



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**Date of decision:** 01.06.2023

Name of Builder	Dhingra Jardine Infrastructure Pvt.Ltd
Project Name	CALIFORNIA COUNTRY, Sector 80-Faridabad

Sr. No.	Complaint No.	Complainant
1.	521 of 2022	Mr. Prabir Ray, S/o Sh. Sudhir C. Ray R/o Flat no. S-E /38, 1 <sup>st</sup> floor, NIT Faridabad, Haryana
2.	496 of 2022	Mr. Pradeep Ray, S/o Sh. Sudhir C. Ray, R/o flat no. S/e 38, 1 <sup>st</sup> floor, NIT, Sector 80, Faridabad, Haryana

**VERSUS**

Dhingra Jardine Infrastrcture Pvt. Ltd

....RESPONDENT(S)

71, Chitra Gupta Road, Paharganj, New Delhi

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

Member  
Member

**Present:** - Mr. Divyanshu Sarswat, learned counsel for the complainants  
None for the respondent

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaints dated 04.04.2022 have been filed by complainants 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. Captioned complaints are taken up together as facts and grievances of both these complaints are more or less identical and relate to the same project of the respondent. Complaint no. 521 of 2022 titled "Prabir Ray Vs Dhingra Jardine Infrastructure Pvt. Ltd.", has been taken as a lead case for disposal of both the matters.

**A. 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, in lead complaint case no. 521 of 2022,



have been detailed in following table:

S.N.	Particulars	Details
1.	Name of the project	California Country
2.	Location of the project	Sector 80, Faridabad
3.	Nature of the Project	Residential flat
3.	RERA Registered/not registered	Un-Registered
5.	Flat no.	1501
6.	Tower	Gloria, California Country
7.	Floor no.	15 <sup>th</sup> floor
8.	Unit area admeasuring	850 sq.ft
9.	Date of Flat buyers Agreement	18.01.2011
10.	Payment Plan	Construction linked payment plan
11.	Total sale consideration	₹17,85,000/-
12.	Amount paid by the complainant	21,20,021/-
13.	Deemed date of possession	30 months from the date of sanctioning of building plans of the said complex or from the date of start of the construction whichever





		is later with a grace period of 180 days.
14.	Possession clause	<p>Clause 3.1 of the Flat buyer's agreement</p> <p><i>"3.1 Subject to Force Majeure and subject to the Buyer having complied with all the terms and conditions of this Agreement and making payment within e stipulated period and not being in default under any of the provisions of this Agreement and having complied with all provisions, otherwise, documentation etc., as prescribed, whether under this Agreement or otherwise, from time to time, the Company proposes to hand over the possession of the said Flat to the Buyer within a period of <b>Thirty (30) months</b> from date of sanction of building plans of the said Complex or from the date of the start of construction which ever is later. However, it is made clear that the main project of the Company is the "California Country". All the approvals and sanctions have been taken for the Project Known as the "California Country. The "Suburbian Floors" and Duplex named " Gemini Grove" &amp; "Gloria" are sub-projects/side projects and which are part of the of construction in respect of the "Suburbian Floors" and Duplex named Gemini Grove" &amp; "Gloria" projects not of start of main project known as "California Country only. The Buyer agrees and understands that the Company shall be entitled to a grace period of 180 days (One-Hundred Eighty days), after the expiry of (36 months for complete of the construction. After completion of the construction, the Company shall apply for Occupation Certificate in respect of the Complex from the concerned authority (ies). The Company shall give Notice of Possession</i></p>



		<p><i>to the Buyer with regard to the handing over of possession and in the event, the Buyer fails to accept and take the possession of the said flat within 30 (thirty) days, the Buyer shall be deemed to be custodian of the said Flat from the date indicated in the notice of possession and the said Flat shall remain at the risk and cost of the Buyer."</i></p>
--	--	--

**B. FACTS STATED BY THE COMPLAINANT**

15. That the complainant had booked a residential flat bearing flat no. 1501, 15<sup>th</sup> floor, Tower-Gloria in the project of the respondent namely "California Country" situated at sector 80, Faridabad. Flat buyer agreement, was executed between the parties on 18.01.2011 and as per the agreement, possession was to be handed over to the complainant on or before 2014.
16. The complainant deposited the amount of 21, 20,021/- against the basic sale consideration ₹ 17, 85,000/- .
17. That complainant visited the site in order to see status of the construction of the unit and was shocked to see that respondent has not even started with the construction of the project till date.
18. Aggrieved of the above fact, complainant has filed the present complaint.

**C. RELIEF SOUGHT:**

19. Complainants are seeking relief of the following stated as under:





1) to refund the deposited amount of ₹ 21, 20,021/- along with the interest.

2) To issue interest at the rate of 18% per annum along with compensation of 10, 00,000/- to the complainant for the delay caused in handing over the unit.

