



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	62 of 2021
Date of filing:	03.02.2021
Date of first hearing:	10.03.2021
Date of decision:	13.04.2023

Smt. Santosh Verma,
w/o Sh. Surender Verma,
r/o 602, Guru apartment,
Sector-14, Rohini,
NEW DELHI -110085

....COMPLAINANT

VERSUS

M/s Apex Buildtech Ltd.,
611, 6th Floor, Best Sky tower,
Netaji Subhash Place, Pitampura
DELHI- 110034

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present through video call: Sh. Birender Singh, learned counsel for the complainant
Sh. Ketan Antil, learned counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 03.02.2021 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 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	Apex Green, Sonapat
2.	RERA registered/not registered	unregistered
3.	Date of payments	23.04.2010 – 30.08.2010



4.	Pent house area	3400-3500 sq.ft.
7.	Date of allotment	24.04.2010(as per Respondent for a plot)
8.	Date of builder buyer agreement	Not executed
9.	Deemed date of possession	Cannot be ascertained
10.	Basic sale price	Not disclosed
11.	Amount paid by complainant	₹55,00,000/-
12.	Offer of possession	10.07.2017(as per Respondent of plot bearing no. G-51)

B. FACTS OF THE COMPLAINT

3. That the case of complainant is that she has booked a residential Pent House, measuring 3400-3500 Sq.ft. in group-housing residential colony of the respondent namely "Apex Greens", situated at Sonepat. Further, complainant had paid an amount of Rs.55,00,000/- to respondent-promoter between 23.04.2010 and 30.08.2010 vide six cheques. Details of the paid amount are provided at page no. 2 of the complaint book and

had

copy of receipts of paid amount issued by respondent-promoter are annexed as Annexure - 'B' at page no. 7-11.

4. That the complainant has also alleged that while relying upon statements given by respondent, she had invested a huge amount of fifty five lakhs for a pent house in respondent project but respondent has miserably failed to handover the possession of the booked pent house rather even after delay of almost thirteen years and respondent-promoter has failed to even executed the builder buyer agreement till date, meaning thereby, till date there is no agreement for sale between the parties wherein the date of delivery of possession might have been stipulated. The promoter cannot indefinitely defer the delivery of possession after receiving huge amount of Rs. 55 lacs from the complainant. The promoter is duty bound to deliver the possession within reasonable time.
5. That in year 2018, complainant received a allotment letter dated 24.04.2010, stipulating that the flat No.G-51 is allotted to him in the said project 'Apex Greens, Sonapat', which is factually incorrect and was issued with an intention to cheat him and the said letter is annexed as Annexure - 'G' at page no.12 of the complaint book.
6. That further because of inordinate delay in completion of the project the respondent may kindly be directed to refund the amount deposited,



alongwith the prescribe rate of interest, on amount deposited from their respective deposits till realization.

7. That, due to delay in possession, the respondent be further directed to pay the cost and litigation charges. Hence, present complaint has been filed.

C. RELIEF SOUGHT

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-

- a) The respondent may kindly be directed to refund the amount deposited with the respondent, alongwith the interest @ 24% per annum, on amount deposited from their respective deposits till realization, in the interest of justice.
- b) 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 23.01.2023 pleading therein:

9. That present complaint is not maintainable because respondent-promoter has received an occupation certificate on 07.07.2017 from the Department of Town and Country planning vide Memo No. ZP-158/AD (RA)/2017/15742 which is much prior to coming into force of RERA.



