



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1564 of 2023
Date of filing:	18.07.2023
Date of first hearing:	23.08.2023
Date of decision:	29.11.2023

Sh.Jatinder Kumar Sapra, S/o Sh.Sham Dass,
Resident of House no. 751, Sector-9, Panchkula.

....COMPLAINANT

VERSUS

M/s Samar Estate Pvt. Ltd,
through its Managing Director Sh. Vinod Bagai,
Regd. Office: House no. 87, Sector-7, Panchkula.

....RESPONDENT

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

Present: Adv. Vishal Madaan, Id. counsel for the complainants.
 None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 18.07.2023 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 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	ESS VEE APARTMENTS, Sector-20, Panchkula, Haryana.
2.	Nature of Project	Residential Group Housing Project
3.	Flat no.	R-301, Tower-R (the allotted flat number' is based upon the assertion made by the complainant in the complaint and in the statement of account of respondent builder as it is not mentioned in BBA)
4.	Area	1240 sq. ft.



5.	RERA registered/ not registered	Registered vide registration no. HIRERA-PKL-54 of 2018 and suspended by HIRERA-PKL., Panchkula vide order dated 28.01.2020 in Suo Moto complaint no. 2807 of 2019
6.	Date of application for allotment	Not mentioned
7.	Date of allotment	Not mentioned
8.	Date of transfer of allotment to complainant	22.08.2011
9.	Date of Flat/ Builder Buyer Agreement	22.08.2011
10.	Deemed date of possession	<p>As per clause 32 of the BBA executed on 07.09.2011, developer contemplated to complete the construction of said flat within a period of 36 months, from date of commencement of construction unless there is delay or failure due to reasons mentioned in present agreement or due to failure of apartment allottees to pay the price of the said apartment in accordance with the schedule of payments agreed between them or upon failure of allottee to abide by all or any of the terms and conditions of the agreement.</p> <p>Note: As per assertion of complainant, the project was launched in 2007 and construction was also started in October, 2007.</p> <p>Thus, DDOP is March 2010 and even if it is taken from the date of execution of the BBA, still the deemed date of possession comes out to be 22.08.2014.</p>



11.	Basic sale price	Rs.28,14,800/-
12.	Amount paid by complainant	Rs.24,17,840/-
13.	Offer of possession	Not offered

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT:

3. That in this case, allottees Smt. Sudesh Bansal and Sh. Rakesh Bansal, booked a 2 bed room apartment flat no.301 in Tower-R, measuring 1240sq.ft. in the project of the respondent namely, "Ess Vee Apartment", Sector-20, Panchkula at the basic sale price of Rs.28,14,800/-. Advance payment of Rs.4,00,000/- was made vide receipt no. 161 and 162 dated 11.10.2006 to the respondent. Thereafter, flat was transferred in favour of Sh.Hariom Singh, S/o Sh. Surjan, R/o: #90, village Rally, Sector-12, Panchkula by initial allottee i.e. Smt. Sudesh Bansal and Sh. Rakesh Bansal upon receipt of payments already made by them. Thereafter, complainant got the said flat transferred in his favour by making payment to Sh. Hariom Singh through respondent vide transfer letter dated 22.08.2011 and stepped into the shoes of Sh. Hariom Singh. Respondent further executed flat buyer's agreement on 22.08.2011 in favour of the complainant and earmarked Flat no. R-301 in name of complainant against the above booking of apartment.



4. That as per clause 32 of flat buyer agreement executed on 22.08.2011, respondent was obliged to complete construction of the said flat within 36 months from the date of commencement of construction. The project was launched in October 2007 and construction too started at the same time. If 36 months is taken from execution of the flat buyer agreement, still the time period to complete the project expired on 22.08.2014. Till date, neither possession has been handed over nor is project complete.
5. That it is worthwhile to mention that complainant made all the payments in time as per the demand raised by the respondent and made total payment as follows:

Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	161	11.10.2006	3,00,000/-	403482	11.10.2006
2.	162	11.10.2006	1,00,000/-	403482	11.10.2006
3.	174	29.01.2007	2,00,000/-	cash	-
4.	176	19.02.2007	1,00,000/-	158734	19.02.2007
5.	493	09.08.2008	1,50,000/- 1,50,000/-	181904 181905	05.08.2008 07.08.2008
6.	290	13.04.2009	7,20,000/-	009631	13.04.2009
7.	295	27.04.2009	30,000/- 50,000/-	745670 739953	27.04.2009
8.	322	20.06.2009	35,000/- 35,000/-	739955 482100	20.06.2009
9.	325	04.07.2009	1,00,000/-	Bank transfer	04.07.2009
10.	351	08.02.2010	2,50,000/-	403484	08.02.2010



11.	666	21.06.2011	30,000/-	248388	20.06.2011
12.	667	21.06.2011	1,240/-	cash	-
13.	669	10.07.2011	600/-	cash	-
14.	678	22.08.2011	62,000/-	283723	22.08.2011
15.	1621	08.02.2012	45,000/-	648147	08.02.2012
16.	2289	12.03.2014	59,000/-	430959	12.03.2014
	Total		24,17,840/-		

