



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3026 of 2022
Date of filing:	14.11.2022
Date of first hearing:	01.02.2023
Date of decision:	23.11.2023

Sanjeev Gupta
R/o Flat no. 501, Maitri Apartments,
Sector-9, Rohini, Delhi-110085

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

Present: Adv Chaitanya Singhal, learned counsel for the complainant
 through video conference.

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

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 14.11.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016

(hereinafter referred to RERA Act, 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", Sonipat.
2.	Flat no. allotted	203, 2 nd floor, Tower-17
3.	Area	1148 sq. ft.
4.	RERA registered/not registered	Registered / HRERA-PKL-SNP-173-2019
5.	Date of booking	09.10.2011
6.	Date of allotment	Not allotted

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7.	Date of builder buyer agreement	Not executed
9.	Deemed date of possession	Cannot be ascertained
10.	Total sales consideration	Rs. 25,99,500/-
11.	Amount paid by complainant	Rs. 12,83,736/-
12.	Offer of possession	No offer was given

B. FACTS OF THE COMPLAINT

3. That the case of the complainant is that he booked a 2 BHK flat no. 203, 2nd floor in Tower 17 in respondent's residential project "Green Escape Apartments- Phase 2, Sonipat on 09.10.2011. Builder buyer agreement has not been executed between the parties.
4. That the total consideration of the said flat was Rs. 25,99,500/- Against said amount, complainants have paid an amount of Rs. 12,83,736/-.
5. That respondent has failed to allot the unit to the complainant and construct the unit from 2011 till date. Complainants had several times visited the corporate office of the respondent and written several letters and emails for seeking refund of amount paid with 18% interest on



account of delay in construction but respondent has failed to refund the amount paid by the complainant along with interest.

6. That 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.
7. That the complainant is entitled for receiving interest @ SBI MLCR+2% on the amount paid to the respondent as per Rule 15 of Haryana Real Estate(Regulation and Development) Rules, 2017.

C. RELIEF SOUGHT

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-
 - a) That the respondent be directed to refund the amount of Rs. 12,83,736/- paid by the complainant along with interest as per HRERA Rule 15.
 - b) To grant litigation expenses of Rs. 1,50,000/- to the complainant.
 - c) Any other relief/direction which the Hon'ble Authority deems fit and proper in light of the facts and circumstances of the above case.
9. Respondent has not filed its reply despite availing four opportunities.



D. ARGUMENTS OF LEARNED COUNSEL FOR 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 his statement may be recorded that respondent is not in a position to construct the unit due to financial constraints in the project. He also stated that respondent does not wish to filing reply in the present case. His statement is taken on record.

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. 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) Complainant in the present case has booked a 2 BHK flat no. 203, 2nd floor in Tower 17 in respondent's residential project "Green Escape Apartments- Phase 2, Sonipat on 09.10.2011. Builder buyer agreement has not been executed between the parties. Total consideration of the said flat was Rs. 25,99,500/- Against said amount, complainants have paid an amount of Rs. 12,83,736/-. Deemed date of possession cannot be



ascertained as there is no allotment letter issued to the complainant and builder buyer agreement has also not been executed between the parties. Ld. Counsel for the respondent does not dispute the fact that complainant is the allottee. He further admitted that respondent is not in a position to construct the complainant's unit. Further, respondent has taken a defence that delay in construction has been caused due to financial constraints and reasons beyond the control of the promoter. In these circumstances where the flat was booked way back in 2011, allotment letter has not been issued, builder buyer agreement has not been executed and admittedly project is neither complete nor likely to be completed in near future. The complainant would be entitled to relief of refund as he cannot be forced to wait for completion of project. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat even after an inordinate delay. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force.

(ii) Factual position reveals that admittedly respondent is not in a position to deliver possession of booked unit. For reckoning the deemed date of possession, reference is 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 v/s Trevor D'lima & Ors.**, wherein

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it has been observed by the Apex court that 3 years is a reasonable time. Deemed date will be reckoned from the date of booking dated 09.10.2011 which works out to be 09.10.2014. Complainant/allottee, in exercise of his 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.

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

(v) 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. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of

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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”.

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.”

(vi) 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. 23.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

(vii) Accordingly, respondents shall be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ Rs. 12,83,736/- 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 ₹ 16,03,590 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 23.11.2023
1.	63140	2013-03-15	72636
2.	63140	2012-01-12	80595
3.	126280	2012-06-22	155165
4.	140130	2011-12-13	180107
5.	34440	2012-01-19	43890
6.	140130	2012-02-13	177549
7.	96940	2012-03-15	121941
8.	223452	2012-04-23	278513
9.	195393	2012-06-22	240087
10.	35506	2012-07-26	43272
11.	65092	2012-07-26	79329
12.	100093	2011-10-11	130506
Total	₹ 12,83,736/-		₹ 16,03,590/-



G. 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 ₹28,87,326/- 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]