



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	802 of 2022
Date of filing:	19.05.2022
Date of first hearing:	21.07.2022
Date of decision:	05.07.2023

1. Manisha D/o Sh. Ashok Kumar Hasija
2. Ashok Kumar Hasija s/o Sh. Bhoj Dutt
3. Kanta Arora W/o Sh. Ashok Kumar Hasija
R/o House no. 212,
Sector 15, Sonapat (Haryana) Pin 131001

...COMPLAINANT

VERSUS

M/ Ansal Properties & Infrastructure Ltd,
Office: 115 Ansal Bhawan, 16 K G Marg
New Delhi 110001

...RESPONDENT

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

Present: Adv Poonam, learned counsel for the complainants through video conference.

Adv Sunny Tyagi, learned counsel for the respondent through video conference.


ORDER (NADIM AKHITAR - MEMBER)

1. Present complaint has been filed on 19.05.2022 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 fulfill 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Phase-2, Sonipat.
2.	Flat no.	0102-26-0601
3.	Area	1610 sq. ft.
4.	RERA registered/not registered	Registered / RERA-PKI-SNP-173-2019



5.	Date of booking	26.09.2011
6.	Date of allotment	No date mentioned in the allotment letter.
7.	Date of builder buyer agreement	05.01.2012
9.	Deemed date of possession (42+6)	05.07.2015 Subject to clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project and the said flat as far as possible within 42 months, with an extended period of 6 months from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later.
10.	Basic sale price	Rs. 35,46,250/-
11.	Amount paid by complainant	Rs. 32,74,374/-
12.	Offer of possession	No offer



B. FACTS OF THE COMPLAINT

3. That the case of the complainant is that they booked a flat in respondent's residential project "Green Escape Apartments- Phase 2, Sonipat on 26.09.2011. After the said booking, the respondent issued an undated allotment letter to the complainants thereby mentioning the total sales price of the flat as Rs. 35,46,250/- has been mentioned.
4. Complainants entered into builder buyer agreement with the respondent on 05.01.2012. As per clause 5.1 of the flat buyer agreement, respondents were to deliver possession of the allotted flat within a period of 42 months from the date of execution of floor buyer agreement with a grace period of 6 months.
5. As per allotment letter the total consideration of the said flat was Rs. 35,46,250/- Against said amount, complainants have paid an amount of Rs. 32,74,375/-.
6. That on 10.04.2012 respondent shared letter relating to cost of flat certificate in which the total cost of the unit was mentioned as Rs. 35,81,250/-.
7. That, cause of action first arose on 26.09.2011 when booking application form was filed by the complainants, the cause of action again arose when the allotment letter was signed and the third time cause of action arose



when the respondent failed to handover the possession on due date 05.01.2016. The promoter cannot indefinitely defer the delivery of possession after receiving the substantial amount. The promoter is duty bound to deliver the possession within reasonable time.

8. That, further because of inordinate delay in completion of the project the respondent may kindly be directed to refund the deposited amount, along with the prescribe rate of interest, on amount deposited from their respective deposits till realization.
9. That, no compensation is sought by the complainant in the complaint from the Hon'ble Authority and the complainant reserves the right to approach the adjudicating officer to claim the right of the compensation.

C. RELIEF SOUGHT

10. In view of the facts mentioned above, the complainant prays for the following relief(s):-
 - a) Pass an appropriate award directing the respondent to provide the refund of the paid amount of Rs. 32,74,375/-
 - b) Pass an appropriate award directing the respondent to pay interest as per Rule 15 to the complainant for his hard earned money invested on the said unit which as per list (DDD) is calculated as Rs. 23,76,983/- till the date of filing of the complaint.



- c) Any other relief/direction which the Hon'ble Authority deems fit The respondent be further directed to pay the cost and litigation charges.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 11.10.2022 pleading therein:

11. That present complaint is not maintainable as this Authority has no jurisdiction to entertain this complaint as the complainant has not come with clean hands and has concealed the material fact from this Hon'ble Authority.
12. Builder buyer agreement was executed much prior to coming into force of the RERA Act and was not executed under the provisions of the RERA Act.
13. That the Real Estate (Regulation and Development) has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. At this stage it is pertinent to submit that any new enactment of laws are to be applied prospectively as held by the Hon'ble Supreme Court in no of cases, in particular, in the matter of '**CIT vs. Vatika Township (P) Ltd**', it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact, it is well settled



law that the retrospective operation of statute may introduce such element of unreasonableness as was held in *State of WB vs. SC Bose (1954SCR 5787)* and *Express Newspapers P Ltd vs. UOI /1959 SCR 12*. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively. That it is further respectfully submitted that, recently in the matter of *Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI &Ors.* The Hon'ble High Court of Judicature at Bombay, held that the provisions of RERA are retroactive in nature and not retrospective.

14. That the complainant has not filed the present complaint in proper form and the same is not as per the provisions of The Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of „Complaints), Regulations, 2018. That the respondent started the construction of unit on 16.4.2022 and the super structure of the tower has been completed and only finishing work is pending. But the construction work is presently stopped and it will take nearly one year time for completion after commencement of work. The delay in completion of construction work is due to financial crunch and reasons beyond the control of the respondent.
15. That in the reply Respondent denies each and every averment or allegation made by the complainant, in the complaint.



