bank for obtaining term loan of Rs.110 crores. The loan was proposed to be granted against mortgage of land underneath the project of respondent No.1. Canara Bank exercised due diligence before acceptance of mortgage of project land. The project appraisal group of the bank made complete assessment of the project including the amount spent on existing construction. The total sale value of the booked flats was assessed at ₹265.32 crores. Further, as per CA certificate, the total



booking amount received by respondent No.1 in respect of the booked apartments was ₹191.79 crores. Accordingly, after finding the proposal viable, term-loan of ₹110 crores were sanctioned and land underneath the project was got mortgaged in favour of the bank. Ld. Counsel argues that super structure raised over the land also stood hypothecated in terms of common hypothecation agreement dated 26.09.2013.

As per averments of respondent No.3 Canara Bank, entire sum of ₹110 crores were disbursed in favour of respondent No.1 to be repaid in 8 quarterly instalments of ₹13.75 crores each w.e.f. June, 2015, ending March 2017.

ii) A board displaying the fact that project has been financed by respondent No.2 was placed at a conspicuous place at the site. It was made clear that after 25.09.2013 whenever a flat buyer requires a home loan from any bank or financial institution, he/she was directed by respondent no.1 to obtain an NOC from Canara Bank. It was averred that about 170 such requests were received by Canara Bank. Further, an arrangement was made that whenever a home buyer obtained loan from any financial institution, it should be deposited into an escrow account. It is understood that said Escrow account was dedicated for re-payment of loan sanctioned by Canara Bank. It has been stated that

good number of home buyers had deposited consideration of the flat in the escrow account.

iii) It has been submitted in writing by respondent No.3 Canara Bank that at the time of sanction of loan super structure of the project was complete to the extent of 30-35% in the project. Further, none of flat owners were in occupation of any flat. At the time of loan appraisal, only 792 out of 1491 flats had been booked. Booking of remaining 699 flats was done after 25.09.2013 i.e. after creation of mortgage in favour of respondent No.3. It was argued that those persons, who have booked flats after 25.09.2013 cannot plead ignorance about mortgage having been executed in favour of respondent No.3. It has also been stated that complainants are well aware that answering respondent bank has already moved an application under Section 7 of Insolvency and Bankruptcy Code 2016, which at present is pending before the learned NCLT, Chandigarh.

iv) It was further argued that respondent no.3 bank was well within its right to classify the account as NPA and also to file an O.A. before learned DRT, Chandigarh. The answering respondent is well within its right to recover its dues by attachment and sale of securities mortgage available with it. Complainants have no legal title to the flats till the time land underneath the project remains mortgaged with the bank.



- v) Learned counsel for respondent No.3 Canara Bank sought dismissal of the complaints for the foregoing reasons.

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

9. Learned counsel for complainant argued that respondent promoter, after receipt of entire consideration from complainants has handed over possession to the complainants in the years 2015. Complainants have been living in their flats peacefully since then. Respondents are not executing and registering conveyance deeds in favour of complainants. It is therefore prayed that a direction may be given to the respondent for registration of conveyance deeds in favour of complainants.

10. Learned counsel for the complainants further stated in the Court today that the decision already taken by the Authority in bunch of cases with lead case **Complaint no. 985 of 2022 titled as "Bhupinder Singh and Gurpreet Kaur Versus SRS Real Estate and others"** squarely covers the controversy involved in the above-mentioned complaints. Hence, these complaints be disposed of in the same manner.

**E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT NO.3, CANARA BANK:**

11. Respondent No.1 had originally got the project financed from State Bank of India in the year 2009. Respondent No.1 settled his account with SBI and re-deemed the mortgage in January, 2013. Thereafter in September

