

ORDER (NADIM AKHTAR - MEMBER)

Present complaint dated 27.05.2022 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 and date of proposed handing over of possession have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Shree Homes (Phase II) by Sarvome, Sector-45, Faridabad
2.	Nature of the Project	Affordable Group Housing
3.	RERA registered/not registered	Registered
4.	Allotment letter dated	11.07.2020
5.	Builder Buyer Agreement dated	23.04.2021(BBA not annexed)
5.	Unit No.	Flat no. 1702, Tower - 11
6.	Carpet Area	645.80 sq. ft.



7.	Total Sale Consideration	26,35,200/- +GST
9.	Paid by the complainant	₹3,99,000/-
10.	Deemed date of possession	Not mentioned
11.	Offer of possession	Not Made

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

3. Complainant applied for allotment of an apartment under Affordable Group Housing Policy, 2013 in project of the respondent namely "Shree Homes" by Sarvome (A unit of JSTL), situated in Village Mewla Maharajapur, Sector – 45, Faridabad vide application no. 6662. Thereafter, vide allotment letter dated 11.07.2020 (annexed at Page 21 of complaint book), Flat no. 1702, Tower 11, having carpet area of 645.80 sq. ft. and balcony area of 100 sq. ft. was allotted to her. Builders Buyers Agreement was executed between the parties on 23.04.2021. However, original agreement was never provided to the complainant.

4. Complainant had paid an amount of Rs. 3,99,000/- till 20.08.2020 by way of cheque(annexed at Page 15 of the complaint book). Rest amount was agreed to be paid through home loan which was promised by the promoter through its approved financial institutions. Respondent promoter did not provided any copy of builder buyer agreement. Complainant is a lower

middle- class individual who was inclined to buy her first home and benefit from "Pradhanmanti Awas Yojana(PMAY) under which she may be entitled to receive a reimbursement upto 6.5% of the interest on Home Loan. Complainant was invited at promoter office on 20.07.2020 to submit application and documents for availing home loan through GIC Housing Finance. However, the loan could not be disbursed in the absence of a BBA between promoter and complainant. Meanwhile promoter assured the complainant that since delay in allotment letter and agreement is on part of promoter, so the complainant will not be charged any interest on the due payments and complainant will surely receive her due benefit of PMAY.

5. Promoter received environmental clearance on 02.02.2021. However, he concealed the fact that he was not authorised to allot the said flat to the complainant and charge any money from complainant as per Clause 7(ii) of the Affordable Housing Policy, 2013. Thereafter, complainant reached the promoter for refund of deposited money to which promoter threatened to deduct major portion of penalties and interest. Respondent promoter kept on assuring the complainant that the date of the scheme of PMAY will be extended as done in past years. However, the scheme PMAY was withdrawn by the Government on 31.03.2021. Complainant lost the opportunity to apply for PMAY scheme leading to loss of considerable saving which she may have got due to delay on part of respondent promoter.



6. On 23.04.2021 promoter entered into Agreement with complainant after paying a fees of Rs. 4,600/- but despite several requests to respondent promoter copy of agreement was not provided to complainant. On 11.12.2021, complainant received an e-mail from respondent promoter requesting to submit documents once again for loan application and to deposit further amount of Rs. 1,33,000/- along with interest of Rs. 85,592/- for which complainant was not liable to pay. All the documents were submitted by complainant in the office respondent promoter. Later, complainant came to know that promoter has been declared NPA account holder by Kotak Mahindra Bank, SIDBI and State Bank of India, therefore, none of financial institutions is neither financing his project nor providing financing facility to any of their customer who have booked any unit in his project. An email dated 04.03.2022 has been received from promoter cancelling the allotment of unit and with direction to collect amount deposited by complainant after deductions along with penalty interest. Complainant instantly approached the respondent promoter seeking clarification for cancellation but promoter failed to provide any satisfactory response. Complainant therefore, prays that relief of refund along with interest be granted.

