



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	505 of 2022
Date of filing:	30.03.2022
Date of first hearing:	11.05.2022
Date of decision:	25.04.2023

Om Prakash s/o Ram Prasad
R/o V. P. O Pakashma
Tehsil Sampla, Distt. Rohtak, Haryana

....COMPLAINANT(S)

VERSUS

Housing Board Haryana
Office: Plot no. C-15, Awasthawan,
Sector-6, Panchkula- 134109

....RESPONDENT (S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Mr. Sudeep Singh Gahlawat, learned counsel for the complainant

None for the respondent

ORDER (NADIM AKHTAR-MEMBER)

Present complaint dated 30.03.2022 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.

2. **UNIT AND PROJECT RELATED DETAILS:**

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 the following table:

S.N.	Particulars	Details
1.	Name of the project	Flat for serving//ex-defence and para, military personnel of Haryana
2.	Location of the project	Sampla, Distt Rohtak
3.	Nature of the Project	Multi-storied flats
4.	Name of the respondent/ promoter	Housing Board Haryana



5.	RERA Registered/not registered	Un-registered
6.	Categories of Houses	Type-A
7.	Allotment letter	12.02.2015
8.	Total Sale Consideration	16,90,000/-
9.	Amount paid by the complainants	₹4,23,000/-
10.	Offer of Possession	NOT MADE

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

3. That complainant had applied for allotment of respective categories of flat i.e., "Type A" category of houses in residential group housing project of respondent situated at Sampla, District, Rohtak for which he had taken a loan of ₹1,69,000/- from Haryana Gramin Bank, Branch Rohtak for making the payment to the respondent.
4. That the respondent made the draw of lots on 29.12.2014 and the complainant was allotted a flat of type-A at Sampla, Distt Rohtak vide provisional registration number 362/Sampla/ T-A/HGB and final registration no. 187.



5. That the letter of allotment dated 12.02.2015 was issued to the complainant. Copy of the letter is annexed as Annexure P-2.
6. That the complainant made a payment of instalment of ₹ 2,54,000/- to the respondent vide DD no. 048341 dated 04.03.2015 issued by Haryana Gramin Bank. A copy of demand draft is annexed as Annexure P-3.
7. That the respondent sent a letter dated 08.02.2018 to the complainant, informing that due to some technical reasons, the flat could not be constructed at Sampla, District Rohtak and to avoid further delay in construction/ allotment of flats and complainant was asked to take allotment of flat at Jhajjar instead of Sampla, District Rohtak. It was further asked to the complainant that if he does not want an alternate flat at Jhajjar, he may opt for the refund of the amount deposited which would be refunded with interest as per policy of Housing Board Haryana. Copy of the letter dated 08.02.2018 is annexed as Annexure P-4.
8. That pursuant to the letter dated 08.02.2018 sent by the respondent, the complainant has sent his request on 19.02.2018 through registered post to the respondent for refund of his deposited amount along with interest. Copies of letter dated 19.02.2018 and postal receipt are annexed herewith as Annexure P-5.
9. That even after passing of a period of four years, the respondent has not refunded the amount to the complainant till date.



10. That respondent is bound by promise made and is liable to refund the amount of ₹4,23,000/- alongwith interest upto date.
11. That since the respondent could not develop the project in time and handover physical possession of the flat, complainant is entitled for refund of the amount along with interest.

RELIEF SOUGHT

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

REPLY SUBMITTED BY THE RESPONDENT:

13. No reply has been filed by the respondent in the case. Vide order dated 19.01.2023, respondent was given the last opportunity to file reply within four weeks and supply an advance to the complainant. Today, none appeared on behalf of the respondent and no reply has been filed by the respondent. Therefore, Authority decides to strike off their defence and proceed the case ex-parte.

ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments, learned counsel for the complainant reiterated the same as stated in the writing. He prayed for the relief of refund along with interest before the Authority.



OBSERVATIONS AND DECISION OF THE AUTHORITY

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

i) It is an undisputed fact that complainant had booked a flat in the project of the respondent and subsequently respondent had issued the allotment letter on 12.02.2015. Complainant has paid the amount of ₹ 4,23,000/- to the respondent till date.

ii) Since the flat could not get constructed at Sampla, District Rohtak due to some technical reasons, respondent had asked the complainant to choose an alternate flat at another project or opt for the refund of the amount deposited by him. Thereupon, complainant has requested vide letter dated 19.02.2018 for refund of the deposited amount along with interest. But respondent has not refunded the deposited amount even after lapse of 4 years.

iii) There has been an inordinate delay of more than 4 years, but still the respondent has neither refunded the amount to the complainant nor completed the project within time. Therefore, the complainant is entitled for refund of the amount along with interest in terms of section 18 of RERA Act read with Rule 15 of HRERA Rules 2017.



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”.

16. 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., 25.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

17. The term ‘interest’ is defined under Section 2(za) 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;

18. 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 ₹ 4,23,000/- 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 10.70% (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 ₹ 3,71,038/- as per detail given in the table below:

Sr. No.	Date of Payment	Principal Amount	Interest accrued till 25.04.2023	Total
1.	20-01-2015	₹1,69,000/-	₹1,49,519/-	₹3,18,519/-
2.	04-03-2015	₹ 2,54,000/-	₹2,21,519/-	₹4,75,519/-
	Total	₹4,23,000/-	₹3,71,038/-	₹ 7,94,038/-


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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) Respondent is directed to refund the entire amount of ₹7,94,038/- 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.
20. 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]