



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2303 of 2022
Date of filing:	01.09.2022
Date of first hearing:	07.02.2023
Date of decision:	07.02.2023

Shikha Malhotra

w/o Amit Malhotra

R/o A-50, Anoop Nagar, 1st Floor

Near Jeevan Park, Uttam Nagar, New Delhi

....COMPLAINANT(S)

VERSUS

M/S Vipul Limited

Regd. Off: Unit No.201, C-50

Malviya Nagar, New Delhi- 110017

....RESPONDENT(S)

CORAM:

**Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Geeta Rathee

Present: - Mr. Vikas Deep, the complainant through video
conference

Mr. Vineet Sehgal, proxy counsel for the respondent through video
conference

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint dated 01.09.2022 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. Brief facts of the case as per pleading and annexures are as under:

S.N.	Particulars	Details
1.	Name of the project	Pratham Apartments, Rewari, Haryana
2.	Nature of the Project	Residential flat
3.	RERA Registered/not registered	Un registered

5.	Flat No.	401
6.	Flat area admeasuring	1160 sq. ft
8.	Date of Flat-buyers Agreement	11.02.2015
9.	Possession Clause	<p>Clause 8 of Flat buyers Agreement</p> <p>"8.1 (a) Subject to the terms of this clause and subject to the vendee having complied with all terms and conditions of this agreement and not being default under any of the provisions of this agreement and complied with all provisions, documentation etc as prescribed by the vendor and all just exceptions, the vendor based on its present plans and estimates shall endeavour to hand over possession of the flat within a period of 60 months from the date of signing of this agreement. The vendee agrees and understands that the vendor shall be entitled to grace period of 90 days, after the expiry of 60 months, for applying and obtaining occupation certificate in phases in respect of different towers of the group housing complex.</p>
8.	Due date of possession	Sixty months from the date of signing of the agreement i.e., 10.02.2020
9.	Total Sales Consideration	₹31,14,162/-

10.	Amount paid by the complainants	₹ 28,58,549.50/-
12.	Delay in handing over of possession from the date of construction	5 years

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

13. That the complainant had booked a residential unit/ flat no.401 in Tower-3 on fourth floor in the project namely "Pratham Apartments" in Revenue Estate of Bawal, Sector 10-A, Rewari, Haryana and paid ₹4,00,000/- as booking amount on 10.08.2013.
14. That the flat buyer agreement was executed between the parties on 11.02.2015. A copy of the agreement is annexed as Annexure- C/1. The total sale consideration including all BSP and all other charges were calculated at ₹31,14,162/- and the complainant has paid the amount of ₹28,58,549.50/- as it is evident from the statement of account as well as various receipts are annexed as annexure-C/2.
15. That as per Clause 8 (a) possession of the unit was to be delivered within a period of 60 months from the date of agreement i.e., by 10.02.2020. But respondent failed to develop the offer of possession

Rathee

and also failed to obtain mandatory occupation certificate from the office of Town and Country Planning, Haryana.

16. Aggrieved of the above facts, complainant has filed the present complaint.

RELIEF SOUGHT

17. The complainant in her complaint has sought relief of refund of the amount paid along with interest.

REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 09.01.2023 pleading therein:

18. That the respondent had acquired and purchased the land admeasuring 9.60 acres situated within the revenue estate of village Bawal, Sector-10 A, Tehsil & District, Rewari, Haryana with a view to promote and develop a group housing colony known as "Pratham Apartments".
19. That complainant being desirous of purchasing a flat/ residential unit in the aforesaid Project approached the respondents and after being completely satisfied in all respects the Complainant took extensively deliberated decision of booking a flat/residential unit in the group housing project known as "Pratham Apartments and vide application dated 10.08.2013 had applied for provisional registration of a

5 

residential unit in the aforesaid group housing complex i.e. "Pratham Apartments".

