



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2471 of 2022
Date of filing:	12.09.2022
Date of first hearing:	08.02.2023
Date of decision:	22.11.2023

1. Chandra Prakash Agarwal S/o Sh. Rajendra Prasad Agarwal
2. Ankit Agarwal s/o Chandra Prakash Agarwal
R/o Room no. 14, reliance tower, Sector-127 Bakhatavarpur,
Noida 201304

....COMPLAINANTS

VERSUS

M/ Ansal Properties & Infrastructure Ltd,
Office: 115 Ansal Bhawan ,16 K G Marg
New Delhi 110001

....RESPONDENT

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

Member
Member

Present: Chandra Prakash Agarwal, complainant through video conference.

Adv Sunny Tyagi, learned counsel for the respondent through video conference.

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ORDER (DR GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 12.09.2022 by complainant Chandra Prakash Aggarwal 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	Ansal Green Escape Apartments, Sonipat
2.	Flat no.	Flat no. 2, Tower 25, 8 th floor
3.	Area	1225 sq. ft.
4.	RERA registered/not	RERA registered-173 of



	registered	2019(Lapsed Registration)
5.	Date of booking	Not mentioned
6.	Date of allotment	01.11.2006
7.	Date of builder buyer agreement	28.03.2007
9.	Deemed date of possession	30 months from the date of sanction of building plan.
10.	Basic sale price	19,60,000/-
11.	Amount paid by complainant	2,50,000/-
12.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. That the case of the complainant is that they booked a flat in respondent's residential project "Green Escape Apartments, Sonipat. After the said booking, the respondent issued an allotment letter dated 01.11.2006 thereby mentioning the area 1225 sq. ft, Basic sales price as ₹19,60,000/- per sq. ft. and amount paid as ₹2,50,000
4. Complainants entered into builder buyer agreement with the respondent on 28.03.2007. As per clause 12 of the flat buyer agreement, respondents

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were to deliver possession of the allotted flat within 30 months from the date of sanction of building plans by the concerned Authorities.

5. As per allotment letter the basic sales price of the said flat was Rs. 19,60,000/- Against said amount, complainants have paid an amount of Rs. 2,50,000/-.
6. That respondent kept making delays and excuses in completing the project and no proper communication was made with the complainant regarding the flat.
7. That, further because of inordinate delay in completion of the project the respondent may kindly be directed to refund the deposited amount, along with the prescribe rate of interest, on amount deposited from their respective deposits till realization.

C. RELIEF SOUGHT

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

In case of failure to give possession the allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.


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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Despite being given adequate opportunity, no reply has been filed by the respondent. Ld. Counsel for the respondent stated that the respondent company do not wish to file specific reply to the plaint and requested that his oral submissions/statement may be recorded. Learned counsel for the respondent made a statement that respondent is not able to construct the unit in the project "Green escape" due to financial constraints. Since, the proceeding before the Authority are summary in nature, and sufficient opportunity has already been afforded to the respondent to file written reply, in case of failure to do so on part of the respondent matter shall be decided based on the documents available on record and after considering the oral submissions of the parties.

E. ARGUMENTS OF COMPLAINANT

9. During oral arguments complainant reiterated arguments as mentioned at Para 3-7 of this order.

F. 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?



G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

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) It is not denied that respondent had allotted a flat no. 2, tower 25th floor admeasuring 1225 sq. ft. in its real estate project "Green Escape" Sonipat. Basic sales price of the flat is Rs. 19,60,000/- out of which complainant has paid an amount of Rs. 2,50,000/- in the year 2006. As per section 18 of the RERA Act it is an obligation upon the promoter to complete or give possession of an apartment plot and building as per agreement for sale. However, in the present complaint as per clause 12 of the BBA the promoter was obligated to handover the possession of the unit within 30 months from the date of sanction of building plans by the concerned Authorities. Since there is no reference of the date of sanction of building plans in the builder buyer agreement, nor in the complaint, neither ld. counsel for respondent referred or relied on any such specific date it is not possible to calculate 30 months from date of sanction of building plans. Thus, to ascertain the deemed date of possession reference has been made to observation of the Apex Court in 2018 STPL 4215 SC titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure)** and anr for reckoning the deemed date of possession 3



years from the date of builder buyer agreement which in the present case shall be 28.03.2010. However, the promoter failed to deliver the possession of the unit within such time frame. Further, as admitted by Id. counsel for respondent itself, respondent is not in a position to construct the unit in the project "Green escape" Sonipat due to financial constraints. In these circumstances where the flat buyer agreement was signed way back in the year 2007 and the projects is not complete, nor is likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, complainants would be entitled to relief of refund as he cannot be forced to wait for completion of project. As on date, the complainants are aggrieved persons who have not been handed over possession of the flat till date even after an inordinate delay of more than 12 years.

(ii) Accordingly, complainants/allottees, in exercise of their right under the provisions of this Act has demanded refund of the amount paid by him. 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.

(iii) Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh**


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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.

(iv) This project is already delayed by several years. It is still not complete and admittedly respondents are not in a position to construct the project due to financial constraints, therefore, 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. 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.”

(v) 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. 22.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(vi) The definition of term ‘interest’ is defined under Section 2(z) 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 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. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹ Rs. 2,50,000/- 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 ₹ 4,58,789 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 05.07.2023
1.	2,50,000/-	01.11.2006	4,58,789 /-
Total	2,50,000/-		

[Handwritten Signature]
Attorney

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 ₹7,08,789/- 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.


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NADIM AKHTAR
[MEMBER]


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