E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

16. During oral arguments learned counsel for the complainant reiterated arguments as mentioned at Para 3-8 of this order. I.d. counsel for the respondent reiterated para 10-14 mentioned in this order.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

I. JURISDICTION OF THE AUTHORITY

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

Territorial Jurisdiction

As per notification no. 1/92/2017/TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning



area Sonipat, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

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:

Section 11(4)(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;

Section 34-Functions of the Authority

34(1) of the Act provides 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 learned Adjudicating Officer if pursued by the complainants at a later stage

(ii) One of the averments of respondents is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming



into force of RERA Act, 2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd.** Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act



and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd** it has been settled that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, therefore this Authority has complete jurisdiction to entertain the captioned complaint. In the instant case, however, relief of refund has been sought.

In this regard reference is made to section 18 of the RERA Act, 2016 which deals with " Return of amount and compensation". Section 18 of RERA Act, 2016 is reproduced below:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the



promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”

Section 18 which is covered under chapter 2 of the RERA Act (Functions and duties of the promoter) provides for an obligation on the promoter in case the promoter fails to complete or unable to give possession of an apartment plot and building as per agreement for sale.

In the present complaint as per clause 5.1 of the BBA the promoter was obligated to handover the possession of the unit within 42 months from the execution of BBA i.e. by 05.07.2015. However, the promoter failed to deliver the possession of the unit within time stipulated in the BBA. Further, as admitted by the respondent itself in its reply the unit in question is still not complete and is likely to take a year's time for completion after commencement of construction work. Construction work is presently stopped. On perusal of reply the Authority observes that the respondent started the construction of unit on 16.04.2022 only whereas the complainant filed the present complaint on 19.05.2022 expressing their intention to not to continue with the project. The respondent has taken a defence that delay in construction has been due to financial constraints and reasons beyond the control of the promoter w.r.t financial constraints. Authority observes that the complainant had paid an amount of Rs. 32,74,374/- out of the BSP of Rs. 35,46,250/- which is 92.33 % of the BSP, whereas the construction of the unit was started on



16.04.2022. Therefore, this plea of financial crunch is not tenable, rather the Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred if the money paid by the allottees was misappropriated by the respondent/promoter instead of using it towards construction of the project. With respect to the plea of reasons beyond control of promoter, it is very general statement with no support, therefore, not tenable. In these circumstances where the flat buyer agreement was signed way back in the year 2012 and the projects are not complete nor likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, the complainant would be entitled to relief of refund as he cannot be forced to wait for completion of project. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.



The general law of the land will regulate such situation and not provision of the agreement.

(iii) Factual position reveals that respondents are not in a position to deliver possession of booked unit. As per agreement for sale possession of the unit was to be handed over in 42 months from the date of executing builder buyer agreement i.e. 05.07.2015. In the relief clause at page 13 of the complaint, complainant had claimed refund of Rs. 32,74,375/- however in his pleadings he has stated that he had paid an amount of Rs 30,76,863/- to the respondents and receipts of this amount only is available on record. Amount of Rs. 197511/- has been taken from ledger accounts annexed at page 59 of the complaint. Therefore amount of Rs. 32,74,374/- is liable to be refunded. Complainant/allottee, in exercise of their right under the provisions of this Act has demanded refund of the amount paid by him. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest, at such rate as may be prescribed. Furthermore, respondent in his reply has not placed on record any document to show whether occupation certificate has been applied or not and if yes then what is the status of the occupation certificate application. In these circumstances it is presumed that respondent has not received occupation certificate till date.



(iv) Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" 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 terms agreed between them. Para 25 of this 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.

(v) This project is already delayed by several years. It is still not complete and admittedly respondents are not in a position to complete the project



within reasonable time, therefore, Authority finds it to be fit case for allowing refund in favor of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. 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".

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."

(vi) 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. 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

(vii) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

"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;

(viii) Accordingly, respondents will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Complainant has sought refund of Rs. 32,74,375/- however proof of an amount of Rs. 32,47,374/- have been annexed. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ Rs. 32,47,374/- along with interest at the rate 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 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.70% till the date of this order and said amount works out to ₹31,55,237 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 05.07.2023
1.	197511	1/30/2015	178276

2.	140373	9/26/2011	176988
3.	197511	5/1/2014	194140
4.	196524	11/24/2011	244386
5.	136850	12/21/2011	169096
6.	196523	1/24/2012	240871
7.	199350	2/29/2012	242232
8.	287100	4/4/2012	345912
9.	136850	5/2/2012	163760
10.	362577	5/21/2012	431855
11.	48300	7/4/2012	56906
12.	88550	7/4/2012	104327
13.	200213	8/26/2016	147025
14.	228815	4/11/2017	152735
15.	230000	11/24/2020	64323
16.	229816	12/9/2020	63261
17	197511	01/15/2015	179144
Total	3274374		3155237

II. DIRECTIONS OF THE AUTHORITY

19. 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) Respondents is directed to refund the entire amount of ₹ 64,29,611/- to the complainant.

(ii) A period of 90 days is given to the respondents 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. Disposed of. File be consigned to record room and order be uploaded on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]