6. That complainant states that out of afore-mentioned payments, payment of Rs.62,000/- is not mentioned in the statement of account of respondent builder, which is alleged to have been charged arbitrarily as transfer fee towards besides the payment of flat. Also, it is worthwhile to mention that when allotment was transferred to complainant, he had paid Rs.15,00,000/- to the previous allottee i.e. Sh. Hariom Singh, who further disbursed the same to Sh. Hariom Singh, which is mentioned in the ledger account statement of the respondent company at page no.34. Thus, all the payments made by the complainant are duly proved by the receipts attached and the account statement attached at page no. 18-33 and 34-35.
7. That complainant asserts that respondent had stopped the construction in the said project since last 5-6 years and failed to complete the project. Further, the Authority allowed approximately 85-90 complaints by directing the refund of the deposited amount with interest to all the



allottees of the project vide order dated 09.10.2019 and have further suspended RERA registration of the project vide order dated 28.01.2020 in complaint no.2807 of 2019 due to huge delay in completion of construction of the said project and further debarred them from selling the flats. It is pertinent to mention that presently respondents are not in a position to deliver the flats to allottees and it is not likely to be completed/ delivered in near future due to mismanagement.

C. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT:

8. That during oral arguments, ld. counsel for the complainant reiterated arguments as mentioned at Para 3-7 of this order. Ld. counsel for the complainant submitted he filed an affidavit on 24.11.2023, wherein it is submitted that present complaint is fully covered by **case no.865 of 2019** titled '*Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.*, earlier decided vide order dated 09.10.2019 by this Authority, whereby refund has been granted to all the allottees/ complainants who filed the complaint before the Authority. He also submitted that RERA registration of the respondent's project 'Ess Vee Apartments' situated at Sector -20, Panchkula has also been suspended by this Hon'ble Authority vide Order dated 28.01.2020 passed in suo moto complaint no. 2807/2020.



9. That aggrieved by the default on the part of respondent to fulfill his obligations, complainant has filed present complaint seeking refund of the entire amount along with interest. I.d. counsel for complainant stated that since director of respondent company was confined in Jail in some other cases, no one is representing them in many other similar matters and also the project is going to be auctioned by the orders passed by Hon'ble High Court, therefore, his case may be decided on this date so that complainant's claim be also satisfied with other allottees from sale/auction proceeds of the project

D. RELIEF SOUGHT:

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

- a) Direct the respondent to refund the entire amount paid till date i.e. Rs.24,17,840/- to the complainants along with interest as prescribed in Rule 15 of HRERA Rules on the amounts from the respective dates of deposit till its actual realization within 90 days as per section 18(1) of the Real Estate (Regulation and Development) Act, 2016;
- b) Cancel the RERA registration of the project namely, "ESS VIEE Apartments" of the Respondent at sector-20, Panchkula, Haryana under RERA read with relevant rules for violating the provisions of this Act;



c) Any other relief/direction which the Hon'ble Authority deems fit as per the rules and provisions contained in the Act.

E. REPLY:

11. That despite successful service of notice to the respondent on 20.07.2023, respondent has not filed its reply. Today also, none has appeared on behalf of respondent. It is pertinent to note that proceedings before the Authority are summary in nature and can be decided on basis of documents available on record. Sufficient opportunity has been afforded to respondent to file reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of respondent, the Authority decides to proceed with this matter ex-parte.

F. ISSUES FOR ADJUDICATION:

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

G. OBSERVATIONS OF THE AUTHORITY:

13. Authority observes that despite successful service of notice, none has appeared on behalf of respondent nor reply has been filed. It is also observed that respondent has not been appearing in other complaint matters related to the real estate project since almost a year. Ld. counsel for complainant has requested the Authority to decide this case today itself in terms of earlier decided cases without affording any further



opportunity to the respondent. He drew attention of the Authority towards the fact that project is going to be auctioned soon and if the matter is decided it shall serve the interest of justice as complainant will also become entitled to recover his refund amount and interest from money collected from auction of the project. Authority observes that in such circumstances where respondent promoter is repeatedly defaulting in appearing before the Authority in numerous other cases, including the present case, even after affording sufficient opportunity, there is no point in granting further adjournment. Therefore in the interest of justice, Authority decides to adjudicate the matter ex parte.

14. It is pertinent to mention that complainant in his complaint has asserted that project was launched in October 2007, construction too started at the same time, therefore, as per flat buyer agreement executed on 22.08.2011, respondent company was duty bound to complete the construction of the said project within a period of 36 months which expired in 2010, approximately 13 years prior to the filing of the present complaint. However, on perusal of file it is observed that complainant has failed to place on record any document to prove that construction of project started in October 2007. Thus, mere oral statement of complainant is not sufficient enough to establish the fact with regard to date of commencement of construction. Nevertheless, respondent executed the flat buyer agreement on 22.08.2011, and in absence of exact date of



commencement of construction, it appears logical to compute 36 months from the date of execution of flat buyer agreement. Accordingly, the deemed date of possession comes to be 22.08.2014. Even by this date, the respondent failed miserably to complete the construction and hand over possession of flat to complainant.

