



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	857 of 2023
Date of filing.:	06.04.2023
First date of hearing.:	18.05.2023
Date of decision.:	08.11.2023

1. Brigadier Retired Vinod Kumar Vadhera
s/o Baldev Raj VadheraCOMPLAINANTS
2. Meera Vadhera w/o Vinod Kumar Vadhera
Both R/o H.No 19, Brahma Putra Apartment,
Sector-29, Noida, Gautam Budh Nagar
Uttar Pradesh

VERSUS

Global Land Masters Infratech Private Limited
(Erstwhile Bhoomi Infrastructure Company)RESPONDENT
H.No 1411, Sector-21
Panchkula
134112

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Present: - Mr. Akshat Mittal, Counsel for the complainants
Ms. Sanya Thakur, Counsel for the respondent
through VC.

Geeta

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed 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 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 project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been delineated in the following table:

S.No.	Particulars	Details
1.	Name of the project.	'Amazon-The Defence County' Sector-30, Panchkula, Haryana.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered



5.	Details of unit.	Initially Flat no. C-1/504, 5th Floor, Type C having area 1100 sq. ft. Later on Z22-11, Ground Floor, Z Block, admeasuring super built up area 1203 sq. ft.
6.	Date of allotment	12.03.2010
7.	Date of floor buyer agreement	07.07.2011
8.	Due date of possession	07.07.2015
9.	Possession clause in BBA (Clause 26)	The developer shall, subject to force majeure circumstances or such other circumstances beyond the reasonable control of the Developer, endeavour to complete the construction of the Unit within a period of thirty six (36) months from the date of execution of this Agreement with an extension of additional twelve (12) months (on a no claims basis) subject to timely payment by the Allottee of the Basic Sale Price and all other charges as may be payable under the Payment Plan and/ or under this Agreement and / or otherwise demanded by the Developer. The Developer upon execution of the Sale Deed for the Unit shall, hand over the Unit to the Allottee for his / her / their / its occupation and use, subject to the Allottee having complied with all the terms and conditions of this Agreement. Save and except as otherwise



		provided in this Agreement, if the Developer fails to complete construction of the Unit within the stipulated period, it shall be liable to pay to the Allottee compensation at Rs. 5/- (Rupees Five only) per month on per square feet of the Super Built-Up Area of the Unit for delay beyond the no claim period.)
9.	Basic sale consideration	₹ 27,20,250/-
10.	Amount paid by complainant	₹ 15,66,762/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Brief facts of complaint are that a unit had been booked in the project of the respondent namely "Amazon-The Defence County" situated at Sector 30, Panchkula, Haryana by the complainants in the year 2010 upon payment of ₹ 4,24,800/- as a booking amount. Vide allotment letter dated 12.03.2010, complainants were allotted unit no. C-1/504, 5th Floor, Type C, having an area of 1100 sq. ft. A copy of the allotment is annexed as Annexure C-2. That a builder buyer agreement with respect to the allotted unit was executed between both the parties on 07.07.2011. As per clause 26 of the agreement, possession of the unit was to be delivered



within a period of thirty six (36) months from the date of execution of the agreement with an extension of additional twelve (12) months (on a no claims basis) subject to timely payment by the allottee of the basic sale price and all other charges as may be payable under the payment plan and/ or under the agreement and/ or otherwise demanded by the developer. Thus, the deemed date of possession to deliver the unit worked out to 06.07.2014, which has not been still complied with by the respondent.

4. That further, it is submitted that the respondent company would not be entitled to the grace period of 12 months, as the same could only be taken benefit of by the promoter in the event of genuine force majeure circumstances and only in a case where the promoter is undisputedly able to establish the same. However, even if the said grace period is considered, the due date of offer of possession still comes to 06.07.2015, which too has long been lapsed and possession has never been offered to the complainants. The basic sale price of the unit was fixed at ₹ 27,20,250/- against which the complainants had made a total payment of ₹ 15,66,762/- till date.
5. That the respondent has failed to deliver possession of the unit even after a continuing delay of almost 13 years since the booking and more than 8 years from the due date of possession.



