



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	434 of 2022
Date of filing:	11.03.2022
Date of first hearing:	10.05.2022
Date of decision:	19.04.2023

1. Mahesh Kumar Sharma,
S/o Sh. Balkishan Sharma,
R/o H. No. 571/3, Prem Nagar,
sector 12 (II) Road,
Gurugram - 122001,
2. Indu Sharma,
W/o Mahesh Kumar Sharma
S/o Sh. Balkishan Sharma,
R/o H. No. 571/3, Prem Nagar,
sector 12 (II) Road,
Gurugram - 122001,

....COMPLAINANT(S)

VERSUS

M G Housing Pvt. Ltd.
Regd Office: G-127, 12th floor,
Himalaya House, 23, KG Marg
Connaught Place,

G. Patil

NewDelhi - 110001

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 19.04.2023

Hearing: 5th

Present: Ms. Stuti, ld. counsel for complainant.
Mr. Peeyush Pruthi, ld. counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 11.03.2022 has 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.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:



S.No.	Particulars	Details
1.	Name of the project	Anandam Estate, Sector 19 & 24, Dharuhera, Haryana
2.	RERA registered/not registered	Registered
3.	Unit no.	Plot no. C-16, Block C
4.	Unit area	189 sq. yards
5.	Date of provisional allotment	31.03.2015
6.	Date of executing builder buyer agreement	16.09.2015
7.	Due date of possession	30.09.2018
8.	Total sales consideration	₹54,61,500/-
9.	Amount paid by complainants	₹45,47,400/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Complainant booked a unit in the project of the respondent namely "Anandam Estate" situated in Sector 19 & 24, Dharuhera, Haryana on 18.03.2015. Vide allotment letter dated 31.03.2015, Plot no. C-16, Block C, measuring 189 sq.

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yards was allotted to him. Plot Buyers Agreement (hereafter referred as PBA) was executed between the parties on 16.09.2015. As per clause 36 of the PBA, respondent undertook to complete construction of the project by 30.09.2018 with a grace period of six months to receive completion certificate. Total sales consideration was fixed at ₹ 54,61,500/- inclusive of charges for green facing/ adjoining green amounting ₹ 2,07,900/- and corner plot charges amounting ₹ 2,07,900/- and other EDC, IDC and maintenance charges. Complainant has paid ₹ 45,47,400/- till 01.05.2019.

4. It is further submitted by the complainants that respondent charged for preferential location charges (PLC) of green facing/ Adjoining green amounting to ₹ 2,07,900/- and corner plot charges amounting ₹ 2,07,900/- from the complainants. For which complainant duly paid ₹ 2,07,900/- on 15.10.2018 and ₹ 2,07,900/- on 02.01.2019. Thereafter, it came as a shock to the complainants that the location of their plot was changed to a non green facing/ adjoining green and non corner plot. The copies of the layout plan which indicate the change of location of plot are appended as Annexure -05.

5. Complainants have approached the respondent and pleaded for delivery of possession of their plot as per the PBA. However, respondent did not reply to their emails, letters, personal visits seeking information about the status of the project and delivery of possession of their plot.

6. Complainant alleges that even after receiving more than 80% of the total sales consideration for the said plot, respondent has failed to offer legal and rightful possession of the plot till date. There is a delay of more than three years in handing over possession by respondent. Aggrieved by the same complainant has filed the present complaint with the prayer that respondent be directed to hand over possession of the unit after receiving completion certificate from concerned Authorities.

C. RELIEF SOUGHT

7. The complainants in their complaint have sought following reliefs:

- A. Direct the respondent to complete the development of the plot along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- B. Direct the respondent to handover the legal and rightful possession of the plot to the complainants, after receiving the completion certificate (CC) and other required approvals and permissions from the competent authorities.
- C. Direct the respondent to pay interest for every month of delay in handing over the possession of the plot since 30th September, 2018 to the complainants, on the amount taken from the complainants towards sale consideration and other charges for the aforesaid plot, with interest at the

prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the plot to the complainants.

