

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 08.07.2022 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	Green Escape Apartments, Phase-2, Sonipat.
2.	Flat no.	0102-20-0504
3.	Area	190.78 sq. mtrs
4.	RERA registered/not registered	Registered / HRERA-PKL-SNP-173-2019

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5.	Date of flat buyer agreement	28.05.2012
6.	Deemed date of possession (42+6)	28.05.2016 Subject to clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavor to complete the development of said residential project and the said flat as far as possible within 42 months, with an extended period of 6 months from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later.
7.	Basic sale price	Rs. 32,36,684/-
8.	Amount paid by complainant	Rs. 16,56,607/-
9.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

[Handwritten Signature]

3. That the case of the complainants is that they booked a flat in respondent's residential project "Green Escape Apartments, Sonipat. Complainants entered into builder buyer agreement with the respondent on 28.05.2012. As per clause 5.1 of the flat buyer agreement, respondents were to deliver possession of the allotted flat within a period of 42 months from the date of execution of floor buyer agreement with a grace period of 6 months
4. As per clause 3.1 of the agreement the basic sales price of the said flat was Rs. 32,36,684/- excluding EDC, IDC, PLC, composite charges and club charges etc. Complainant opted for a construction linked plan. Complainants have paid an amount of Rs. 16,56,607/- against basic sales price of Rs. 32,36,684/-.
5. That from 2016-2021 respondent had not raised any demands from the complainants. In 2021 complainants enquired about the status of possession of their flat after which they were informed that the construction of tower in which complainant's apartment was located has been cancelled and they are no longer continuing building that tower.
6. That respondent has not completed the project till date. Complainants have honored the demands made by the respondent. Further, because of inordinate delay in completion of the project the respondent may kindly

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be directed to refund the deposited amount, along with the prescribed rate of interest, on amount deposited from their respective deposits till realization.

C. RELIEF SOUGHT

7. In view of the facts mentioned above, the complainant prays for the following relief(s):-
- i) The complainants pray for refund of amount of Rs. 16,56,607 (with interest) paid so far to the respondent in accordance with the relevant provisions of the RERA Act with the 18% interest per annum.
 - ii) Also further the Authority is requested to see that there should not be illegal deduction out of the amounts paid by the complainants at the time of refund.
 - c) Any other relief/direction which the Hon'ble Authority deems fit.
8. Notice served upon the respondent on 13.07.2022 and respondent was directed to file reply on or before 08.08.2022. Several opportunities were given to the respondent to file reply on 22.09.2022 (first hearing), 09.02.2023 (second hearing) and 10.05.2023(third hearing). However till date no reply has been filed by the respondent. Since, the proceedings before this Authority are summary proceedings, therefore the Authority after giving sufficient opportunities decides to struck down the right to

file reply. Authority shall adjudicate the complaint on the basis of record available and oral arguments adopted by the counsel.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

9. During oral arguments learned counsel for the complainant reiterated arguments as mentioned at Para 3-7 of this order. Ld. counsel for the respondent submitted that respondent is not in a position to handover possession in the present case due to financial restraints. He further submitted that reply need not be filed as respondent is not constructing the tower in which complainant's flat is situated.

E. ISSUES FOR ADJUDICATION

10. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

F. OBSERVATIONS OF THE AUTHORITY

11. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Factual position reveals that complainant had paid an amount of Rs. 16,56,607/- out of the BSP of Rs. 32,36,684/-. As per clause 5.2 agreement for sale possession of the unit was to be handed over in 42 months from the date of executing flat buyer agreement by 28.11.2015.



As admitted by Id. Counsel for respondent himself respondent is not in a position to handover possession in the present case due to financial restraints. Complainant/allottee, in exercise of their right under the provisions of this Act has demanded refund of the amount paid by him. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand 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. Authority observes that in these circumstances where the flat buyer agreement was signed way back in the year 2012 and the projects is not complete nor likely to be completed within reasonable time, extraordinary delay has already been caused from the due date of offer of possession, the complainant cannot be forced to wait for completion of project.

(ii)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 terms agreed between them. Para 25 of this 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.

(iii) This project is already delayed by several years. It is still not complete and admittedly respondents are not in a position to complete the project within reasonable time, therefore, Authority finds it to be fit case for allowing refund in favor of complainant. Though the complainants has sought that interest be allowed @18% however same cannot be allowed as interest can only be awarded in terms of RERA Act of 2016 and HRERA Rules of 2017. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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”.

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.”

(iv) 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. 09.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(v) The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

"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

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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;

(vii) Accordingly, respondents will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondents to refund to the complainant the paid amount of ₹ Rs.16,56,607/- 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 calculated at the rate of 10.75% till the date of this order and said amount works out to ₹ 17,72,453/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 09.08.2023
1.	167000	5/28/2012	201216
2.	284644	9/17/2012	333574
3.	79655	12/26/2012	91001
4.	7236	6/12/2012	8687
5.	242273	7/10/2012	288843
6.	11214	7/12/2012	13363

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7.	355800	11/15/2012	410778
8.	145869	12/26/2012	166647
9.	362916	12/27/2012	258344
Total	1656607		1772453

H. DIRECTIONS OF THE AUTHORITY

12. 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) Respondents is directed to refund the entire amount of ₹ 34,29,060/- to the complainant.
- (ii) A period of 90 days is given to the respondents 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.

13. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



 NADIM AKHTAR
 [MEMBER]



 DR. GEETA RATHEE SINGH
 [MEMBER]