6. It is further submitted that the respondent company had unilaterally increased the size of the unit in question from the original 1100 sq. ft to 1175 sq. ft i.e an increase of more than 6.5%, thus increasing the cost of the unit.
7. That further, the entire construction activity at the project site was stopped in the year 2014. Therefore, the complainants requested the respondent for refund of the amount, whereafter, the respondent company had informed that the said unit will be transferred to another customer and the complainants would be refunded his amount along with additional compensation of ₹ 3,25,000/-. Complainants submitted its willingness for the said transfer to the respondent vide email dated 29.12.2014, a copy of which is annexed as annexure C-4. However, respondent failed to confirm the said communication to the complainants despite repeated reminders.
8. It is pertinent to mention that respondent company with malafide intentions changed the allotment of the unit from the name of the complainants to one Sh. Rahul Gupta, without issuing refund or compensation to the complainants. A copy of letter dated 14.01.2015 in this regard issued by respondent to Sh. Rahul gupta is annexed as Annexure C-6.
9. Complainants have been making continuous and repeated efforts with the respondent company in hope of return of the paid amounts . Copy of



communications with the respondent from 2018 to 2023 is annexed as Annexure C-7.

10. Highly aggrieved by these aforementioned circumstances, complainants have approached the Authority. That despite a delay of more than 13 years respondent has failed to develop the project and deliver possession of the booked unit. It is further stated that the complainants intend to withdraw from the project on account of deficiency in services. The complainants seek complete refund of the paid amount along with interest as per Rule 16 of HRERA Rules 2017 due to failure on the part of respondent in delivery of possession. Hence the present complaint has been filed.

C. RELIEF SOUGHT

11. That the complainants seek following relief and directions to the respondent:-

- i. Direct the respondent to refund the entire amount deposited by the complainants amounting to ₹ 15,66,762/- with interest.
- ii. Direct the respondent to pay a sum of ₹ 20,00,000/- on account of grievance and frustration caused to the complainants and deficiency in service and for causing mental agony.



- iii. The registration, if any, granted to the respondent for the project be revoked under Section 7 of the RERA Act.
- iv. legal expense of ₹ 1,50,000/- incurred by the complainants for filing and pursuing the instant case.
- v. Any other damages, interest and relief which the Hon'ble Authority may deem fit.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

12. Learned counsel for the respondent filed detailed reply on 22.09.2023 pleading therein:
13. That the unit in question was booked by the complainants in the year 2010 after making due diligence upon payment of a booking amount of ₹ 4,24,800/-. On 12.03.2010, respondent duly allotted a unit bearing no.C-1/504, 5th Floor, Type C, having an area of 1100 sq. ft to the complainants.
14. That a builder buyer agreement dated 07.07.2011 was executed between both the parties. As per clause 26 of the agreement, possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of the agreement with an extension of additional twelve (12) months (on a no claims basis) subject to timely payment by the allottee of the basic sale price and all other charges as may be payable under the payment plan and/ or under the agreement and/ or otherwise

demanded by the developer. Thus, the deemed date of possession to deliver the unit with extension of 12 months worked out to 06.07.2015.

15. That the respondent was bound to offer possession in aforesaid period only upon timely payment by the allottees of the basic sale price and all other charges payable as per payment plan. At the time of booking, complainants had opted for construction linked payment. That the respondent had constructed the tower C-1 in the project in question upto the 21st floor, the payment of which was duly received by the respondent from most of the allottees as and when demanded. The complainants made a payment of ₹ 15,66,762/- up to July 2014. Punjab and Sind Bank sanctioned term loan to the company in August 2014 and major construction work of this tower was carried out after August 2014. However, , the complainants did not adhere to the payment schedule and though the construction of this tower was nearly complete, he failed to make any payment. The complainant delayed on payments made to the respondent till date, and since he has not paid the remaining amount and has certainly defaulted on the same. Owing to this wilful non-payment on behalf of the complainants, the respondent was not able to complete construction of the project which was later handed over to the association by the Hon'ble Authority in proceedings of Complaint no. 559 of 2018.
16. That the reason for non payment was wilful on the part of the complainants. When the complainants were asked to make payment based



on construction linked payment plan, complainants found it difficult to make payment based on construction linked payment plan. Hence, complainants submitted a surrender request to the respondent company vide letter dated 13.03.2015. It is pertinent to mention that respondent has failed to place on record a copy of the letter dated 13.03.2015. After receipt of letter, complainants were requested to visit the office and settle account. Complainants were telephonically informed that since they had agreed to surrender the unit, their unit was being transferred to another applicant. Further, complainants were informed vide email dated 28.12.2014 that the unit initially allotted to them has been allotted to another applicant.

