



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	639 of 2020
Date of filing:	15.07.2020
Date of first hearing:	25.08.2020
Date of decision:	15.03.2023

Mrs. Pratibha w/o Sh. Shivam Bansal

R/o House no.1235, Sector- 21 D, Faridabad, Haryana - 121001

....COMPLAINANT

VERSUS

1. M/s Ferrous Township Private Limited
Office at Seth Farm, Khasra no. 41, MG Road, Ghitorni, Near Indian Oil
Petrol Pump, New Delhi 110024
2. Sh. Surender Seth, Director, M/s Ferrous Township Private Limited
R/o Seth Farm, Khasra no. 41, MG Road, Ghitorni, Near Indian Oil
Petrol Pump, New Delhi 110024
3. Sh. Ashish Seth, Director, M/s Ferrous Township Private Limited
R/o R-13, Greater Kailash-I, New Delhi - 110048

....RESPONDENT(s)

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

Present: Mr. Pawan Kumar Bansal , learned counsel for complainant
through video conferencing.

None for respondent


ORDER (NADIM AKHTAR - MEMBER)

Present complaint dated 15.07.2020 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 of possession have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Ferrous Megapolis City, Sector – 70, Faridabad, Haryana



3.	RERA registered/not registered	Un-Registered
4.	Allotment letter dated	17.03.2012
5.	Plot No.	B-222
6.	Size of Plot	268.01 sq. yds.
7.	Total Sale Consideration	₹60,30,225/-
9.	Paid by the complainant	₹61,98,568/-
10.	Deemed date of possession	Not mentioned since no clarification is provided as to whether Builder Buyer Agreement was executed or not
11.	Offer of possession	Not Made

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

3. Complainant had booked a plot bearing no. B-222, measuring 268.01 sq. yards in respondent's project "Ferrous Megapolis City", situated at Sector-70, Faridabad by paying an amount of ₹5,50,000/- on 23.02.2012. Respondent promoter issued allotment letter dated 17.03.2012. Basic sales price of the plot was ₹60,30,225/- against which complainant had paid an amount of ₹61,98,568/-. Thereafter, respondent promoter was re-allocated another plot no. B-300 measuring 268 sq. yards. However, no offer of possession has been made by the respondent till date. Complainant also visited the project site but there were no signs of development of project. Therefore, complainant sought relief of refund along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.



C. RELIEF SOUGHT:

5. The complainant in his complaint has sought following reliefs:
- i. Initiate appropriate action against the respondent for not getting the project registered under the provisions of RERA Act(in case the project is not registered under RERA by the respondent)
 - ii. Direct the respondent to refund a sum of ₹61,98,568/- along with compound interest @ 24% p.a. along with compensation as on the same rate which is mentioned in the demand letters issued by respondent from the date when payments were made till realization of the amount in full.
 - iii. Direct the respondent to pay a sum of ₹15 lacs to the complainant towards undue hardship and injury, both physical and mental, caused due to acts of omissions and commissions on the part of the respondent.
 - iv. Direct the respondents to pay a sum of ₹50,000/- to the complainant towards the cost of litigation.
 - v. Pass such order or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.
 - vi. Direct the respondent to get itself registered under the provisions of the Real Estate Regulatory Authority Act.



D. REPLY:

6. Details of service of notice to respondent:

Particulars	Details
Notice sent on 16.07.2020	Successfully delivered on 22.07.2020 to M/s Ferrous Township Pvt. Ltd and Sh. Surender Seth and on 20.07.2020 to Sh. Ashish Seth

7. Respondent vide his written submissions dated 07.09.2020, submitted that they have not been able to complete the project due to force majeure circumstances, i.e., a litigation was going on in the Hon'ble Punjab and Haryana High Court challenging partition proceedings of some piece of land. As a result of the same, Hon'ble Punjab and Haryana High Court vide its order dated 01.07.2014 directed parties to maintain status quo with respect to land in question. Besides, CWP No. 25226/2013 was filed in Hon'ble Punjab and Haryana High Court, which was finally disposed off on 09.05.2016 with direction to remand back the matter to Assistant Collector, Ballabgarh for fresh adjudication. To safeguard interest of allottees, respondent challenged this order dated 09.05.2016, by way of LPA No. 2129, 2131, 2081 and 2142 of 2016 and vide order dated 26.10.2016, Hon'ble Punjab and Haryana High Court stayed passing of final order and fixed the matter for 30.09.2020. Thus, respondent promoter demands reasonable extension of time for completion of project in question and period during which land in question remained under



stay, be excluded from 36 months time period for delivery of possession to complainant.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

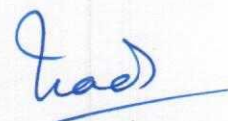
8. During hearing, learned counsel for the complainant reiterated the factual matrix of the case as narrated above and apprised the Authority that there has been an inordinate delay in handing over possession of the plot in question. Therefore, complainant wish to withdraw from the project of the respondent and prays for refund of the paid amount along with interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016..

F. JURISDICTION OF THE AUTHORITY:

9. 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 over State of Haryana except district Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Sector- 70, 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 refund of the amount deposited by him, i.e., ₹61,98568/-, along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY:

10. Perusal of record file reveals that this is 10th hearing of the captioned matter today. This case was adjourned during previous hearings at the request of Sh. Sourabh Goel, learned counsel for respondent promoter who sought some time to settle this matter. Today, none appeared on behalf of respondent promoter. No settlement has been arrived at between parties, despite availing several opportunities by the respondent promoter. Therefore, Authority decides to proceed ex-parte and decide the case on merits.

11. While perusing case file, it is also observed that builder buyer agreement is not annexed in complaint file. Nothing is mentioned with respect to builder buyer agreement. However, in Para 3 of reply filed by respondent promoter dated 07.09.2020, respondent made a mention of Clause 44 of BBA which clearly establishes that builder buyer agreement had been executed between the parties.

11. Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" in Appeal no. 6745-6749 of 2021, decided on 11-11-2021, has highlighted that the



allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed state. 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.”

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 delayed delivery of possession.

12. Authority observes that there has been an inordinate delay in handing over possession of plot to complainants and project is not likely to be completed in the near future. Allotees are within their right to ask for refund as no timeline is being committed by respondent promoter for handing over of possession and



allottees cannot be forced to wait for an indefinite period for possession of booked unit. Therefore, Authority finds it to be fit case for allowing refund 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 (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.”

13. 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.

14. 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%.

15. 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;

16. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.70% till the date of this order which works out to be ₹ 68,90,048/- as per details given in the table below –

Sr. No.	Principal Amount	Interest @10.70% till 15.03.2023	Amount to be refunded
1	₹61,98,568/-	₹ 68,90,048/-	₹ 1,30,88,616/-

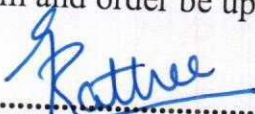
I. DIRECTIONS OF THE AUTHORITY:

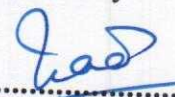
17. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹ 1,30,88,616/- to the complainant.

(ii) A period of 90 days is given to the respondent promoter 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.

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


 DR. GEETA RATHEE SINGH
 [MEMBER]


 NADIM AKHTAR
 [MEMBER]