



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Order pronounced on : 08.02.2023

Name of builder	MVL Ltd.
Name of project	MVL River City Yamunagar

Complaint No.	Complainant
946 of 2022	Sangeeta Rani W/o Rajinder Kumar Goel R/o 1174/4 Near Power House, Chhacchhrauli, Haryana.

**Versus**

Respondent	M/s MVL Ltd. MVL Park 6th Floor Near, Red Cross Society sector 15 Gurgaon-122001
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**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**PRESENT:** Mr. Shiv Kumar Gupta, Ld counsel for complainant.

None for the respondent.

### **ORDER (NADIM AKHTAR - MEMBER)**

1. This complaint has been filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of

*Nadim Akhtar*

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. Complainant had purchased two units from the respondent. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, of each unit have been detailed in following table:

**Details of first unit-Provisional Plot No. 26 Block H**

<b>SR. NO.</b>	<b>PARTICULARS</b>	<b>DETAILS</b>
1.	Name of project	MVL River City Yamunanagar
2.	Nature of the Project	Affordable Residential Plotted Colony
3.	Unit No.	Provisional Plot No. 26 Block H
4.	RERA registered/not registered	Un- Registered
5.	PBA dated	05.08.2014
6.	Super Area	180 sq. yd.
7.	Basic Sale Price	16,20,000/-
8.	Paid by the complainant	17,19,000/-

9.	Deemed date of possession	05.08.2019
10.	Offer of possession	Not Made

Details of second unit-**Provisional Plot No. 56 Block D**

Sr. No.	PARTICULARS	DETAILS
1.	Name of project	MVL River City Yamunanagar
2.	Nature of the Project	Affordable Residential Plotted Colony ( under DDJAY)
3.	Unit No.	Provisional Plot No. 56 Block D
4.	RERA registered/not registered	Un- Registered
5.	PBA dated	19.07.2014
6.	Super Area	360 sq. yd.
7.	Basic Sale Price	32,40,000/-
8.	Paid by the complainant	Rs. 39,24,000/
9.	Deemed date of possession	19.07.2019
10.	Offer of possession	Not Made

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

4. Complainant booked two units in the respondents project. First admeasuring 180 sq. yards for basic sale price of Rs. 16,20,000/- and another admeasuring 360 sq. yards for basic sale price of Rs. 32,40,000/-. Complainant has paid a total sum of Rs. 56,43,000/- against both the plots.

5. Complainant signed application for provisional booking/allotment of residential plot on 05.12.2012. Provisional plot no. 26 in block H, bearing 180 sq. yards was allocated to the complainant at basic sale price of Rs. 16,20,000/-. As per clause 23 of the said application, the possession of plot was to be delivered to the complainant within five years (4+1 grace period) from the date of signing of builder buyer agreement. Complainant executed builder buyer agreement on 05.08.2014. Clause 5.1 of builder buyer agreement reiterates that the possession of the plot to be delivered within five years.

6. Complainant booked another unit in the respondent's project and signed application for provisional booking/allotment of residential plot. Provisional plot no. 56 in block D, bearing 360 sq. yards was allocated to the complainant at basic sale price of Rs. 32,40,000/-. As per clause 23 of the said application, the plot was to be delivered to the complainant within five years (4+1 grace period) from the date of signing of builder buyer agreement. Complainant executed builder buyer agreement on 19.07.2014. Clause 5.1 of builder buyer agreement reiterates that the possession of the plot to be delivered within five years.

7. Complainant is aggrieved that till date no possession of allotted plots has been given to the complainant till date, despite receiving huge sum of Rs. 56,43,000/-.



**C. RELIEF SOUGHT:**

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the complete amount which has been deposited with the respondent by the complainant with interest from the actual date of deposit of each payment as per the Real Estate (Regulation & Development) Act, 2016 R/w Haryana Real Estate (Regulation & Development) Rules, 2017 at the rate prescribed under the Act.
  - ii. Any other relief or claim which the Hon'ble Authority deems appropriate.

**D. REPLY:**

14. Despite sufficient opportunities given to the respondent, none appeared on behalf of the respondent. Authority deemed fit to proceed ex parte against the respondent for non prosecution of complaint.

**E. JURISDICTION OF THE AUTHORITY:**

15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E.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 on the 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 Yamunanagar District, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

**E.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, this authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

**F. ISSUES FOR ADJUDICATION:**

- i. Whether the respondent has failed to fulfill its commitments and obligations as per the terms of Builder Buyer Agreement.
- ii. Whether the complainant is entitled to refund of the entire amount for failing to hand over the unit within the stipulated period of time as per the agreement.