2013 respondent No.1 raised a term loan of Rs.110 crores from Canara Bank who is respondent in all cases. This project in question was mortgaged with bank as security. Apparently, entire loan was disbursed by the bank to Respondent No.1 in one go. The loan was to be repaid from June, 2015 to March, 2017 in eight quarterly instalments of Rs.13.75 crores each. The account of respondent No.1 with Canara Bank was classified as non-performing assets (NPA) in September, 2016 which lead to initiation of proceeding before Ld. Debt Recovery Tribunal, (DRT) Chandigarh by Canara Bank. Ex-parte proceedings were held by learned DRT against respondent No.1, whereby all mortgaged assets of respondent No.1 were ordered to be attached by Ld. DRT. Against the order passed by Ld. DRT some allottees approached Hon'ble Punjab & Haryana High Court by way of Civil Writ Petition Nos.14889, 16979 and 29956 of 2018 against M/s SRS Real Estate Ltd. herein R-1 and Canara Bank herein R-3. Hon'ble High Court while issuing certain directions substantially upheld the orders passed by learned DRT Chandigarh. There-after some allottees filed writ petitions under Article 32 before Hon'ble Supreme Court further challenging the orders passed by learned DRT. Hon'ble Supreme Court ordered that the grievances of writ petitioners and other similarly placed persons who are home buyers of said project can be assuaged and redressed by Real Estate Regulatory Authority (RERA), inter alia in the light of dictum of Hon'ble Apex Court in "Bikram Chatterjee and Ors. Versus UOI and Ors." Hon'ble Apex Court allowed the



petitioners and other similarly placed persons to approach RERA for redressal of their grievances.

**F. JURISDICTION OF THE AUTHORITY:**

12. 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 Faridabad 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 Office, if pursued by the complainants at a later stage.

**G. ISSUES FOR ADJUDICATION:**

- i. Whether complainant is entitled to execution of conveyance deed in his favour?

**H. OBSERVATIONS OF THE AUTHORITY:**

13. Complainants were allotted flats between the years 2010-2014. Occupation certificate of the flats was received in the year 2015. Entire consideration amount was paid before offer of possession given by the respondent No.1 to the complainants. All the complainants had taken peaceful possession of their properties much before they learnt about loan taken by respondent No.1-company from the Canara Bank. Complainants are not a



parity to the loan agreement executed by respondent No.1 with Canara Bank. Complainants are not privy to the loan agreements and such agreement cannot bind them into any legal obligation. Having taken lawful possession of their apartments after paying entire consideration amount, complainants have become lawful owners of the property.

14. Notices were issued to respondent no.1, 2, 3 and 4 in all five cases which have not been delivered to respondent no.1 and 2 at the address provided by complainants and through Jail Superintendent, Neemka Jail, Faridabad. Delivery courier has reported that notices have not been delivered "due to shifted address/receiver refused delivery". Notices to the respondents No.3 and 4 i.e. Canara Bank and Enforcement Directorate were delivered in all five cases. However, reply has only been filed on behalf of respondent no.3, Canara bank.

15. In view of facts and grievances and records placed on record, the Authority is also satisfied that the issues and controversy involved in present complaints are of similar in nature as were subject matter of cases disposed of with lead Complaint no. 985 of 2022 titled as "Bhupinder Singh and Gurpreet Kaur Versus SRS Real Estate and others" vide order dated 23.08.2022. Therefore, the captioned complaints are **disposed of** in terms of the order passed by the Authority in Complaint no. 985 of 2022. Operative part of the order dated 23.08.2022 is reproduced below:

  
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“.....19. *In accordance with above findings, it is ordered that respondent-promoter shall authorise an official of the company to execute conveyance deeds in favour of allottees. Respondent shall prepare draft conveyance deed and send to each allottee-complainant within 60 days. Thereafter, conveyance deed shall be got executed as per law. It is reiterated that in all those cases in which possession has been handed over voluntarily by respondents, it will be deemed that complainants have already paid entire consideration amount unless it was stipulated otherwise by way of a separately executed document. These orders shall be applicable on all other similarly placed allottees also whether or not they have approached this Authority by way of a complaint.*”

**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 shall authorize an official of the company to execute conveyance deeds in favour of complainants. Respondent shall prepare draft conveyance deed and send to each allottee-complainant within 60 days. Thereafter, conveyance deed shall be got executed as per law.

  
A handwritten signature in green ink, appearing to read 'Rathore', is written over a horizontal line.



17. The complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



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



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