20. That the respondent company in furtherance of the application form so submitted by the complainant and the earnest money so received from the complainant made the provisional allotment of residential flat bearing No. 401 in Tower 3 at 4th Floor, in the aforesaid group housing project known as "Pratham Apartments in favour of the complainant. Respondent company along with said allotment letter had further sent the terms and conditions for allotment of flat as well as schedule of payment which was construction linked plan as opted by the complainant. The allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainants.
21. That the respondent company had sent the flat buyer agreement to the complainant on 11.02.2015 which was voluntarily and consciously executed by the complainant on the same day i.e., 11.02.2015.
22. That respondent company has made every endeavour to finish the development work of the project "Pratham Apartments" well within time and the project near completion, however due to force majeure conditions and current scenario of covid pandemic, delay was caused in the final developments works of the project. The fact of force majeure was duly conveyed to the complainant but the same has been concealed by the complainant by filing the present complaint. Thus,

this present complaint is liable to be dismissed on the ground of concealment of vital facts.

23. That the complainant has made the payment of ₹ 28,51,899/- to the respondent company in lieu of the apartment booked by him. The figure of ₹28,58,549/- stated in the complaint is wrong and the complaint need to prove the payments of ₹ 28,58,549/- as alleged by her to be paid to the respondent company.
24. That the development works of the project are on final stage and shortly the company is going to approach the DTCP, Haryana for grant of Occupation Certificate but due to current scenario of covid pandemic, they are not able to complete the development works of the project.
25. That in view of aforementioned facts, it is submitted that the captioned complaint deserves to be dismissed.

ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

26. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is seeking refund of the amount deposited by them along with interest. Learned counsel for the respondent on the other hand stated that 80 % of the construction work of the project is complete. Respondent is trying to complete the remaining project and will make offer of possession to the complainant at the shortest possible time. He

further stated that allowing refund at this stage will hamper progress of the project.

JURISDICTION OF THE AUTHORITY

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

I. 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 of Rewari District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

II. 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:


S. Kataria

(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:

So, 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 officer if pursued by the complainants at a later stage.

ISSUES FOR ADJUDICATION

27. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

OBSERVATIONS AND DECISION OF THE AUTHORITY

28. In light of the facts of the case and perusal of document placed on record, Authority observes as follows:

i) Respondents have admitted that a flat-buyer agreement was executed on 11.02.2015 and as per the terms of the flat-buyer agreement, possession of the flat was supposed to be delivered within 60 months from the date of agreement which means possession should have been


J. K. Khatke

delivered by 10.02.2020. However, no offer of possession has still been made even after lapse of 3 years.

iii) The learned counsel for the respondent on being asked about the status of the case, during the course of hearing, stated that about 80% of construction work is complete. The respondent in his reply has tried to take support of force majeure conditions (covid outbreak) and stated that the construction work could not be completed on time due to covid outbreak. Here the Authority observes that the deemed date of possession as per the flat buyer's agreement was 10.02.2020, whereas the covid outbreak conditions deteriorated in mid-march 2020 and the lockdown was imposed w.e.f. 20.03.2020. Therefore, this plea of the respondent that the construction works could not be completed by the deemed date of possession as per flat buyer's agreement is not tenable and the respondent promoter cannot be given any benefit on account of any force majeure conditions.

iii) The project is still not complete and admittedly occupation certificate has not been obtained from the competent Authority. Complainant cannot be forced to accept the possession of unit without an occupation certificate. When an allottee books a unit in the project, completion of the construction of the project and handover of possession of booked unit as per the terms stipulated in the buyer's agreement becomes essential. In the present case, as per clause of flat