**G. OBSERVATIONS OF THE AUTHORITY:**

16. After considering facts and circumstances of the case and going through oral as well as written arguments of the complainant, Authority observes as follows:

- i) Builder-buyer agreement between complainant and respondent was executed on 19.07.2014 and 05.08.2014. Basic sale price for both the plots were agreed to be 48,60,000/-. Complainant had paid over Rs. over 56,43,000/- ,i.e., more than agreed basic sale price by 30.07.2014.
- ii) After payment of more than agreed basic sale price amount, legitimate expectations of the complainant would be that possession of

the plots will be delivered within a reasonable period of time. With agreement having been executed in 2014 and full substantial payment having been made by 30.07.2014, legitimate expectation is generated that possession will be delivered within next 1-2 years.

17. Authority further observes that the relief of refund was allowed in similar cases against the respondent in same projects where the facts and issues were similar. Refund order dates back to 05.05.2022 passed in lead complaint no. 102 of 2022 titled "Somesh Grover nad Anr vs MVL Ltd.". Authority has specifically stated in that order that respondent has failed to deliver the possession to the complainants even after inordinate delay from the due date of possession. Allottees cannot be made to wait for an indefinite period of time for a unit for which the allotment and BBA dates back to 2013. Relevant part of the order dated 05.05.2022 is produced below:

*2. Today it is again observed that detailed written reply has not been filed by respondents. Shri Kamal Dahiya, learned counsel for respondent sought liberty to submit his arguments in writing before Authority. Authority observes that today it intends to pass final order, however, Mr. Dahiya is at its liberty to submit his written arguments which will be duly accounted for in the final order.*

*3. Shri Kamal Dahiya, learned counsel in his arguments reiterated his earlier stand that a Letter of Intent (LOI) is likely to be issued by the Town & Country Planning Department for migration to part of the colony original into an affordable housing colony. He stated*





that once such an LOI has been issued, it is likely that a large number of allottees, including complainant allottees, will opt for migration into the new colony. He requested for more time for facilitating receipt of LOI which according to him is at an advanced stage of consideration of Town & Country Planning Department.

4. Shri Himanshu Raj, learned counsel for complainants reiterated that original project, admittedly, has been abandoned by respondents. Complainants do not wish to be part of the new project. Complainants cannot be forced to accept allotment in a new project where the project in which they had booked plots has been abandoned.

5. Learned counsel for the complainant further stated that Authority has already expressed its views on multiple occasions that the original project in which plots were booked by complainants has no chance of being completed, and admittedly it has been shelved by respondents, therefore, the prayer of the refund deserves to be allowed. He further stated that complainants are not interested in getting plots in propsoed DDJAY colony for which respondents may or may not be granted license by Town & Country Planning Department.

6. Shri Kamaljit Dahiya, learned counsel for respondents submitted his written arguments on 23.05.2022 i.e. nearly 18 days after conclusion of oral arguments. However, nothing new has been stated by Shri Dahiya in his written submissions. He has only stated in writing what he had been submitting orally which has already been duly incorporated by Authority in above quoted orders.

7. In view of the undisputed fact situation, Authority allows relief of refund to all the

*complainants along with interest calculated in accordance with Rule 15 of the HRERA Rules i.e.@ SBI MCLR+2%.*

18. Since the present matter is also based on similar facts, relating to same project of the respondent, this complaint is also disposed of in terms of complaint no. 102 of 2022 titled "Somesh Grover nad Anr vs MVL Ltd.". Therefore, the Authority finds it to be a fit case for allowing refund of deposited amount in favor of the 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 (1) 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."*

19. 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.

20. 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. 08.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be SBI MCLR + 2% , i.e., 10.60%.

21. 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;*

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount.

22. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.60% till the date of this order in the captioned complaint; details are given in the table below:

Sr. No.	Unit Details	Principal Amount (in Rs.)	Interest @10.60% till 08.02.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	H- 26	Rs. 17,19,000/-	Rs. 16,43,685/-	Rs. 33,62,685/-
2.	D- 56	Rs. 39,24,000/-	Rs. 37,79,602/-	Rs. 77,03,602/-

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

23. 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 along with interest of @ 10.60 % to the complainant as is specified in the

table above from the date amounts were paid till the actual realization of the amount.

(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.

24. This complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading of order on the website of the Authority.



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



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**NADIM AKHTAR**  
[MEMBER]