



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| Complaint no.: | 1138 of 2023 |
| Date of filing: | 09.05.2023 |
| Date of first hearing: | 19.07.2023 |
| Date of decision: | 07.11.2023 |

Sandeep Kumar, S/o Sh. Ramesh Kumar,
Resident of House no. 780, Sector-82,
JJPL Industrial Park, SAS Nagar (Mohali),
Punjab, Pin-140306

....COMPLAINANT

VERSUS

M/s Samar Estate Pvt. Ltd,
through its Managing Director Sh. Vinod Bagai,
Regd. Office: House no. 87, Sector-7, Panchkula.

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present:

Adv. Vishal Madaan, Id. counsel for the complainant.
None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 09.05.2023 by the 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.

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 | ESS VEE APARTMENTS, Sector-20, Panchkula, Haryana. |
| 2. | Nature of Project | Residential Group Housing Project |
| 3. | Flat no. | T-402, 4 th Floor, Tower-T |
| 4. | Area | 1240 sq. ft. |
| 5. | RERA registered/ not registered | Registered vide registration no. HRERA-PKL-54 of 2018 and |



| | | |
|-----|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | suspended by HRERA-PKL, Panchkula vide order dated 28.01.2020 in Suo Moto complaint no. 2807 of 2019 |
| 6. | Date of booking cum application for allotment | 05.07.2011 |
| 7. | Date of allotment | Not mentioned |
| 8. | Date of Flat/ Builder Buyer Agreement | 19.07.2011 |
| 9. | Deemed date of possession (36+6) | <p>As per clause 32 of the BBA, developer contemplated to complete the construction of said flat within a period of 36 months, from date of commencement of construction unless there is delay or failure due to reasons mentioned in present agreement or due to failure of apartment allottees to pay the price of the said apartment.</p> <p>Note: As per assertion of complainant, construction was started in October, 2007. Thus, DDOP is March 2010.</p> |
| 10. | Basic sale price | Rs.48,67,000/- |
| 11. | Amount paid by complainant | Rs.12,16,750/- |
| 12. | Offer of possession | Not offered |



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT:

3. In this case, allottee Sh. Sandeep Kumar, booked a 2BHK flat bearing no.402 in Tower-T, measuring 1240 sq. ft. in the project of the respondent namely, "Ess Vee Apartment", Sector-20, Panchkula. Flat buyer's agreement was executed on 19.07.2011. The total sale consideration of the flat was fixed as Rs.48,67,000/- against which complainant has paid an amount of Rs.12,16,750/- till the year 2011. Copy of receipt has been attached at page no. 26 of the complaint book.
4. As per clause 32 of the flat buyer agreement dated 19.07.2011, respondent was obliged to complete the construction of the flat within 36 months from the date of commencement of construction. The project was launched in October 2007 and construction was also started at the same time. Thus, the project should have been completed by the respondent company by March 2010. And even if we go as per the flat buyer agreement, if 36 months are taken from execution of the flat buyer agreement, still the time period to complete the project expired on 19.07.2014. However till date, neither possession has been handed over nor is the project complete. Therefore, complainant is praying for refund along with interest on the ground that respondent has not completed the project even after lapse of 12 years from



the date of booking and it is not likely to be completed in near future due to mismanagement.

C. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT:

5. During oral arguments learned counsel for the complainant has reiterated arguments as mentioned at Para 3-4 of this order. Ld. counsel for the complainant submitted that director of the respondent company was confined to Jail in some other cases, no one is representing them in many other similar matters and also the project is going to be auctioned soon by the orders passed by Hon'ble High Court for recovery of refund and interest amount due towards the allottee in whose favour earlier orders have been passed by the Authority. The complainant submits that his case may be decided on this date so that his claim be also satisfied with other allottees from sale/auction proceeds of the project.

D. RELIEF SOUGHT:

6. In view of the facts mentioned above, the complainant prays for the following relief(s):-

- a) Direct the respondent to refund the entire amount paid till date i.e. Rs. 12,16,750/- to the complainant along with interest as prescribed in Rule 15 of HRERA Rules on the amounts from the respective dates of



deposit till its actual realization within 90 days as per section 18(1) of the Real Estate (Regulation and Development) Act, 2016;

- b) Cancel the RERA registration of the project namely, "ESS VEE Apartments" of the Respondent at sector-20, Panchkula, Haryana under RERA read with relevant rules for violating the provisions of this Act;
- c) Any other relief/direction which the Hon'ble Authority deems fit as per the rules and provisions contained in the Act.

E. REPLY:

- 7. Despite successful service of notice to the respondent on 29.05.2023, no one appeared on behalf of the respondent and also no reply has been filed. Today also, none has appeared on behalf of respondent. It is pertinent to note that the proceedings before the Authority are summary in nature, thus the matter will be decided on the basis of documents available in the file. Having granted sufficient opportunity to the respondent to file a reply and also to argue the matter, the Authority decides to proceed with this matter ex-parte.

