



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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| Complaint no.: | 183 of 2023 |
| Date of filing: | 19.01.2023 |
| Date of first hearing: | 29.03.2023 |
| Date of decision: | 29.03.2023 |

1. Manpreet Singh s/o Kulwant Singh
 2. Manjit Kaur w/o Manpreet Singh
- Both R/o VPO Laha, Tehsil Naraingarh, District Ambala
At present R/o House no.801, Sector-33B Chandigarh.

....COMPLAINANTS

VERSUS

M/s Samar Estates Pvt. Ltd. through its managing Director Vinod Bagai
Registered office at #87, Sector-7, Panchkula.

....RESPONDENT

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

Date of Hearing: 29.03.2023

Present: - Mr. Vishal Madaan, Advocate, Counsel for the
 complainants
 None for the respondent

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

Present complaint dated 19.01.2023 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 possession, delay period, if any, have been detailed in following table:

| S. No. | Particulars | Details |
|--------|--------------------------------|--|
| 1. | Name of project | Ess Vee Apartment, Sector-20, Panchkula |
| 2. | Nature of the Project | Residential Group Housing Project |
| 3. | RERA registered/not registered | Registered vide registration no. HRERA-PKL-54-2018 and suspended by HRERA, Panchkula vide order dated 28.01.2020 |
| 4. | Allotment/booking dated | 02.06.2011 to original allottee Transferred to complainants on 20.06.2012 |
| 5. | Unit No. | G-303 |

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| | | |
|-----|---------------------------|--|
| 6. | Unit Area | 1725 sq. ft. |
| 7. | Builder buyer agreement | 20.06.2012 with complainant |
| 8. | Payment plan | Construction link |
| 9. | Basic Sale Consideration | ₹67,70,000/- as per BBA dated 20.06.2012 |
| 10. | Paid by the complainant | ₹55,68,196/- (as mentioned in pleadings) |
| 11. | Deemed date of possession | June 2015 |
| 12. | Offer of possession | Not offered |

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

3. In this case, original allottee, Mr. Gurmeet Singh, father-in-law of complainant no.1 and father of the complainant no.2 booked 3BHK flat bearing no.303 measuring 1725 sq. ft. in the project of the respondent namely, "Ess Vee Apartment", Sector-20, Panchkula and paid ₹6,77,000/- as booking amount on 02.06.2011. Original allottee, Mr. Gurmeet Singh has transferred his booking in the name of complainants and respondent had executed flat buyer agreement dated 20.06.2012 in favour of complainants. Total sale consideration of the flat was fixed as ₹67,70,000/- against which complainants have paid ₹55,68,196/- till the year 2015. Copies of receipts have been attached at page no.21-29 of the complaint book. As per clause 32 of the flat buyer agreement dated 20.06.2012, respondent was obliged to hand over possession of the flat within 36 months from the date of

commencement of construction. The project was launched in October 2007 and construction was also started on the same time. Even if 36 months may be taken from the execution of the flat buyer agreement dated 20.06.2012, time period to complete the project expired in the June 2015. Till date, neither possession has been handed over nor project is complete. Therefore, complainants prayed for refund along with interest on the ground that respondent has not completed the project even after lapse of 11 years from the date of booking and it is not likely to be completed in near future due to mismanagement.

C. RELIEF SOUGHT:

4. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund of the paid amount of ₹55,68,196/- along with interest as prescribed Under section 18(1) of HRERA Rules,2017;
 - ii. Any other relief which is deemed fit by this Hon'ble Authority.

D. REPLY:

5. Despite successful service of notice to the respondent on 24.01.2023, respondent has not filed its reply nor any justified reasons have been given for delay in handing over possession. Today also, none has

appeared on behalf of respondent. Hence, the Authority decides to proceed with this matter ex-parte.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

6. At the outset, it has been argued by learned counsel for complainants that the original allottee had booked an apartment bearing no. G-303 measuring 1725 sq. ft. in the project namely "Ess Vee Apartment", Sector-20, Panchkula of the respondent on 02.06.2011. Total sale consideration of the flat was ₹67,70,000/- against which the complainant had paid an amount of ₹55,68,196/-. Assurance was given to the complainant that actual and complete possession of the apartment would be delivered up to June 2015. The respondent company has not completed the project till date. The complainants have constantly tried to communicate with respondent with regard to possession and status of the project but the complainant could not succeed in establishing communication with respondent company. Already 11 years have been passed from the date of booking, no work has been carried out at the site of said project.

7. Aggrieved by the default on the part of respondent to fulfil his obligations, the complainants have filed present complaint seeking refund of entire paid amount along with interest. Learned counsel for complainants stated that since director of the respondent company is confined in Jail in

some other cases, no one had to represented them since two years and also the project is going to auctioned by the orders passed by Hon'ble High Court, his case may be decided on this date so that complainants claim be also satisfied with other allottees from sale/auction proceeds of the project.

