



Complaint No. 503/2023

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	503 of 2023
Date of filing:	27.02.2023
Date of first hearing:	03.05.2023
Date of decision:	23.08.2023

Sh. Naresh Tanwar S/o Sh. Rameshwar Tanwar,
R/o House no.05, Sector-6,
U.T.T., Bhiwadi, District Alwar,
Rajasthan- 301019

.....COMPLAINANT

Versus

Choice Real Estate Developers Pvt. Ltd,
14/185-14/186,
Ground Floor, Malviya Nagar,
Main Shivalik Road,
New Delhi -110017

.....RESPONDENT

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

**Member
Member**

Present: - Sh. Vishal Madaan Advocate, Counsel for the complainant
 Sh. Vneet Sehglia Advocate, Counsel for the respondent through
 VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 27.02.2023 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 project have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Vipul Pratham Apartments, at Village Bawal, Sector-10 A, Rewari
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Registered no. 38 of 2018
4.	Date of Allotment	13.08.2013
5.	Flat no.	504, 5 th floor, Tower-1



6.	Flat area	818 sq.ft.(75.99 Sq.mtrs)
7.	Date of builder buyer agreement	20.11.2013
	Deemed Date of Possession(clause 8(8.1)(a))	Within 60 months from date of signing agreement plus 90 days as grace period i.e. 20.02.2019
8.	Basic sale price	₹22,59,854/-
9.	Amount paid by complainant	₹ 19,41,585/-

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

3. That the complainant booked a unit in the respondents' project ie "Vipul Pratham Apartments" in Bawal, Sector 10 A, District Rewari, Haryana in the year 2013. On 13.08.2013, the respondents furnished an allotment letter to the complainant and was allotted unit No. 504, 5th Floor, Tower No.1, admeasuring 818 sq ft in the project.
4. That on 20.11.2013, the complainant and respondent entered into a Builder Buyer Agreement (herein referred to as BBA). As per Clause 8.1(a) of the said agreement, the possession of the unit was deemed to be handed over by



60 months of the agreement along with grace period of 90 days, i.e., by 20.02.2019 but the respondent failed to hand over the possession within the stipulated period of time. In the present case, the respondent had allotted themselves more than reasonable period of time, i.e., 5 years from the date of the agreement. Yet the respondent is unable to complete the project and even till date, the project is under constructed, i.e., after more than 9 years from the date of agreement.

5. That the complainant had opted for Construction Linked Plan and the complainant paid the entire amount as and when demanded by the respondent and has complied with his legal obligation against the unit on time without fail. The total amount paid along with receipts/account statement is annexed as ANNEXURE C-4 to C-13 at page 27-36 of the complaint file.
6. That after visiting and inspection of the site it was revealed that the construction of the TOWER No. 1 in which complainant is allotted the flat is under constructed and inhabitable. No development works were carried out and only a concrete structure was erected with all the raw materials scattered all over. Till date, the said area is still under developed and no progress regarding the development of the project has been initiated by the



respondent in order to complete the project even after more than 9 years from the date of the agreement.

7. That till date respondent has not completed the construction of the tower in which the complainant was allotted the unit. The said area is mostly lying vacant and idle with nothing on it. The whole project is at stand still and no work is going on for years. Aggrieved by the same, complainant has filed the present complaint. Complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest from respective dates of payment till the actual realization.

C. RELIEF SOUGHT:

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount paid by complainant of Rs. 19,41,585/- along with the interest;
 - ii. To direct the respondent to pay ₹50,000/- to the complainant as litigation fee;
 - iii. Any other relief which is deemed fit by this Hon'ble Authority.
 - iv. Registration granted to the respondent for the project in question be cancelled.