- D. Direct the respondent to refund with interest as per the Act, from the date of receipts, a total amount of Rs.4,15,800/- (Rupees Four Lakh Fifteen Thousand and Eight Hundred), (Rs.2,07,900/- from the date of receipt i.e., 15th October, 2018 and Rs.2,07,900/- from the date of receipt i.e., 2 January, 2019) charged and retained by respondent towards charges for green facing/ adjoining green and corner plot charges for plot no C-16, from the complainants,
- E. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainants cannot be made to wait till eternity for enjoying the rights over the plot, with liberty to the complainants to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Panchkula.
- F. Direct the respondent to not charge anything beyond the charges stipulated in the plot buyer agreement.
- G. Direct the respondent to pay legal expenses of Rs.1,00,000/- (Rupees One Lakh) incurred by the Complainants for filing and pursuing the instant case.

H. Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the Complainants and against the Respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 25.07.2022 pleading therein:

8. That as per clause 36 & 37 of the BBA respondent undertook to complete the project by 30.09.2018 with a grace period of six months to receive completion certificate and hand over possession of the said plot latest. This clause was subject to force majeure circumstances. It is mentioned that construction of the project was stopped several times during the year 2016, 2017, 2018, 2019, 2020 & 2021 by the orders of EPCA, HSPCB, NGT & Hon'ble Supreme Court of India. However, despite such circumstances, respondent has developed the project and it would be completed in near future. It is further stated that money received from complainant allottees has been utilized towards completion of the project. Respondents are not in position to pay interest as prayed by complainants. Therefore, he prayed that the request of the complainant to pay delay interest should not be allowed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT


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9. During oral arguments, ld. counsel for complainants argued that complainants booked a corner plot C-16 for which they paid Rs. 45,47,400/- in total which is inclusive of preferential location charges for green facing plot amounting to Rs. 2,07,900/- and Rs. 2,07,900/- for corner location. However, builder has changed the location of plot C-16 and constructed another plot C-17 beside it. Now, complainant's plot which is C-16 is neither a corner plot nor green facing. Therefore, ld. Counsel for complainant prayed for relief of possession of plot C-16 along with delay interest in addition to refund of preferential location charges and corner plot charges paid by complainants. Counsel for complainants further submitted that complainants are only interested in corner plot and if respondent-promoter is not in a position to give possession of the same, then complainant seek refund of the amount of Rs. 4,15,800/- paid by complainant towards preferential location charges for green facing plot and corner location along with interest from the date of receipts of payments of the same as per Rule-15 of the HRERA Rules, 2017.

10. On the other hand, ld. counsel for respondent submitted that there has been a change in the layout plan of the project after following the due procedure because of which the location of C-16 was changed and in its place C-17 became the corner plot. He further submitted that respondent-promoter is not in a position to give possession of the corner plot, C-17 as the plot is allotted to a third party. In

alternative respondent-promoter is ready to give possession of any other plot of complainant's choice available in the project; or respondent-promoter is ready to refund the amount of Rs. 4,15,800/- paid by complainant towards preferential location charges for green facing plot and corner location.

G. ISSUES FOR ADJUDICATION

11. Whether the respondent has failed to timely deliver the possession of the Plot no. C-16, Block C, in the project "Anandam Estate" to the complainant and is liable to pay delay possession interest or not?
12. Whether the complainants are entitled to refund of the amount deposited by them for preferential location charges along with interest or not?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. After taking into consideration the facts and circumstances of the case and arguments put forth by the parties, there are two main issues for adjudication before the Authority in the present matter, Firstly, whether respondent has failed to deliver the possession of the Plot no. C-16, Block C, in the project "Anandam Estate" to the complainant within the time stipulated in the agreement for sale and is liable to pay delay possession interest to complainant or not?

With regard to this issue, Authority observes that plot buyer agreement was executed between the parties on 16.09.2015. As per clause 36 of the said plot buyer agreement, respondent agreed to hand over possession of plot C-16 to the

complainants by 30.09.2018 with a grace period of 6 months for obtaining completion certificate. This extra period of 6 months was provided specifically for applying and obtaining completion certificate. Since, respondent has not obtained completion certificate, therefore, benefit of extra 6 months cannot be granted to respondent while calculating the deemed date of possession. Hence, deemed date of possession shall be 30.09.2018.