F. ISSUES FOR ADJUDICATION:

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

G. OBSERVATIONS OF THE AUTHORITY:

8. It has been observed that despite successful service of notice, none has appeared on behalf of respondent nor reply has been filed. It is also observed that the respondent had not been appearing in other complaint matters related to the real estate project from almost last 2 years. Since complainants requested the Authority to decide this case in terms of earlier decided cases as the project is going to be auctioned soon, Authority observes that in such circumstances where the respondent promoter is repeatedly defaulting in appearing before the Authority in numerous cases, there is no point of granting further adjournment and therefore the Authority in the interest of justice decided to adjudicate the matter today only.

9. The Authority had already allowed refund to various allottees of the same project i.e. 'Ess Vee Apartments' in bunch of cases earlier decided

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on 09.10.2019 with lead case bearing Complaint No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd., due to the following reasons: -

- i) Promoter while seeking registration of the project had disclosed that first phase of the project which was earlier scheduled to be completed in December, 2009 will be completed by December, 2019, second phase of the project which was earlier scheduled for completion in August, 2014 would be completed by March, 2019 and third phase of the project which was earlier scheduled to be completed in December, 2015 would be completed by December 2019. However, the promoter inspite of seeking several adjournments has not been able to arrange funds for further investment in the project and therefore it is unlikely for him to complete the project and handover possession to the allottees on the time so projected;
- ii) Promoter has mismanaged his finances and due to non-payment of loans raised from the banks and financial institutions has already incurred huge interest liability;
- iii) That promoter's interest liability will also be huge towards allottees on account of already incurred delay of 4 to 10 years in completing the project and delivering possession. The allottees who have lost faith in the promoter and have been waiting of possession of

their apartments for the last more than 4 to 10 years are unlikely to pay more money to the respondent.

iv) The Town and Country Planning Department has already clarified that it cannot take over the project for completion and the department is only concerned with recovery of arrears of ₹98.65 lacs on account of Internal Development Charges.

v) That the allottees of the project have also expressed their inability to join together for forming an association for the purpose of taking over and completing the project.

10. Even after the passage of more than three and half years, there has been no change in circumstances and status of the project and the project is still unlikely to see the light of the day. Further, Hon'ble Punjab and Haryana High Court had passed order dated 28.03.2023 in CWP no.26539 of 2021, operative part of which is reproduced below:

"Learned counsel for the respondents has informed the Court that in pursuance to the order passed by this Court on 19.01.2023, auction of the property is fixed for 17.04.2023. A public advertisement dated 19.03.2023 has also been issued in this regard. Counsel, however, prays for an adjournment for 11.04.2023."

Thus, Authority is of the considered view that the complainants in the captioned complaint are at parity with other complainants/allottees who have been granted the relief of refund and are also entitled to refund. Complaint deserves to be allowed in terms of the decision already rendered by this

Authority in lead case No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd. Furthermore, Hon'ble Supreme Court in the matter of **"Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others"** has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant 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."

11. 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 non-delivery of possession of the unit on agreed date. Thus, in terms with the judgment and in view of above facts and records placed, Authority finds it to be fit case for allowing refund in favour of complainants. 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. 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 (NCLR) 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”.

12. 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. 29.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

13. 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;

14. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹55,68,196/- 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 at the rate of 10.70% till the date of this order and said amount works out to ₹1,19,05,783/- as per detail given in the table below:

| S.No. | Principal Amount | Date of payment | Interest Accrued till 29.03.2023 | TOTAL |
|-------|------------------|-----------------|----------------------------------|--------------|
| 1. | ₹6,77,000/- | 02.06.2011 | ₹8,57,162/- | ₹4,92,482/- |
| 2. | ₹8,00,000/- | 02.08.2011 | ₹9,98,588/- | ₹7,00,826/- |
| 3. | ₹2,15,500/- | 08.09.2011 | ₹2,66,657/- | ₹15,05,583/- |
| 4. | ₹6,77,000/- | 24.10.2011 | ₹8,28,583/- | ₹17,98,588/- |
| 5. | ₹6,77,000/- | 24.02.2012 | ₹8,04,172/- | ₹7,48,350/- |
| 6. | ₹6,50,000/- | 09.06.2012 | ₹7,51,902/- | ₹4,82,157/- |

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|--------------|---------------------|------------|---------------------|-----------------------|
| 7. | ₹2,00,000/- | 06.07.2012 | ₹2,29,772/- | ₹6,56,041/- |
| 8. | ₹3,48,969/- | 21.07.2012 | ₹3,99,381/- | ₹15,34,162/- |
| 9. | ₹3,56,114/- | 15.03.2014 | ₹3,44,712/- | ₹14,01,902/- |
| 10. | ₹3,49,368/- | 18.07.2014 | ₹3,25,380/- | ₹14,81,172/- |
| 11. | ₹3,48,245/- | 27.12.2014 | ₹3,07,796/- | ₹4,29,772/- |
| 12. | ₹2,69,000/- | 26.06.2015 | ₹2,23,482/- | ₹6,74,748/- |
| Total | ₹55,68,196/- | | ₹63,37,587/- | ₹1,19,05,783/- |

H. DIRECTIONS OF THE AUTHORITY:


15. 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 ₹1,19,05,783/- 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.

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


.....
NADIM AKHTAR
(MEMBER)


.....
DR. GEETA RATHEE SINGH
(MEMBER)