17. However, upon visiting the office of the respondent, complainants upon seeing the progress in construction work decided to retain their unit. Since the booked unit had already been allotted to somebody else, complainants agreed to re-allotment of another unit subject to payment of balance amount. However, complainants were not able to make requisite payments and again submitted a surrender request vide letter dated 14.07.2018. At this point of time, the financial position of the respondent company was not in good condition and complainants were accordingly informed that refund will be granted once the situation improves.

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18. That passing an order for refund of paid amount at this point will jeopardise the promoter as the amount has been utilised for construction of the project.
19. During the course of hearing dated 03.10.2023, learned counsel for the respondent had sought time to argue and the request was accepted by the Authority upon receiving no objection from the learned counsel for the complainant. Today, Ms Sanya Thakur, learned counsel for the respondent again sought time to argue the matter. It is noteworthy to mention that respondent in this case was served notice for filing reply on 26.04.2023. Thereafter reply was filed in the registry on 22.09.2023. Such a conduct on the part of the respondent does not deserve to be condoned. The proceedings before the Authority, under RERA Act 2016, are summary proceedings and respondent has already been given fair opportunity to file reply and argue the matter and/or place on record document relevant to the captioned complaint. There appears to be a deliberate attempt on part of the respondent to cause delay in adjudication. Since principle of natural justice have been followed and reply from the respondent has been taken on record, in absence of a conclusive reason, this Authority has no hesitation in refuting the request of the learned counsel for another adjournment to argue the matter. Matter is thus decided/adjudged after consideration of complaint filed and reply submitted by both parties.



E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

20. As has been admitted by both the parties, upon booking, a unit bearing no. C-1/504, 5th Floor, Type C, having an area of 1100 sq. ft had been allotted to complainants in the project of the respondent namely "Amazon-The Defence County" situated at Sector 30, Panchkula, Haryana vide allotment letter dated 12.03.2010; a builder buyer agreement with respect to the allotted unit was booked between both the parties on 07.07.2011; as per clause 26 of the agreement, possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of the Agreement with an extension of additional twelve (12) months subject to timely payment by the allottee of the basic sale price and all other charges as may be payable under the payment plan and/ or under the agreement and/ or otherwise demanded by the developer. Thus the deemed date of delivery of possession worked out to 07.07.2015. The complainants have made a total payment of ₹ 15,66,762/- against the basic sale price of ₹ 27,20,250/- which has not been disputed by the respondent. It is alleged by the complainants that the respondent had stopped construction activity in the year 2014. Respondent in its reply has submitted that upto July 2014, respondent had constructed the tower C-1, in which the unit of the complainant was situated upto 21st floor. However, respondent has failed to attach any

documentary proof in support of its claim, therefore Authority is unable to accept their contention of the respondent.

21. Since the construction of the project had been stalled for a long time, complainants who had already invested a huge amount of ₹ 15,66,762/-, were forced to withdraw from the project and seek refund of the paid amount. Accordingly, complainants had communicated their willingness to withdraw from the project and seek refund of paid amount to the respondent vide email dated 29.12.2014. Complainants had confirmed their approval for transfer of unit to another applicant and receive refund of paid amount. This fact has been admitted to by the respondent. That thereafter, the unit bearing no C-1/504, 5th Floor, Type C, initially allotted to the complainants had been provisionally allotted to another applicant namely Mr. Rahul Gupta. Respondent has not denied the allotment in favour of Mr. Rahul Gupta in the written submissions. That after the transfer of unit booked by the complainants, respondent failed to initiate the process of refund of paid amount in favour of the complainants. Though the respondent in its reply has submitted that complainants agreed to re-allotment of another unit subject to payment of balance amount and again submitted a surrender request vide letter dated 14.07.2018 on account of not being able to pay dues. However, respondent has failed to place any documentary evidence in support of its claim. Therefore, mere submissions of the respondent cannot be accepted.