D. REPLY:



9. Respondent has submitted reply on 23.08.2023 in the registry. Respondent has submitted as follows:-
10. That the Complainant has concealed the fact that the respondents have duly intimated him with regard to various restrain orders having been passed against the construction activities by the Hon'ble NGT on various occasions, which ultimately acted like FORCE MAJEURE and caused unwanted delay in finishing the project. Further, in the present scenario of Covid pandemic the construction activities on all the project sites have virtually stalled since March 2020 and the same has caused delay in finalizing the development works and handing over the possession of the Apartment to the complainant. The intimation of same was duly sent to the complainant but the said fact has been concealed by the complainant while filing the present complaint.
11. That as a part of its business, the respondent had acquired and purchased the land admeasuring 9.60 acres situated within the revenue estate of village Bawal, Sector-10 A, Tehsil & District, Rewari, Haryana with a view to promote and develop a group housing colony known as "Vipul Pratham Apartments".
12. That the Complainant after being completely satisfied in all respects with respect to project has booked a flat/residential unit in the Group Housing



Project known as "Vipul Pratham Apartments" and vide application in the month of August 2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex i.e. "Vipul Pratham Apartments".

13. That the respondent company in furtherance of the application form so submitted by the complainant and the earnest money so received from the complainant, accordingly made the provisional allotment of one residential flat bearing No. 504 in Tower-1, at 5th Floor, in the aforesaid group housing in favor of the complainant. It is further submitted that the respondent company along with said allotment letter had sent the terms and conditions for allotment of flat as well as schedule of payment which was construction linked plan, as opted by the complainant. The Allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainant.
14. That the respondent company, on 20.11.2013 sent the 'Flat Buyer Agreement to the complainant, Buyers Agreement dated 20.11.2013 was voluntarily and consciously executed by the complainant and in terms thereof he had assumed and undertaken to perform the terms and conditions of the agreement.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

15. During oral arguments learned counsel for the complainant reiterated the facts mentioned in para 3-8 of this order and submitted that there is no progress at the site and project cannot be completed in near future. Therefore, he requested to dispose of the matter in same terms of the Complaint no. 389 of 2021 titled as Meenakshi Kamboj Vs Choice Real Estate Developers Pvt Ltd. Learned counsel for respondent reiterated the facts mentioned in para 9-14 of this order.

F. ISSUES FOR ADJUDICATION:

16. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

17. After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes as follows:
- i) Builder-buyer agreement between complainant and respondent was executed on 20.11.2013. Total sales consideration was agreed to be Rs.22,59,854/-. Complainant had paid over Rs. 19,41,585/- by year 2017.



After paying almost 85% of sales consideration amount, legitimate expectations of complainant would be that possession of the apartment will be delivered within a reasonable period of time. With agreement having been executed in 2013 and full substantial payment having been made in 2017, legitimate expectation is generated that possession will be delivered within next 1-2 years.

18. Authority further observes that the relief of refund was allowed in similar cases against the same project of the respondent where the facts and issues were similar. Vide order dated 07.12.2022 passed in lead complaint no. 389 of 2021 titled "Meenakshi Kamboj vs. Choice Real Estate Developers Pvt. Ltd.", Authority has specifically stated that respondent has failed to deliver the possession to the complainants even after inordinate delay from the due date of possession. Allottees cannot be made to wait for an indefinite period of time for a unit for which the allotment and BBA dates back to 2013. Relevant part of the order dated 07.12.2022 is reproduced below:

"6. Counsel for the complainant argued that project is at complete halt and there is no likelihood of its completion in near future. Project has been already delayed by more than 3 years and they further cannot wait for an uncertain amount of time. Therefore, he pressed for refund only. Further in complaint no. 578/2020, complainant also stated that he has paid more than 85% of the agreed sale consideration by 2016 and there is no progress at project site since 2016. Photographs dated 10.10.2022 shows that there is no work ongoing at the



site. No progress has been made at the site in the last 6 years as is clear from comparison of the photographs dated 01.12.2016 and latest photographs dated 10.10.2022.

7. Ld. Counsel for respondent submitted that more than 80% of the work at the project site has already been completed and the project is currently ongoing. Project has been registered with RERA as HRERA-PKL-RWR- 38-2018 and as per it, completion date was 2020 which has been further extended by concerned Authority till December 2022. As the project is still at an ongoing stage, the Occupation Certificate has not been applied till date. He requested for an adjournment to comply with the directions given by Authority vide order dated 11.10.2022.