G. Rathore

buyer's agreement, possession was supposed to be handed over within 60 months + grace periods of 90 days for applying and obtaining occupation certificate. However, since respondent has till date not applied for occupation certificate, therefore, the grace period of 90 days cannot be allowed and hence for the purpose of calculating deemed date of possession, 60 months' time shall be considered. Accordingly, the deemed date of possession be taken as 10.02.2020. However, when the respondent did not deliver the possession as per agreed terms, it became unqualified right of the allottee/ complainant whether he wishes to opt for possession of the booked unit or demand refund of the paid amount on account of default in delivery of possession as per the agreement for sale. Since it is the respondent who has failed to discharge his obligations as mentioned under section 11(4) of the RERA Act, the complainant acquires an unqualified right to withdraw from the project on account of delayed delivery of possession and demand refund of the paid amount along with interest.

iv) Further, Hon'ble Supreme Court in the matter of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors**, 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 agreement. Para 25 of this judgment is reproduced below:-

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(0) 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 on 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”.*

29. Since the promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The complainant cannot be expected to wait endlessly for taking the possession of the alleged unit for which she has paid a considerable amount towards the sale consideration. 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

G. Kothari

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."

30. 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.
31. 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. 07.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
32. 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 be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount

As such, the complainant is entitled to refund of the entire amount paid by him 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 10.60% (8.60% + 2.00%) from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

33. It is pertinent to mention here that respondent has alleged that complainant has made the payment of ₹28,51,899/- against the total sale consideration of ₹31,14,162/-. However, complainant claimed to have paid ₹28,58,549.50/- against the total sale consideration. On

perusal of statement of accounts and receipts annexed in the complaint file, it is revealed that complainant has paid the total amount of ₹ 28,58,549.50/- to the respondent company. As it is evident from the proofs of payments annexed in complaint file, Authority allows the refund of an amount of ₹28,58,549.50/- and the accrued interest will be calculated upon the same amount i.e., ₹28,58,549.50/-.

34. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants including interest calculated at the rate 10.60% till the date of this order and said amount works out to ₹ 23,85,105/- is depicted in table below:

Sr. No.	Date of Payment	Principal Amount	Interest accrued till 07.02.2023	Total
1.	2015-08-20	₹1,50,000/-	₹1,18,880/-	₹2,68,880/-
2.	2016-12-20	₹7,173/-	₹4,668/-	₹ 11,841/-
3.	2015-05-09	₹4,00,000/-	₹3,28,978/-	₹7,28,978/-
4.	2015-11-03	₹1,45,800/-	₹1,12,375/-	₹ 2,58,175/-
5.	2013-08-10	₹4,00,000/-	₹4,02,974/-	₹8,02,974/-
6.	2015-06-26	₹1,50,000/-	₹1,21,276/-	₹2,71,276/-
7.	2015-05-15	₹1,50,000/-	₹1,23,105/-	₹2,73,105/-
8.	2016-02-02	₹75,976/-	₹56,551/-	₹1,32,527/-

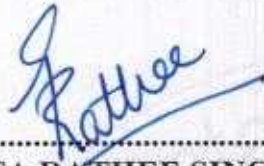
9.	2013-09-24	₹3,04,208/-	₹3,02,494/-	₹6,06,702/-
10.	2016-11-03	₹1,47,282	₹97,863	₹2,45,145/-
11	2014-04-15	₹1,84,434.75/-	₹1,72,522/-	₹3,56,956.75/-
12	2016-03-15	₹70,000/-	₹51,249/-	₹1,21,249/-
13	2014-04-15	₹1,84,434.75/-	₹1,72,522/-	₹3,56,956.75/-
14	2015-08-07	₹1,50,000/-	₹1,19,446/-	₹2,69,446/-
15	2016-09-12	₹1,48,987/-	₹1,01,246/-	₹2,50,233/-
16.	2018-03-15	₹1,90,254/-	₹98,956	₹2,89,210/-
	Total	₹28,58,549.50/-	₹23,85,105/-	₹52,43,654.50/-
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DIRECTIONS OF THE AUTHORITY

35. 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 is directed to refund the entire amount of ₹52,43,654.50/- (₹28,58,549.50/-+₹23,85,105/-) 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.

36. Complaint is, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]

