



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1507 of 2022
Date of filing:	19.07.2022
First date of hearing:	23.08.2022
Date of decision:	17.08.2023

Gaurav Dubey

R/o II no. 235 C, Near Power Station,

Friends Colony, Etawah

Uttar Pradesh, Pin-206001

.....COMPLAINANT

Versus

M/s SRS Real Estate Ltd.

SRS Tower, 3rd floor,

Near Mewla Maharajpur Metro station,

Mathura road,

Faridabad

.....RESPONDENT

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

Member
Member

Present: - Mrs. Dipti Kanchan Dubey W/o Mr. Gaurav Dubey, for complainant.
None for the respondent.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 19.07.2022 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 there under, 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, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name & location of project	SRS Palm Homes, Sector 7, Palwal
2.	RERA registered/ not registered	Not registered
3	Unit no.	PH/07/SCO/230/028
4.	Super built up area	230 sq. ft.
5.	Date of Booking	19.05.2015(as per Annexure-2 annexed at page no. 33 of complaint book)



6.	Date of shop/commercial buyer agreement	Undated, although signed by both the parties
7.	Deemed date of possession	19.05.2019 (as per clause 4(a) of shop/commercial buyer agreement " <i>Developer shall endeavour to complete the construction and development of said complex tentatively within four years from the date of execution of this agreement</i> ") Note: Shop/commercial buyer agreement is undated therefore, deemed date of possession is ascertained four years from date of booking i.e. 19.05.2015.
8.	Total sale consideration	₹12,90,000/- (Page no. 4 of complaint book)
8.	Amount paid by complainant	₹6,45,000/-
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That complainant is serving in Indian Air force as a commissioned officer. Complainant booked a shop in real estate project namely "SRS Palm Homes", Sector-7, Palwal being developed by respondent "SRS Real Estate Limited". He was allotted unit no. PH/07/SCO/230/028, measuring 230 sq. ft. for total



sale consideration of ₹12,90,000/-. Shop/commercial buyer agreement executed between the parties is annexed as "Annexure-1".

4. As per payment structure provided at page no. 15-18 of the shop/commercial buyer agreement, complainant had made a payment of ₹6,45,000/- till the year 2017 against the total sale consideration of ₹12,90,000/-. Details of the payment made by complainant is illustrated in the table below:

S. No.	Amount paid	Date of payment	Mode of payment	Proof at page no.
1.	₹1,29,000/-	19.05.2015 (Receipt)	Cheque no. 227344	Page no. 33 (Annexure-2, in complaint book)
2.	₹1,93,500/-	30.06.2015 (Receipt)	Cheque no. 248040	Page no. 31, (Annexure-1, in complaint book)
3.	₹1,61,250/-	24.06.2016 (Demand letter)	Cheque no. 079675	Page no. 37, (Annexure-6, in complaint book)
4.	₹1,61,250/-	22.02.2017 (Demand letter)	Cheque no. 016290	Page no. 38 (Annexure-7, in complaint book)

5. Complainant was further promised that he shall be entitled to 11% assured return on 90% of payment till actual possession of shop is offered.
6. That complainant did not deposit any further amount to the respondent as there was no visible progress seen towards completion of the project. Moreover, respondent had miserably failed to reply to any of the queries raised by the complainant with regard to completion status of the project.

After receiving no response from respondent regarding status of construction, complainant was left with no other option than to ask respondent to refund the entire amount paid by him till date. Furthermore, complainant has sent various emails and letters seeking refund of his paid amount from respondent which were not answered by the respondent. Complainant even tried to contact respondent telephonically, still got no response from the respondent. Subsequently, complainant also visited the office of respondent where he was shocked to see that office was locked and the project was kept in abeyance.