10. That the respondent also alleged that complainant has concealed material facts of the matter as complainant had agreed to purchase the flat bearing noG-51 from the respondent. Further a letter dated 24.04.2010 was issued to the complainant in the year 2010 itself, and it is the complainant who has filed this complaint after 11 years of booking.
11. Respondent has issued several reminders to the complainant to take possession, but complainant never come forward to take possession of the flat. Respondent claims to have undertaken some correspondence with complainant even in regard to change of certain building plans vide letter dated 21.10.2015.
12. The respondent have also annexed a copy of offer of possession letter dated 10.07.2017, annexed as Annexure R-2 . They have also annexed a copy of postal receipt of the same, and the same is annexed as Annexure R-3. Further a reminder letter dated 05.11.2017, AnnexureR-4 was also issued by the respondent. In brief respondent claims that complainant had never booked any pent house rather a flat bearing No.G-51 was booked by the complainant and same was allotted to the complainant and an offer of possession of the same flat was made to the complainant in the year 2017.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT



13. During oral arguments learned counsel for the both the parties have reiterated arguments as mentioned in Para 3-12 of this order. Further, complainant has argued that he had filed an FIR against the respondent-promoter for committing fraud with him in the Civil Court, Sonipat, which is still pending.

F. ISSUES FOR ADJUDICATION

14. Whether the complainant is 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

15. After going through rival contentions and available records, Authority observes and orders as follows:
- i. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the project in question as respondent has taken Occupation Certificate on 07.07.2017 i.e. prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that relationship of builder and buyer 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 agreement. 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 terms of allotment, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue with regard to obtaining Occupation Certificate prior to coming into force of the RERA Act, 2016 was already dealt in judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 whereby it has already been held 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, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Moreover, the RERA Act of 2016 came into force in entirety on 01.05.2017 whereas the respondent promoter obtained the Occupation Certificate on 07.07.2017. Therefore this Authority has complete jurisdiction to entertain the captioned complaint.



ii. Further, complainant has alleged that he had booked a pent house for which entire amount of ₹ 55 lacs stands paid by her in the year 2010 itself. The fact with regard to the payment of ₹ 55 lacs has not been denied/ disputed by the respondent. However, no builder buyer agreement has been executed between the parties till date. In absence of builder buyer agreement it cannot rightly be ascertained as to when the possession of said unit was due to be given to the complainant. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, complainant had made first payment for the pent house on 23.04.2010 and taking a period of 3 years from the date of first payment i.e 23.04.2010 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 23.04.2013. In present situation, respondent failed to deliver the possession of booked plot even after a lapse of more than nine years.

iii. Respondent has also averred that vide letter dated 24.04.2010 respondent had allotted a flat bearing no. G-51 to the complainant and possession of the same was also offered on 10.07.2017 but complainant has never come forward to take the possession. Therefore, respondent was never at fault. Further, respondent has stated that he is still holding the possession of the flat no. G-51 with him and he is ready to give possession of the same. However, complainant's case is that she had booked a pent house admeasuring 3400-3500 sq.ft in respondent project and had paid an amount of Rs. fifty five lakhs for the same in the year 2010. However, respondent after receiving said huge amount has not executed builder buyer agreement with the complainant till date. Further, complainant stated that after delay of almost eight years, in the year 2018, respondent forcefully delivered by hand an allotment letter dated 24.04.2010 for a flat bearing no. G- 51 with an intention to cheat her. In response of the same, complainant has also filed an FIR against the respondent-promoter for committing fraud with her in the Civil Court, Sonipat, which is still pending. Furthermore, complainant has referred to Annexure A-1,2 and 3 of the application dated 16.01.2023, wherein list of allotted flats, pent house and list of directors of the company had been placed on record, wherein value of each flat was Rs. Twenty five lakh, however the respondent claims to have offered the same



flat to complainant for Rs. Fifty five lakhs, which raised the doubt with regard to the claims made by respondent. The Authority is not convinced with the averments made by respondent as the flats in the real estate project were sold to other allottees for 25 lacs, whereas they claim to have sold the same to the complainant who allegedly is a relative of one of the then directors, for ₹ 55 lacs.

