



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2893 of 2022
Date of filing:	11.11.2022
First date of hearing:	31.01.2023
Date of decision:	29.01.2024

Anil Mehta

S/o Ram Dita Mehta

R/o E-4/128, Sector 7, Rohini,

Delhi-110085

.....COMPLAINANT

Versus

M/s Prabhu Shanti Real Estate Pvt. Ltd.

Registered office- Flat No. 2, Ground floor,

Block-D, Pkt-5, Sector 15, Rohini,

Delhi-110085

.....RESPONDENT

CORAM: Parneet Singh Sachdev

Chairman

Nadim Akhtar

Member

Present: - Mr. Karan Dang, Advocate, counsel for complainant through VC

None for the respondent.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 11.11.2022 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 there under, 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 project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name & location of project	P.D.M Hi Tech Homes, Group Housing Colony, Phase-I, Sector-3A, Bahadurgarh, Haryana
2.	RERA registered/not registered	Un-registered
3	Unit no.	Flat no. T2-D2
4.	Super built up area	1980sq. ft.
5.	Date of Booking	21.12.2012



6.	Date of apartment buyer agreement	02.06.2013
7.	Deemed date of possession	02.12.2015 (As per clause 10.1 of the agreement which says- <i>“the company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/ said apartment within a period of 2.5 from the date of execution of this agreement)</i> Note- 2.5 years from date of execution of the agreement, i.e., 02.06.2013 comes out to be 02.12.2015.
8.	Total sale consideration	₹53,46,000/-
9.	Amount paid by complainant	₹20,54,564/-(receipts attached)
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

- i. Complainant registered a residential apartment admeasuring 1980 sq. ft. in the future township project namely “P.D.M. Hi tech Homes (Group Housing Colony, Phase-I), Sector 3-A, Bahadurgarh, Haryana on 21.12.2012 by paying a sum of ₹5,00,000/- for allotment of flat. Booking receipt dated 21.12.2012 is annexed as “Annexure P-1”.



- ii. That respondent vide demand letter dated 21.01.2013 raised another demand of ₹5,00,000/- from complainant which was duly paid by complainant on 01.03.2013. Demand letter dated 21.01.2013 and payment receipt dated 01.03.2013 are attached as Annexure P-2 and P-3 respectively.
- iii. Subsequently, respondent sent a communication dated 20.05.2013 that draw of flat will be conducted at site on 09.06.2013 at 11:00 A.M. Copy of letter dated 20.05.2013 is attached as "Annexure P-4".
- iv. That respondent informed complainant through communication dated 11.06.2013 that flat no. T2-D2 with super area of 1980 sq. ft. has been allotted and further an agreement will be ready by 25.06.2013 for execution and was further instructed to make a payment of ₹6,59,103/- by 25.06.2013. Copy of letter dated 11.06.2013 is annexed as "Annexure P-6".
- v. Apartment Buyer agreement was executed between the parties on 02.06.2013. Complainant made further payments of ₹5,27,282/- on 12.07.2013 and ₹5,27,282/- on 08.10.2013. Apartment Buyer agreement and receipts dated 12.07.2013 & 08.10.2013 are annexed as "Annexure P-7, P-8 and P-9" respectively.
- vi. That complainant visited the site on 15.11.2013 and to his utter shock complainant found that no progress has been made by respondent in development of the project as mentioned in letter 25.10.2013. Subsequent to this, complainant wrote a letter dated 25.11.2013 to respondent enquiring



about the actual construction status of the project as there was no development at the site and complainant had already made the payment of approx 40% cost of the flat. Respondent did not reply to the said letter rather again raised demand letters dated 08.02.2014, 10.03.2014 to pay sum of ₹5,27,282/ and ₹10,54,564/- respectively. Demand letters dated 08.02.2014 and 10.03.2014 are attached as "Annexure P-12 and P-13" respectively.

- vii. Aggrieved by the situation, complainant again wrote a letter dated 04.08.2014 and sent reminders dated 31.12.2014 and 15.05.2015 to know about the actual status of the project as there was still no visible progress seen at the project site. Further, to see the development at site in person, complainant visited the site again on 31.12.2015 and found that only 30% of the project was developed after receiving 40% of amount against total sale consideration.
- viii. That in the year 2019 matter was reported by other home buyers to the police for siphoning off a fund of ₹155 crores and FIR bearing No. 4587, PIS no. 16080399 dated 04.04.2019 was registered at Police Station Economic Offences Wing, Delhi. Copy of FIR is annexed as "Annexure P-17". Complainant also sent a legal notice dated 17.11.2021 which was received back undelivered with a reason that such address is not available.