14. Respondent company in its reply has taken a plea that it could not complete the construction of the project because the same was stopped several times during the year 2016, 2017, 2018, 2019, 2020 & 2021 by the orders of EPCA, HSPCB, NGT & Hon'ble Supreme Court of India. In support of its averment, it has placed on record order dated 08.11.2016 of Hon'ble NGT and order dated 04.11.2019 of Hon'ble Supreme Court. Perusal of the order dated 08.11.20216, shows that the Hon'ble NGT, to avoid further environmental degradation, had stopped the construction activities in the Delhi NCR region, state of Punjab, Haryana and Rajasthan. Authority observes that restraining orders passed by Hon'ble NGT are generally in force for a period of ten to fifteen days, and construction activities are stopped only for a short period of time. This cannot be taken as an excuse by the respondent promoter for non-completion of the project. Moreover, restrain on construction activities only for a period of ten to fifteen days by orders of hon'ble NGT is not covered under the force majeure conditions as provided under section 6


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of RERA Act, 2016. Therefore, this plea of respondent is rejected as delay of more than 4 years is not justified in completing the construction of the project and handing over the possession.

With respect to order dated 04.11.2019 of hon'ble Supreme Court placed by counsel for respondent, it is observed that the order placed by counsel before the Authority was passed subsequent the due date of possession of the unit to the complainant. Hon'ble High Court of Punjab & Haryana in O.M.P (I) (COMM.) No. 88/2020 titled as M/S Halliburton Offshore Services Inc. v. Vedanta Limited & Anr., in para 69 held that "*The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself.*" By virtue of aforementioned observation, it is viewed that respondent-promoter cannot take plea of order passed subsequent to the due date of possession for non completion of his obligation. As per the agreement, respondent promoter was under obligation to complete the unit and hand over the possession to complainant on or before 30.09.2018 (deemed date of possession), however, respondent- promoter failed in its obligation to deliver the possession of the unit


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within the stipulated time and now in an attempt to justify the delay it has placed on record an order passed post the deemed date of possession i.e., 30.09.2018 which cannot be allowed.

15. Deemed date of possession in the matter was 30.09.2018 and there is a delay of more than 4 years on the part of respondent in offering the possession of the unit, although during the hearing, counsel for respondent stated that respondent is making effort to hand over possession after receiving completion certificate from the concerned Authority; However, it has not placed on record any documents like application for obtaining completion certificate and specified as to when respondent will be in a position to handover possession of the booked plot. Complainants however are only interested in getting the possession of their plot. They do not wish to withdraw from the project or the respondent. In such circumstances, the provision of Section 18 of the Act clearly comes into play by virtue of which while exercising option of taking possession of the apartment the allottee is entitled to monthly interest for the entire period of delay caused at the rate prescribed. The respondent in this case has not made any offer of possession to the complainants till date nor has he obtained the completion certificate of the project in question. So, the Authority hereby concludes that the complainants are entitled for the delay interest on the total amount paid by him after refunding amount of preferential location charges and corner charges with interest from the

deemed date i.e., 30.09.2018 to the date on which the valid offer of possession is sent to complainants after obtaining completion certificate.

16. Second issue pertains to , whether the complainants are entitled to get refund of preferential location charges or not?

In regard to this issue, Authority observes that at the time of execution of PBA, plot C-16 was a green facing/adjoining green and corner plot. Clause 3 of the plot buyer agreement provides 'total sale price' of the plot as ₹ 54,61,500/- inclusive of ₹ 4,15,800/- on account of green facing/adjoining green and corner plot charges. On perusal of the file, it is evident that complainants have paid an amount of ₹ 2,07,900/- for preferential location charges (PLC) of green facing/adjoining green plot on 15.10.2018 and corner plot charges amounting ₹ 2,07,900/- on 02.01.2019. It is an admitted fact that layout plan was revised due to which plot C-16 is not a corner plot now. Complainants have prayed that since the location of plot C-16 has been changed and now plot C-16 is neither a corner plot nor green facing/adjoining green, the amount paid by them for preferential location charges be refunded to them.

17. Authority observes that since respondent-promoter has failed to provide a corner green facing plot, respondent-promoter cannot be allowed to charge for the preferential location charges and, therefore, is obligated to refund the amount charged by it on account of preferential location charges and corner plot charges

paid by complainants. During the course of hearing, counsel for respondent-promoter also submitted that respondent-promoter is agreeing to hand over possession of plot C-16 and to refund the amount of ₹ 4,15,800/- charged on account of green facing/adjoining green and corner plot charges.