Further, the complainant during hearing proceeding had also alleged that respondent-promoter had illegally allotted all the pent houses to his own family members so as to evade his obligation to allot her the promised pent-house. In light of these facts, complainant prayed that either the possession of the booked pent house alongwith permissible delay interest may be awarded or refund of paid amount with permissible interest be allowed. In view of above stated facts, Authority deems appropriate to refer to order dated 24.01.2023 passed by the Authority in the captioned complaint. Operative part of the said order is reproduced below for the ready references:

“2.***


3.***

4. *After hearing both parties and going through records, Authority observes that complainant has challenged the authenticity of the allotment letter dated 24.04.2010. He argued that said letter is forged and it was never sent to him in the year 2010 rather the same was handed over to him in the year 2018 by the guard of his society. After receiving the same complainant was shocked to see that respondent had forged the allotment and had allotted him the flat rather than a pent house which was promised. To substantiate his contention, he also*

referred to Annexure 1,2 and 3 of the application stated in para 2 of this order, whereby complainant has clearly shown that flats constructed in the respondent project are for Rs. 25 lacs each only but respondent after receiving amount of Rs. Fifty five lakh in the year 2010 has offered possession of a flat instead of the booked pent house in the year 2018. Respondent counsel objected the same and stated that flat was offered to the complainant way back in the year 2010. However, no postal receipt with the said letter has been attached by the respondent.

5. Authority directs the respondent to submit the postal receipt of the said allotment letter dated 24.04.2010 to verify the authenticity of the same. Further, complainant at para 2 of this order has stated that he had filed an FIR against the respondent -promoter for committing fraud upon him. Copy of the same is also not placed on record. Authority is of the view that these documents are necessary to decide the matter. Therefore, complainant is directed to submit a copy of said FIR filed against the respondent-promoter."

Authority vide above mentioned order has given opportunity to both the parties to submit necessary documents to prove their cases. In compliance of the directions issued by the Authority, complainant has filed a copy of FIR registered against respondent-promoter for committing fraud upon him. However, respondent even after availing ample opportunity has failed to file the postal receipt proving delivery of the allotment letter dated 24.04.2010 issued by the respondent-promoter with regard to allotment of flat no. G-51 in Real estate project namely "Apex Green". Furthermore, complainant has placed on record all the necessary documents to prove his case such as receipts of the paid amounts of Rs. 55 lacs; list of allotted flats to the allottees along with their prices for sale,



which was approximately 25 lacs for each flat. In the light of the above facts, inference could be drawn that payment of 55 lacs was not for purchasing a flat instead was for a pent house, which have been admittedly constructed by the respondent. There has already been delay of almost thirteen years have occurred since the payment was made to the respondent in the year 2010 and even now as stated by the learned counsel for respondent during argument, respondent has no pent house to offer to the complainant even today. After such inordinate delay, innocent allottees who have invested this hard earned money cannot be made to wait endlessly for grant of possession.

16. 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 agreed state. 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.

17. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Though the complainant has sought that interest be allowed @24% however same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed under Rule 15 provides for the prescribed rate of interest. Definition of the term 'interest' is defined under Section 2(z a) of the Act which is as under:

2(z a) "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;

Rule 15 of HRERA Rules, 2017 is reproduced herein below for reference:

“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”.

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. 13.04.2023 is 8.7%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.7%.

20. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹ 55,00,000/- 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 10.7% (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 10.7% till the date of this order and said amount works out to ₹75,67,685/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 13.04.2023
1.	₹10,00,000/-	23.04.2010	₹1389241/-
2.	₹10,00,000/-	28.04.2010	₹1387775/-
3.	₹10,00,000/-	03.06.2010	₹1377222/-
4.	₹5,00,000/-	03.06.2010	₹688611/-
5.	₹10,00,000/-	16.06.2010	₹1373411/-
6.	₹10,00,000/-	30.08.2010	₹1351425
	₹55,00,000/-		₹75,67,685/-



7.	Total payable amount by the respondent	₹1,30,67,685/-
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21. The complainant is seeking cost and litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. &ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

22. 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 principal amount of ₹ 55,00,000/- along with interest of ₹ 75,67,685/-, which total come to be ₹ 1,30,67,685/- 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.

23. **Disposed of.** File be consigned to record room after uploading of this order on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]