C. RELIEF SOUGHT

3. In view of the facts mentioned in complaint book, the complainant pray for following:



- i. An independent commissioner be appointed to look into the facts and the ground reality of the project.
- ii. To register the aforesaid project with the RERA being an ongoing project and to complete the project which is kept pending for completion since 2012-2022.
- iii. Direct the respondent to refund the cost of the plot with interest as the respondent has failed to develop flat no. T2-D2 and cannot develop in the shape of residential scheme and respondent is defaulting from 2015 onwards and stopped the construction due proceeding of SARFACI Act and the complainant has attained the age of more than 60 years and priorities has changed according to age factor.
- iv. Direct respondent to pay back an amount of ₹20,54,564/- and interest of ₹19,48,633/- @ 10% P.A. as on 31.10.2022, total amounting to ₹40,03,197/- to the complainant, interest will further accrue till the date of final payment for the aforesaid plot.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

4. As per office record notice was issued to respondent on 15.11.2022, which was received back with a report "address ok but no such person found". Therefore, vide order dated 31.01.2023; complainant was directed to take dasti notice and serve it upon respondent. On 02.05.2023, learned counsel for complainant



stated that even dasti was not served to respondent. Subsequently, learned counsel for complainant requested the Authority to serve the notice to respondent through publication in newspaper. Request was allowed. After submission of cost of ₹5000/- by the complainant, process of publication was initiated and public notice with regard to the same was published in the newspaper on 21.09.2023. Even after publication, respondent has miserably failed to appear or file written submission before the Authority. Even today, i.e., on 29.01.2024, respondent neither appeared nor filed reply. Authority is of the view that proceedings before this Authority are summary proceedings and sufficient opportunities have already been granted to the respondent to file reply, any further delay shall defeat the ends of justice for an allottee who has been waiting for his unit since 2013. Thus, matter is proceeded and decided ex-parte, based on the documents available on file.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT :-

5. Mr. Karan Dang, Advocate appeared on behalf of complainant and stated that today is second hearing after publication of notice to respondent. Respondent has miserably failed to appear or file written submissions before the Authority. Complainant has invested his hard earned money in this project. Therefore, learned counsel for complainant requested the Authority to give directions to respondent for refund the paid amount, i.e., ₹20,54,564/- along with interest to



complainant. Receipts of all the paid amounts have been attached as “Annexure- 1, 3, 8 and 9” to the complaint.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

7. The Authority has gone through the documents placed on record. As stated in the complaint, complainant on 21.12.2012 booked a residential apartment admeasuring 1980 sq. Ft. in the real estate project “P.D.M. Hi Tech Homes (Group Housing Colony, Phase-I)” located at Sector-3A, Bahadurgarh, Haryana, being developed by promoter, “Prabhu Shanti Real Estate Pvt. Ltd.”, for total sale consideration of ₹53,46,000/-. An apartment buyer agreement was signed and executed between the parties on 02.06.2013. Further, as per clause 10.1 of Apartment Buyer agreement, the developer had committed to complete the construction and development of the said building/apartment within a period of 2.5 years from the date of execution of this agreement. Accordingly, deemed date of possession comes to 02.12.2015.
8. However, it is a matter of fact that the respondent has till date not handed over the possession of the unit/shop to the complainant, meaning thereby, that the respondent has failed to handover possession to complainant within a stipulated time frame. The innocent allottee who had invested his hard earned



money in the project from the year 2012-2013 with the hope to get an apartment, cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is no bonafide effort shown on part of the promoter to complete the project. Thus, in the given circumstances where respondent had failed to complete the project and handover apartment as per agreed time and where complainant wishes to withdraw from the project, he cannot be forced to continue with it specially when there is nothing on record to show that there is any likelihood completion of project.

9. Further, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.*" 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 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.”

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.

10. In view of above findings and after considering above mentioned judgment passed by Hon’ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as “***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.***”, Authority finds it to be fit case for allowing refund along with interest in favour of complainant. As per Section 18 of Act, interest is defined as under:-

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 which is reproduced below for ready references:

“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”.”

11. 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., 29.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
12. Accordingly, respondent 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 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



10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.85% from the date of payment till the date of this order, which comes to ₹44,44,503/- (₹20,54,564/- (principal amount) + ₹23,89,939/- (interest accrued till 29.01.2024). According to the receipts/statement of accounts provided by the complainant, details of which are given in the table below –

S.No.	Principal Amount	Date of payment/ transfer	Interest Accrued till 29.01.2024
1.	₹5,00,000/-	21.12.2012	₹6,02,992/-
2.	₹5,00,000/-	01.03.2013	₹5,92,588/-
3.	₹5,27,282/-	12.07.2013	₹6,04,076/-
4.	₹5,27,282/-	08.10.2013	₹5,90,283/-
Total	₹20,54,564/-		₹23,89,939/-

13. Complainant is also seeking reliefs that an independent commissioner be appointed to look into the facts and the ground reality of the project and to register the aforesaid project with the RERA Authority being an ongoing project and to complete the project which is kept pending for completion



since 2012-2022 (mentioned in para 3 (i) and (ii) of the order). However, with regard to the same, complainant neither argued nor pressed upon the same during hearing. Therefore, Authority cannot adjudicate the said reliefs.

H. DIRECTIONS OF THE AUTHORITY

14. 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 amounts along with interest of @ 10.85 % to the complainant as specified in the table provided above in para no12.

(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.

15. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order in each case on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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PARNEET SINGH SACHDEV
[CHAIRMAN]