**D. REPLY SUBMITTED BY THE RESPONDENT:**

20. As per office record, notice was sent to the respondent on 13.04.2022 and the same has been successfully delivered to the respondent on 14.04.2022. From the previous two hearings dated 18.05.2022 and 02.08.2022, respondent had not appeared nor filed the reply in the matter till date. Today again, none appeared on behalf of the respondent. Therefore, Authority decides to strike off its defence and proceed the case ex-parte.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

21. Today learned counsel for the complainant submitted that Authority vide order dated 29.03.2023 had directed the complainant to become the member of the association of the Gloria – F, however, complainants are neither in a position to become the member of the association nor interested to continue with the project. Therefore, they only seek the relief of the refund along with interest at this stage.



**F. OBSERVATIONS AND DECISION OF THE AUTHORITY**

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

i) Abovesaid factual position as discussed above goes unrebutted and unchallenged as none appeared on behalf of the respondent. It is evident that complainant had booked a residential flat no.1501 in the project of the respondent namely "California Country" in the year 2011 and flat buyer agreement was executed on 18.01.2011. As per the clause of 3.1 of the flat buyer's agreement, possession should be handed over to the complainant within 30 months with a grace period of 180 days from the date of sanction of the building plans or start construction whichever is later.

ii) On perusal of record, it is observed the complainant has not produce any document to ascertain the date for sanction of building plan or starting date of construction. Therefore, the due date of possession for handing over of possession cannot be ascertained for the documents.

However, the Hon'ble SC has dealt with and settled this issue in the case titled as "**M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr**" where the Hon'ble Apex Court has held that period of three years is a reasonable time of completion of construction work and delivery of possession. Hence, in accordance with the ratio laid down by the Hon'ble SC, the Authority observes that three



years period from the execution of the builder buyer agreement is a reasonable period for completion of the construction and handing over the possession. Therefore, 18.01.2013 is taken to be the deemed date of possession.

iii) Authority observes that the residential flat of the complainant falls under the tower namely 'Gloria F' of the project of the respondent 'California Country, sector 80, Faridabad'. Complaint no. 3134 of 2019 titled as "Gloria Welfare Association versus Dhingra Jardine Infrastructure Pvt. Ltd" relating to the same tower has been filed by the association of the allottees of the said tower. In the said matter, Authority vide order 29.03.2023 had handed over the internal development works of the Gloria Tower F to the association of the tower for the completion of the works at its own level.

iv) However, the complainants do not wish to become a member of the association of allottees nor does he wish to continue with the project, instead he intends to withdraw from the project and is demanding refund as per the provisions of section 18 of the RERA Act along with interest. In this regard, the Authority observes that the promoter has failed to fulfil his obligations as per section 11(4) of the RERA Act, 2016 by not delivering the unit to the complainant within the time stipulated in the builder buyer agreement. Since the possession has not been offered as per





the agreement for sale, the complainant as per section 18 is entitled for the relief of refund along with interest.

Section 18 of the RERA Act is reproduced here for ready reference:

“18. Return of amount and compensation.—(1) 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.

Further, there has already been an inordinate delay of nine years, therefore, the complainant cannot be forced to wait endlessly for the possession in cases where there has been a delay in handing over of possession within the timeline stipulated in the agreement for sale. Hon'ble Supreme Court in the matter of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors**, 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 agreement.



Para 25 of this judgment is reproduced below: -

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(0) 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 on 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”.*

Therefore, relief sought by the complainant is allowed in terms of section 18 of the RERA Act read with Rule 15 of HRERA rules, 2017. As per section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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;*

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 (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".*

23. 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., 27.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.
24. 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 in both the complainants the paid amount 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.

25. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants in captioned complaint no. 521 of 2022 and 491 of 2022 including interest calculated at the rate 10.70% till the date of this order is depicted in table below:

S.No.	Complaint no.	Principal Amount	Interest Accrued till 01.06.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	496 of 2022	₹24,60,266/ -	₹28,67,133/-	₹53,27,399/-
2.	521 of 2022	₹21,20,021/ -	₹24,70,539/-	₹45,90,560/-

It is pertinent to mention here that in complaint no. 496 of 2022, complainant claimed to have paid the sum of ₹24,62,261/-, however, perusal of the statement of account and receipts shows that complainant has paid the amount of ₹24,60,266/-, therefore interest has been calculated upon the principal amount of ₹24,60,266/- which works out to ₹28,67,133/-.





**DIRECTIONS OF THE AUTHORITY**

26. Hence, the Authority hereby passes this common 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 ₹53,27,399/- to the complainant in complaint no. 496 of 2022 and ₹ 45,90,560/- in complaint no. 521 of 2022.

(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.

27. 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]**