C. RELIEF SOUGHT:

7. The complainant in her complaint has sought following reliefs:



- i. To refund the amount received from complainant along with interest since the promoter was never eligible to allot any flat to the complainant in the absence of "Environment Clearance", the promoter cheated the complainant by stating false facts;
- ii. Rs. 2,50,000/- as compensation for mental agony and harassment caused by the promoter.
- iii. Rs. 2,50,000/- as compensation for the loss of opportunity to receive the benefit of PMAY by complainant due to the delay tactics adopted by the promoter.
- iv. Rs. 1,50,000/- as compensation for the cost of litigation.

D. REPLY:

8. Details of service of notice to respondent:

Particulars	Details
Notice sent on 07.07.2022	Successfully delivered on 08.07.2022

9. Respondent company filed its reply on 23.12.2022, wherein it is stated that total cost of flat in question is Rs. 26,33,200/- plus GST. Environmental clearance was granted to respondent promoter on 02.02.2021. Complainant deliberately defaulted in making the payments though various demand letters were sent to complainant from time to time.



10. Further, both the complainant/allottee and respondent promoter are governed by Affordable Housing Policy, 2013 notified on 19.08.2013 by the Town and Country Planning Department, Government of Haryana and all its subsequent amendments as is clearly admitted by the complainant. It is important to quote Clause 5(iii)(i) of the Policy here, which is as under -

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also, an amount of Rs. 25,000/- may be deducted by the colonizer and the balance amount shall be refunded to the applicant."

After deliberate defaults in making payment by complainant, public notice in the newspaper 'The Pioneer' was issued on 02.02.2022 with a request to pay amount due within 15 days from date of publication of public notice failing which allotment shall be cancelled. Period of 15 days expired on 17.02.2022. Complainant continued her default and thus, allotment has been cancelled.

Cancellation of allotment of unit of complainant has been duly done under the confines of the Affordable Housing Policy, 2013.

11. The complainant was also re-informed about cancellation of allotment as he continued her default of non- payment of outstanding amount on 04.03.2022. Complainant was requested to complete the formalities for refund of amount deposited by her subject to deductions governed by the Affordable Housing Policy, 2013 issued by the Government of Haryana. The Policy does not allow reinstating a legally cancelled allotment.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

12. Mr. Ankit Jain, learned counsel for complainant reiterated the factual matrix of case and submitted that complainant is pressing for relief of refund along with interest as per Rule 15 of HRERA Rules, 2017.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:

13. Mr. Amrit Singh, learned counsel for respondent promoter submitted that cancellation of allotment of unit of complainant has been duly done under the Affordable Housing Policy, 2013 issued by the Government of Haryana and the Policy does not allow reinstating a legally cancelled allotment. Complainant deliberately defaulted in making payment of installments. Therefore, respondent promoter is not liable to refund amount paid by complainant or further interest upon deposited amount.



G. JURISDICTION OF THE AUTHORITY:

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

G.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- 45, Faridabad District. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

G.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.

H. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the amount deposited by him, i.e., Rs. 3,99,000/-, along with interest in terms of Section 18 of Act of 2016?

I. OBSERVATIONS OF THE AUTHORITY:

15. 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 date. 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.

16. The respondent in his oral averment stated that he has acted as per the policy of DTCP and he shall not be liable to pay refund to the complainant. Authority observes that RERA Act,2016 was enacted in the interest of allottees and promoter. Policy of Town and Country Planning Department,



Haryana cannot supersede the provision of the Act and Rules and Regulations formed there under.

17. 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 (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.”

18. 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.

19. 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. 28.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

20. The 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;

21. 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 and

after deduction of ₹ 25,000/- as per Clause 5(iii)(i) of the Affordable Housing Policy, 2013 which works out to be ₹ 4,96,191/- as per details given in the table below -

Sr. No.	Principal Amount	Interest @10.60% till 14.02.2023	Amount to be refunded	Total amount to be refunded after deduction of ₹ 25,000/-
1	₹ 3,99,000/-	₹ 1,22,191/-	₹ 5,21,191/-	₹ 4,96,191/-

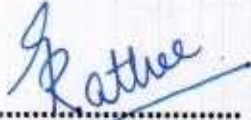
J. DIRECTIONS OF THE AUTHORITY:

22. 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 ₹ 4,96,191/- 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.

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



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