F. ISSUES FOR ADJUDICATION:

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



G. OBSERVATIONS OF THE AUTHORITY:

9. On perusal of the record, it is observed that despite successful service of notice, none has appeared on behalf of respondent nor reply has been filed. It is also observed that respondent has not been appearing in other complaint matters related to the real estate project since almost a year. Ld. counsel for complainant has requested the Authority to decide this case today itself in terms of earlier decided cases without affording any further opportunity to the respondent. Ld. counsel for complainant drew the attention of Authority towards the fact that project is going to be auctioned soon and if the matter is decided it shall serve the interest of justice as complainant shall also become entitled to recover his refund amount and interest from money collected from the auction of the project. Authority observes that in such circumstances where respondent promoter is repeatedly defaulting in appearing before the Authority in numerous other cases, including the present case, even after affording sufficient opportunity, there is no point in granting further adjournment. Therefore in the interest of justice, Authority decides to adjudicate the matter ex parte.
10. It is pertinent to mention that complainant in his complaint has asserted that project was launched in October 2007, construction too started at the same time, therefore, as per clause 32 of the flat buyer's agreement executed on



19.07.2011, respondent company was duty bound to complete construction of the said project within a period of 24 months which expired in 2009, approximately 14 years prior to the filing of present complaint in Authority. However, on perusal of file it is observed that complainant has failed to place on record any document to prove that construction of project started in October 2007. Thus, mere oral statement of complainant is not sufficient enough to establish the fact with regard to date of commencement of construction. Nevertheless, respondent executed the flat buyer's agreement on 19.07.2011, and in absence of exact date of commencement of construction, it appears logical to compute 24 months from the date of execution of flat buyer's agreement. Accordingly, the deemed date of possession comes to be 19.07.2013. Even by this date, the respondent failed miserably to complete the construction and hand over the possession of the flat to the complainant.

11. Further, it is noted that Authority has on earlier occasions elucidated that the present project i.e. 'Ess Vee Apartments' is unlikely to see the light of the day and has thereby allowed refund in like matters to various other allottees in the same project in bunch of cases earlier decided on 09.10.2019 with lead case bearing **Complaint No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.**, due to the following reasons:-



- i. Promoter while seeking registration of the project had disclosed that first phase of the project which was earlier scheduled to be completed in December, 2009 will be completed by December, 2019, second phase of the project which was earlier scheduled for completion in August, 2014 would be completed by March, 2019 and third phase of the project which was earlier scheduled to be completed in December, 2015 would be completed by December 2019. However, the promoter inspite of seeking several adjournments has not been able to arrange funds for further investment in the project and therefore it is unlikely for him to complete the project and handover possession to the allottees on the time so projected;
- ii. Promoter has mismanaged his finances and due to non-payment of loans raised from the banks and financial institutions has already incurred huge interest liability;
- iii. Promoter's interest liability will also be huge towards allottees on account of already incurred delay of 4 to 10 years in completing the project and delivering possession. The allottees who have lost faith in the promoter and have been waiting of possession of their apartments for the last more than 4 to 10 years are unlikely to pay more money to the respondent.
- iv. The Town and Country Planning Department has already clarified that it cannot take over the project for completion and the department is only concerned with recovery of arrears of 198.65 lakhs on account of Internal Development Charges.



v. *The allottees of the project have also expressed their inability to join together for forming an association for the purpose of taking over and completing the project.*

12. Therefore, on basis of above stated reasons, Authority is of the considered view that complainant in the captioned complaint is at parity with other complainants/allottees, which have been granted relief of refund and is hereby entitled to refund in the present matter in terms of the decision already rendered by this Authority in lead **case No. 865 of 2019 titled as *Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.***

13. Furthermore, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others*" has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date.

Relevant Para 25 of *ibid* judgment 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"

14. The aforesaid 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 non-delivery of possession of the unit on agreed date. Thus, in terms with the judgment and in view of above facts and records placed, Authority finds it to be fit case for allowing refund in favor of complainant. 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".

15. 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. 01.11.2023 is 8.75%. Therefore, the prescribed rate of interest will be MCLR+2% i.e. 10.75%.
16. Accordingly, respondent will be liable to pay the complainant, interest from the date amounts were paid by him till the date of actual realization of said amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹12,16,750/- 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%) 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 ₹ 28,27,927/- as per detail given in the table below:

| Sr. No. | Principal Amount | Date of payment | Interest Accrued till 07.11.2023 (in Rs.) | TOTAL (in Rs.) |
|--------------|--------------------|-------------------|-------------------------------------------|--------------------|
| 1. | 12,16,750/- | 18.07.2011 | 3,94,427/- | 16,11,177/- |
| Total | 12,16,750/- | 18.07.2011 | 3,94,427/- | 28,27,927/- |

17. Further, complainant is seeking relief regarding cancellation of RERA Registration of the project namely, Ess Vee Apartments, Sector-20, Panchkula under RERA. In this regard, it is observed that said relief is neither part of the pleadings nor has been pressed by the complainants during arguments. Therefore, the said relief is not allowed as not pressed.

H. DIRECTIONS OF THE AUTHORITY:

18. Taking into account above facts and circumstances, 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 ₹ 28,27,927/- 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. However, delay interest shall be payable by the respondent till the date of realization of amount paid by the complainant.
- (iii) The complaint is accordingly **disposed of**. File be consigned to Record room after uploading order on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]