15. Further, it is noted that Authority has on earlier occasions elucidated that the present project i.e. 'Ess Vee Apartments' is unlikely to see the light of the day and has thereby allowed refund in like matters to various other allottees in same project in bunch of cases earlier decided on 09.10.2019 with lead case bearing **complaint No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.**, due to the following reasons:-

i. Promoter while seeking registration of the project had disclosed that first phase of the project which was earlier scheduled to be completed in December, 2009 will be completed by December, 2019, second phase of the project which was earlier scheduled for completion in August, 2014 would be completed by March, 2019 and third phase of the project which was earlier scheduled to be completed in December, 2015 would be completed by December 2019. However, the promoter inspite of seeking several adjournments has not been able to arrange funds for further investment in the project and therefore it is unlikely for him to complete the project and handover possession to the allottees on the time so projected;



- ii. *Promoter has mismanaged his finances and due to non-payment of loans raised from the banks and financial institutions has already incurred huge interest liability;*
- iii. *Promoter's interest liability will also be huge towards allottees on account of already caused delay of 4 to 10 years in completing the project and delivering possession. The allottees who have lost faith in the promoter and have been waiting of possession of their apartments for the last more than 4 to 10 years are unlikely to pay more money to the respondent.*
- iv. *The Town and Country Planning Department has already clarified that it cannot take over the project for completion and the department is only concerned with recovery of arrears of 198.65 lakhs on account of Internal Development Charges.*
- v. *The allottees of the project have also expressed their inability to join together for forming an association for the purpose of taking over and completing the project.*

16. Therefore, on basis of above stated reasons, Authority is of the considered view that complainant in captioned complaint is at parity with other complainants/allottees, which have been granted relief of refund and is hereby entitled to refund in the present matter in terms of the decision already rendered by this Authority in lead **case No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.**
17. Furthermore, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others**" has observed that allottee has an unqualified right to seek refund



of deposited amount if delivery of possession is not done on agreed date.

Relevant Para 25 of ibid 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"

18. The aforesaid decision of the Hon'ble 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 non-delivery of possession of the unit on agreed date. Thus, in terms with the judgment and in view of above facts and records placed, Authority finds it to be a fit case for allowing refund in favor of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be



prescribed. The 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 IIRERA 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".

19. 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. 01.11.2023 is 8.75%. Thus, prescribed rate of interest will be MCLR+2% i.e. 10.75%.
20. Accordingly, respondent will be liable to pay the complainant, interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹24,17,840/- 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%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.75% till the date of this order and said amount works out to ₹63,29,083/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 29.11.2023 (in Rs.)	TOTAL (in Rs.)
1.	3,00,000/-	11.10.2006		
2.	1,00,000/-	11.10.2006	7,37,362/-	11,37,362/-
3.	2,00,000/-	29.01.2007	3,62,201/-	5,62,201/-

4.	1,00,000/-	19.02.2007	1,80,482/-	2,80,482/-
5.	3,00,000/-	09.08.2008	4,93,999/-	7,93,999/-
6.	7,20,000/-	13.04.2009	11,33,221/-	18,53,221/-
7.	80,000/-	27.04.2009	1,25,584/-	2,05,584/-
8.	70,000/-	20.06.2009	1,08,772/-	1,78,772/-
9.	1,00,000/-	04.07.2009	1,54,977/-	2,54,977/-
10.	2,50,000/-	08.02.2010	3,71,317/-	6,21,317/-
11.	30,000/-	21.06.2011		
12.	1,240/-	21.06.2011	41,818/-	73,058/-
13.	600/-	10.07.2011	800/-	1,400/-
14.	62,000/-	22.08.2011	81,861/-	1,43,861/-
15.	45,000/-	08.02.2012	57,162/-	1,02,162/-
16.	59,000/-	12.03.2014	61,687/-	1,20,687/-
Total	24,17,840/-		39,11,243/-	63,29,083/-

That it is pertinent to note that out of the aforementioned payments, payment of Rs.62,000/- at sr. no. 14 of the above table is not mentioned in the statement of account of the respondent company, however, same is reflected in the receipts attached by complainant with the complaint annexed as annexure C-14. Thus, all payments made by complainant are proved by the receipts attached and the account statement attached at page no. 18-33 and 34-35 respectively. The same are accepted by the Authority as a valid proof of all the payments made by the complainant.

21. Further, complainant is seeking relief regarding cancellation of RERA Registration of the project namely, Ess Vee Apartments, Sector-20, Panchkula under RERA. In this regard, it is observed that said relief is

neither part of the pleadings nor has been pressed by the complainants during arguments. Therefore, the said relief is not allowed as not pressed.

H. DIRECTIONS OF THE AUTHORITY:

22. Taking into account above facts and circumstances, 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 **Rs.63,29,083/-** to the complainants.
- (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. However, delay interest shall be payable by the respondent till the date of realization of amount paid by the complainant
- (iii) The complaint is accordingly **disposed of**. File be consigned to record room after uploading order on the website of the Authority.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]