8. Authority has gone through respective written submissions apart from noting verbal arguments put forth by both the sides Respondents admitted that construction of the project has not been completed. In Real E fact, it is still going on. Further, no specific time period has been committed for its completion. Arguments in respect of force majeure conditions cannot be accepted. and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now. As per the photographs submitted vide application dated 25.11.2022, it is clear that project is at halt and incomplete. Further, Occupation Certificate has not been applied till date and there is no scope the same will be applied by end of this year by which respondent claimed to complete the project as per the registration certificate. Declared policy of this Authority in all such cases where projects are neither complete nor likely to be completed within the foreseeable future and delay has already been caused from the due date of offer of possession, the complainant would not be made to pay the remaining amount.

This right of the complainant to claim refund in case of delay has been made into a more substantial right by way of 'Newtech Promoters and Developers Pvt. Ltd. v. State of UP and Others 2021 (11) ADJ 280. where the Hon'ble Supreme Court has expressly observed that allottee has an unqualified



right to claim refund even if there is delay of one day Relevant paragraph is produced 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 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."

In this case, the agreement was entered into on 01.01.2014 by which the due date to handover of possession was set to January 2019. Nearly four years has passed and still there is no certainty that this project will see light of day in the foreseeable future. Thus in such cases complainant would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.

9. Authority accordingly hereby orders refund of the amount paid by the complainants along with interest in accordance with Rule 15 of the RERA Rules, 2017."

19. Since captioned matter is also based on similar facts, relating to same project of the respondent, this complaint is also disposed of in terms of complaint no. 389 of 2011 titled "Meenakshi Kamboj Vs. Choice Real Estate Developers Pvt. Ltd. Therefore, the Authority finds it to be a fit case for



allowing refund in favor at the complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under:

The definition of 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;

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready references:

“Rule 15: 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". "

20. 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.
21. 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. 23.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
22. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ 19,41,585/- 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 10.75% (8.75% + 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 10.75% till the date of this order



and said amount works out to ₹ 37,63,979/- as per detail given in the table below:

S.No.	Principal Amount in Rs.	Date of payment	Interest Accrued till 23.08.2023 in Rs.
1.	3,00,000/-	10.08.2013	3,23,914/-
2.	1,08,255/-	24.09.2013	1,15,450/-
3.	5000/-	24.09.2013	53,32/-
4.	75,000/-	21.10.2013	79,388/-
5.	30,000/-	25.11.2013	31,446/-
6.	1,40,000/-	07.12.2013	1,46,253/-
7.	1,28,253/-	28.01.2014	1,32,017/-
8.	90,000/-	01.09.2014	86,916/-
9.	56,365/-	11.09.2014	54,268/-
10.	55,180/-	11.09.2014	53,127/-
11.	58,098/-	25.11.2014	54,653/-
12.	60,000/-	27.11.2014	56,407/-
13.	1,18,098/-	13.02.2015	1,08,312/-
14.	96,609/-	02.04.2015	87,238/-
15.	75,000/-	02.06.2015	66,378/-

16.	21,348/-	19.06.2015	18,787/-
17.	97,254/-	13.08.2015	84,011/-
18.	97,000/-	02.11.2015	81,477/-
19.	97,790/-	11.05.2016	76,640/-
20.	60,000/-	26.09.2016	44,585/-
21.	37,591/-	26.09.2016	27,784/-
22.	533/-	27.09.2016	396/-
23.	8031/-	05.12.2016	5,802/-
24.	1,26,380/-	17.08.2017	81,813/-
Total	₹ 19,41,585/-		₹ 18,22,394/-
Total payable amount	₹ 37,63,979/-		

23. The complainant is seeking litigation costs of ₹ 50,000/- under Section 12 of RERA Act, 2016 and /-. 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.

24. Further, complainant has sought cancellation of the registration granted to the respondent project in. In this regard it is observed that said relief has nowhere been claimed by the complainant in his complaint nor pressed by him during arguments. Hence, complainant prayer for cancellation of registration granted to project in question is rejected.

H. DIRECTIONS OF THE AUTHORITY

25. 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 amounts along with interest of @ 10.75 % to the complainant as specified in the table provided in para 22 of this order.



(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.

26. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]