18. In view of the above, Authority observes that a total amount of ₹ 4,15,800/- has been charged by respondent in lieu of corner plot charges and green facing/adjoining green charges on 15.10.2018 and 02.01.2019 from complainants. Despite receiving the preferential location charges, respondent has failed to fulfill this obligation i.e., handing over a corner green facing plot. In all fairness, complainants are entitled to get refund of the amount paid by them for corner plot charges and green facing/adjoining green charges lying with respondent from 15.10.2018 and 02.01.2019 along with interest in accordance with Rule -15 of HRERA, Rules, 2017. Hence, respondent shall refund ₹ 4,15,800/- along with interest as per Rule 15 of HRERA Rules, 2017. Interest is calculated on the amount of ₹ 4,15,800/- from the date of receipts till the date of the order i.e., 19.04.2023 @ SBI highest MCLR + 2% i.e., 10.70% which comes out to be ₹ 1,96,063/- Total amount to be refunded comes out to ₹ 6,11,863/-.

19. With respect to the relief claimed by the complainant regarding a definite and fixed date of delivery of possession, it is observed that respondent has not submitted any document for instance, application for obtaining completion

certificate, however, it has only orally stated that it is making all endeavours to get the completion certificate from the competent authority at the earliest. Respondent is hereby directed to hand over possession of the plot as soon as they receive completion certificate. In these circumstances, to strike balance between the rights of allottee and promoter, Authority has decided to give delay possession interest to complainant for entire period of delay caused at the rate prescribed till the date of handing over of possession. In such circumstances, no specific date as such can be fixed by the Authority for handing over possession. However, the respondent is directed to hand over the possession after obtaining completion certificate at the earliest.

20. With regards to relief wherein complainants are seeking legal expenses of ₹ 1,00,000/- incurred by complainants for filing and pursuing the instant case. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

21. Authority has calculated the interest on the total paid amount from the deemed date of possession till the date of this order at the rate of 10.70% (SBI MCLR + 2%) and said the amount works out to ₹ 41,31,600/- (45,47,400 - 4,15,800/- preferential location charges) Details given in the table below:

Sr. No.	Principal amount	Deemed date of possession or date of payment whichever is later	Interest Accrued til 19.04.2023
1.	12,47,400/-	30.09.2018	6,08,119/-
2.	7,92,100/-	15.10.2018	3,82,673/-
3.	10,00,000/-	20.12.2018	4,63,764/-
4.	7,92,100/-	02.01.2019	3,64,329/-
5.	3,00,000/-	01.05.2019	1,27,521/-
	Total amount = ₹41,31,600/-		Total upfront interest = ₹ 19,46,406/-
6.	Monthly interest		₹ 36,335/-

22. Accordingly, the respondent is liable to pay the upfront delay interest of ₹ 19,46,406/- to the complainants towards already caused delay in handing over possession. Further, on the entire amount of ₹ 41,31,600/- monthly interest of ₹ 36,335/- shall be payable up to the date of actual handing over of possession after

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obtaining completion certificate. In addition, as observed in para 18 of this order, respondent is liable to pay ₹ 6,11,863/- (₹ 4,15,800/- principal amount + ₹ 1,96,063/- interest) to the complainant as refund of Preferential location charges along with interest. Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

23. Furthermore, during the course of hearing, counsel for respondent has submitted in his reply that there have been a change in the layout plan after following due procedure as per law. Authority observes that in this regard that after coming of RERA into force, it is mandated upon respondent to seek prior written permission from 2/3rd allottees before making any change in the lay out plan. Since, the project is registered with this Authority, project branch is directed to verify this fact that whether the respondent has submitted relevant documents showing the change in layout plan as per the provision of RERA act, 2016 i.e., after seeking prior written permission of 2/3rd allottees. In case, such documents are not available, show cause notice under relevant sections be issued to the promoter for initiation of penal proceedings before the Authority.

I. DIRECTIONS OF THE AUTHORITY

24. 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 pay upfront delay interest of ₹ 19,46,406/- to complainant towards delay already caused in handing over of possession and for further delay monthly interest of 36,335/- shall be given to complainants till valid offer of possession after receipt of completion certificate is issued to them.
- (ii) Refund ₹ 6,11,863/- preferential location charges within 90 days from uploading of this order.
- (iii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of offer of possession.
- (iv) The respondent shall not charge anything from the complainants which is not part of the agreement to sell and in violation of RERA Act, 2016.
- (v) 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

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Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

22. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


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