C. RELIEF SOUGHT

7. Complainant is requesting for relief of refund of his paid amount along with interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

8. As per office record notice to respondent was successfully delivered on 12.06.2023. Despite five opportunities of hearing, respondent has neither appeared nor any reply has been filed on its behalf till date. Even, today, i.e., on 17.08.2023, respondent neither appeared nor filed reply. Authority is of the view that proceedings before this Authority are summary proceedings and sufficient opportunities had already been granted to the respondent to file reply, any further delay shall defeat the ends of justice for an allottee who has been waiting for his shop since 2015. Thus, matter is proceeded and decided ex-parte, based on the documents available on file.



E. ISSUES FOR ADJUDICATION

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

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

10. The Authority has gone through the documents placed on record. As stated in the complaint, complainant on 19.05.2015 booked a shop bearing unit no. PH/07/SCO/230/028, admeasuring 230 sq.ft. in the real estate project "SRS Palm Homes" located at Palwal, being developed by promoter, "SRS Real Estate Ltd.", for total sale consideration of ₹12,90,000/- and a shop/commercial buyer agreement was signed between the parties. However, on perusal of the buyer's agreement placed on record it is observed that the same is undated. Further, as per clause 4(a) of shop/commercial buyer agreement, the developer had committed to complete the construction and development of the said complex tentatively within four years from the date of execution of the agreement. Since, shop/commercial buyer agreement is undated, exact deemed date of possession cannot be ascertained from the same. Nevertheless, complainant as per the payment schedule made his first payment of 10% of total sale consideration towards booking of shop in question on 19.05.2015. In absence of date on shop/commercial agreement, Authority deems it appropriate to consider date of payment of booking amount made by complainant, i.e., on 19.05.2015 as starting date for



calculating the four years time for completion and handing over of possession. Accordingly, deemed date of possession comes to 19.05.2019.

11. However, it is a matter of fact that the respondent has till date not handed over the possession of the unit/shop to the complainant, meaning thereby that the respondent has failed to handover possession to complainant within a stipulated time frame. The innocent allottee, Commissioned Officer in Indian Airforce, who had invested his hard earned money in the project from the year 2015-2017 with the hope to get a shop cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. Thus, in the queen circumstances where respondent had failed to complete the project and handover shop as per agreed time and where complainant wishes to withdraw from the project, he cannot be forced to continue with it specially when there is nothing on record to show that there is any likelihood of completion of project.
12. Further, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & 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 terms agreed between them. Para 25 of this 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.”

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.

13. In view of above findings and after considering above mentioned judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as *“M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors.”*, Authority finds it to be fit case for allowing refund along with interest in favour of complainant. As per Section 18 of Act, interest is defined as under:-



The definition of 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 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”.

14. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e.



17.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

15. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant 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 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount.
16. On perusal of record it is noted that complainant has alleged that an amount of ₹6,45,000/- stands paid till the year 2017 to the respondent for shop in question. Receipts dated 19.05.2015 and 30.06.2015 annexed with the file, reveals that an amount of ₹3,22,500/- stands paid by complainant till the year 2015. Further, for proof of payment of remaining amount, complainant has relied upon demand letters dated 24.06.2016 and 22.02.2017, wherein the respondent in the table provided has admitted remaining payment of ₹1,61,250/- and ₹1,61,250/- respectively, total amounting to ₹3,22,500/-.



Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.75% from the date of payment till the date of this order, which comes to ₹11,65,249/- (₹6,45,000/- (principal amount) + ₹5,20,249/- (interest accrued till 17.08.2023. according to the receipts/statement of accounts provided by the complainant details of which are given in the table below –

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 17.08.2023
1.	₹1,29,000/-	19.05.2015	₹1,14,473/-
2.	₹1,93,500/-	30.06.2015	₹1,69,316/-
3.	₹1,61,250/-	24.06.2016	₹1,24,000/-
4.	₹1,61,250/-	22.02.2017	₹1,12,460/-
Total	₹6,45,000/-		₹5,20,249/-

G. DIRECTIONS OF THE AUTHORITY

17. 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 above in para no. 16

(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.

18. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order in each case on the website of the Authority.



.....
Dr. GEETA RATHIEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]