22. The facts set out in the preceding paragraph demonstrate that as per the terms of builder buyer agreement possession of the unit had been due since July 2015, however, respondent failed to construct the project within stipulated time. Seeing no progress in construction work, complainants opted for withdrawing from the project and seek refund of paid amount vide letter dated 29.12.2014. Upon approval from the complainants, respondent with malafide intentions allotted the unit of the complainants to another applicant however, failed to refund the amount paid by the complainants. It is the contention of the respondent that complainants had opted for construction linked payment and stopped making payments as per plan. Therefore, complainants chose to withdraw from the project on account of default in making payments as per agreed plan. Fact of the matter is that complainants had already made a payment of ₹ 15,66,762/- i.e more than 50% of the basic sale consideration by July 2014. Respondent has failed to place on record any demand letter/reminder letter to show as to which demand has been delayed by the complainants. Further, as to what was the stage of construction upon which the complainants began defaulting in making payments and/or the reminder letters sent by the respondent to the complainant alerting them of their default. In case, complainants had actually defaulted in making payments, then upon their surrender request , respondent should have immediately cancelled the allotment of the complainant and initiated

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process for refund of paid amount. Rather respondent transferred the allotment of the unit allotted to the complainants to another applicant way back in 2015 and on the other hand chose not to return the amount paid by the complainants.

23. It is an admitted fact that respondent has illegally retained a huge amount of ₹ 15,66,762/- paid by the complainants since July 2014 and has been enjoying on the hard earned money of the complainants. Complainants have been bereft of both their money and possession of a unit in the project in question. Such an act on the part of respondent clearly highlights the unscrupulous conduct of the respondent in the captioned matter. It is true that the complainants chose to withdraw from the project before the due date of possession under the apprehension that the project has been stalled and they might not receive the possession within stipulated time. No documentary evidence has been placed on record by the respondent proving other wise that the complainants opted to withdraw from a running project and were at fault. It cannot be accurately proved that what was the exact status of the project when the complainants decided to leave the project; but the fact that the respondent immediately allotted the unit of the complainant to another applicant and earned additional revenue cannot be overlooked. Whereas after nearly 10 years complainants neither have any possession in their favour nor their hard earned money paid to the respondent.

24. Under the apprehension of delayed possession, complainants had chosen to withdraw from the project. Had the respondent at that time acted as mutually decided amongst the parties and returned the amount paid by the complainants after forfeiture of earnest money, it would have been held right in the eyes of law. However, respondent acted in an unjust manner and illegally retained the amount of ₹ 15,66,762/- paid by the complainants. Now in the year 2023, Authority cannot determine the exact sequence of events as happened in the year 2014, but the respondent cannot be allowed wrongful gains. Therefore, it is observed that complainants are entitled to refund of the entire paid amount along with interest in terms of the RERA Act 2016.

25. So, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainants will be entitled to refund of the paid amount from the dates of various payments till realisation. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 provides for prescribed rate of interest which is as under:

“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”..”

26. 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. 08.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.



27. Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 from the date of various payments till actual realisation of the amount.
28. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 08.11.2023 at the rate of 10.75% and said amount works out to ₹20,02,941/-. Complainants shall be entitled to further interest on the paid amount till realisation beginning from 09.11.2023 at the rate of 10.75%:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 08.11.2023 (in ₹)
1.	2,75,000/-	12.03.2010	4,04,156/-
2.	1,49,000/-	12.03.2010	2,18,979/-
3.	2,18,700/-	22.06.2010	3,14,844/-
4.	4,18,800/-	25.06.2011	5,57,520/-
5.	5,05,262/-	09.07.2014	5,07,442/-
Total:	15,66,762/-		20,03,052/-



29. The complainants are seeking compensation to the tune of ₹ 20,00,000/- on account of grievance and frustration caused to the complainants and deficiency in service and for causing mental agony and ₹ 1,50,000/- towards cost of legal expenses. 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.

F. DIRECTIONS OF THE AUTHORITY

30. 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 amount of ₹35,69,814/- (till date of order i.e 08.11.2023) to the complainants and pay further interest beginning from 09.11.2023 till actual realisation of the amount at the rate of 10.75%.

(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.

31. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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NADIM AKHTAR
[MEMBER]


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DR. GEETA RATHEE SINGH
[MEMBER]