



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2137 of 2022
Date of filing:	16.08.2022
Date of first hearing:	08.02.2023
Date of decision:	22.11.2023

Vivek Kant Saxena
R/o Flat no. 167, Pocket- 24, Sector 24
Rohini, Delhi-110085

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

Present: Adv Vivek Sethi, 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 16.08.2022 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 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 Apartments, Sector-35, Sonipat.
2.	Flat no.	0102-16-0203
3.	Area	1717 sq. ft.



4.	RERA registered/not registered	Registered / HRERA-PKL-SNP-173-2019
5.	Date of booking	Not mentioned
6.	Date of allotment	11.02.2013
7.	Date of builder buyer agreement	25.02.2013
9.	Deemed date of possession	25.08.2016
10.	Basic sale price	Rs. 37,09,545.60/-
11.	Amount paid by complainant	Rs. 40,08,600/-
12.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. That the case of the complainant is that the complainant was allotted flat no. 0102-16-0203 admeasuring super area 1717 sq. ft in the respondent's project "Green Escape Apartments" Sector-35, Sonipat on 11.02.2013. Flat buyer agreement was executed between the parties on 25.02.2013 for said flat. As per clause 5 of the said agreement possession of the flat was to be offered within 42+6 months from the date of execution of agreement or from the date of commencement of particular block. Basic sales price of the flat was ₹37,09,545.60/- against which an amount of



₹40,08,600/- stands paid by the complainant. Complainant opted for construction linked plan.

4. That since tower no. 16 in which the flat was allotted to the complainant was not started by the respondent, complainant was approached by the respondent to change his allotted unit from 0102-16-0203 to 0102-39-0001 admeasuring 2196 sq. ft vide letter dated 06.09.2016. Complainant agreed for the same after which allotment letter dated 07.09.2016 for the new unit, i.e, 0102-39-0001, admeasuring 2196 sq. ft was sent to the complainant. Flat buyer agreement for the new/changed unit was also executed on the same date.
5. That despite passage of more than 9 years, the possession of the flat is not handed over as there is no progress of construction on the project site. The promoter cannot indefinitely defer the delivery of possession after receiving the substantial amount. The promoter is duty bound to deliver the possession within reasonable time.
6. 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.

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C. RELIEF SOUGHT

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

- a) To direct the respondent to refund amount of Rs. 40,08,600/- (Rupees Forty Lakhs Eight Thousand Six Hundred Only) paid towards allotted residential Flat/ Unit No.: 0102-16-0203. (Super area: 1717 sq. ft.) in Green Escape Apartments, Sector 35, Sonipat, Haryana-131029;
- b) To direct the respondent to pay interest on delayed possession for more than 9 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 since 25.02.2017 to the complainants;
- c) To direct the respondent to Pay Rs. 5,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;
- (d) To direct the respondent to Pay Rs. 5,00,000/- as compensation to the complainant as part of deficiency of service on your part;
- (e) To direct the respondent to refund of all legal cost of Rs. 50,000/- (Fifty Thousand Only) incurred by the complainant.
- (f) Any other relief/direction which the Hon'ble Authority deems fit The respondent be further directed to pay the cost and litigation charges.

8. Respondent has not filed its reply despite availing four opportunities. Cost of ₹10,000/- payable to the Authority and ₹5000/- payable to the



complainant for not filing the reply in time has already been imposed on the respondent.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

9. During oral arguments learned counsel for the complainant reiterated arguments as mentioned at Para 3-6 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 is not filing reply in the present case. His statement has been 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 executed builder buyer agreement for unit no. 0102-16-0203 admeasuring 1717 sq. ft on 25.02.2013. As per clause 5.1 of the BBA the promoter was obligated to handover the possession of the



unit within 42 months with an extended period of 6 months, from the date of execution of the agreement or from the date of commencement of construction of the particular tower/block in which the unit is located. Basic sales price of the flat was ₹37,09,545.60/- against which an amount of ₹40,08,600/- stands paid by the complainant. Complainant was approached by the respondent to change his allotted unit from 0102-16-0203 to 0102-39-0001 admeasuring 2196 sq. ft vide letter dated 06.09.2016. Complainant agreed for the same after which allotment letter dated 07.09.2016 for the new unit i.e, 0102-39-0001 admeasuring 2196 sq. ft was sent to the complainant. Flat buyer agreement for the new/changed unit was also executed on the same date.

On perusal of letter sent by the respondent dated 06.09.2016, it is revealed that respondent had not started the construction of the tower in which the complainant's unit was situated and proposed to change the unit of the complainant from 0102-16-0203 admeasuring 1717 sq. ft. to 0102-39-0001 admeasuring 2196 sq. ft. Complainant accepted the same and thereafter builder buyer agreement dated 07.09.2016 for the new unit, i.e, 0102-39-0001, admeasuring 2196 sq. ft was executed. Respondent has not offered possession of the flat for which first agreement dated 25.02.2013 was executed and requested the complainant to change the unit but respondent is again not in position to give possession of the flat as per the new agreement dated 07.09.2016. L.d. counsel for the respondent has admitted that respondent is not in a position to construct the complainant's unit and has not even filed reply.



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 w.r.t financial constraints. Authority observes that the complainant had paid an amount of Rs. 40,08,600/- against the BSP of Rs. 37,09,545.90/-. The plea of financial crunch is not tenable as amount more than the basic sales price has been paid, rather the Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred if the money paid by the allottees was misappropriated by the respondent/promoter instead of using it towards construction of the project. In these circumstances where the flat buyer agreement was signed way back in the year 2013 and the projects are not complete nor likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, 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 as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.

(ii) Factual position reveals that respondent is not in a position to deliver possession of booked unit. As per clause 5.1 of the agreement dated 07.09.2016, the promoter was obligated to handover the possession of the unit within 42

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months with an extended period of 6 months, from the date of execution of the agreement or from the date of commencement of construction of the particular tower/block in which the unit is located. Said clause is vague as it has not been disclosed by the respondent as to when the construction in the tower in which complainant's unit is situated is likely to be started. In the present case respondent has executed an agreement dated 25.02.2013 for flat no. 0102-16-0203 and since construction of said tower was not started by the respondent, another agreement was executed on 07.09.2016 for flat no. 0102-39-0001 in another tower but respondent has failed to honour its obligations with respect to both the agreements. In such a situation deemed date will be reckoned from the date of previously executed agreement dated 25.02.2013 which works out to be 25.02.2016.

Ld. Counsel for the respondent has also admitted that construction of the complainant's unit cannot be completed due to financial crunch. Complainant/allottee, in exercise of his rights 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**" 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 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 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(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;

(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 respondents to refund to the complainant the paid amount of ₹40,08,600/- 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 ₹36,14,246/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 22.11.2023
1.	32326	2013-05-09	36655
2.	206000	2013-02-11	238863
3.	284771	2013-03-22	326929
4.	296764	2013-05-09	336502
5.	411360	2013-07-12	458689
6.	225686	2013-08-30	248395
7.	2513922	2016-09-21	1939112

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8.	37771	2016-09-24	29101
Total	₹ 40,08,600/-		₹ 36,14,246/-


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 ₹ 76, 22,846/- 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]