



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2921 of 2022</b>
<b>Date of filing:</b>	<b>07.11.2022</b>
<b>Date of first hearing:</b>	<b>17.01.2023</b>
<b>Date of decision:</b>	<b>05.10.2023</b>

Smt. Ranbir Bharti, W/o Sh. Sanatan Vijay Bharti,  
Resident of Duplex no. D195, Gulmohar City Extention,  
Haibatpur Road, Derabassi, Mohali- 140507

....COMPLAINANT

VERSUS

M/s Green Space Infraheights Pvt. Ltd.  
Registered office at #306, 3<sup>rd</sup> floor,  
Indra Prakash Building, 21, Barakhamba Road,  
New Delhi-110001 and  
Corporate office at SCO-406, 1<sup>st</sup> and 2<sup>nd</sup> floor,  
Sector-20, Panchkula, Haryana- 134116.

....RESPONDENT

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

**Present:**            Smt. Ranbir Bharti, complainant.  
                         Adv. Dharamveer, counsel for respondent, through VC.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint was filed on 07.11.2022 by the 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	Shree Vardhman Green Space, Village Billah, Sector-14, Panchkula.
2.	Nature of Project	Affordable Housing Scheme
3.	Flat no.	No. 0504, 5 <sup>th</sup> Floor, Tower-A
4.	Carpet Area	478 sq. ft.
5.	RERA registered/ not registered	Registered vide registration no. HRERA-PKL-87 of 2017
6.	Date of application for allotment	23.06.2015



7.	Date of allotment	25.08.2015
8.	Date of Flat/ Builder Buyer Agreement	11.01.2016
9.	Deemed date of possession (36+6)	15.03.2020 As per clause 8(a), possession was to be offered within 4 years from the date of approval of building plan or grant of environmental clearance, whichever is later. Environment clearance was granted on 15.03.2016.
10.	Total sale price	Rs.19,62,000/-
11.	Amount paid by complainant	Rs.20,47,838/-
12.	Offer of possession	Not offered

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

3. In this case, the allottee Smt. Ranbir Bharti and Sh. Sanatan Vijay Bharti, applied for the purchase of a 2 bed room flat vide application no.2446 dated 23.06.2015, by payment of amount of Rs. 1,01,131/-. Pursuant to such application, the complainant was allotted Flat no. 0504 in Block/Tower no. A in the draw of lots held on 25.08.2015 according to the terms and conditions governing Affordable Group Housing Policy, 2013. Thereafter, a flat buyer agreement was executed on 11.01.2016 by respondent with complainant, who paid a sum of Rs.4,90,8889/- towards basic price on the date of signing of agreement. Till now, complainant has



paid a total amount of Rs. 20,48,838/- in installments as per demand raised by the respondent, thus, paid more than 100% of the total sale consideration. The total sale consideration of flat was fixed at Rs.19,62,000/- against which complainants have paid Rs. 20,48,838/- till year 2019. Copies of receipts have been attached at page no. 39-47 of the complaint book along with statement of account at page no. 29-38.

4. According to the Affordable Housing Policy of 2013, the respondent was obliged to deliver the possession of the allotted flat to the complainant within a period of 4 years. As per clause 8(a) of the builder buyer agreement dated 11.01.2016, respondent was obliged to offer possession of the said flat within a period of 4 years from the date of approval of the building plans or grant of environment clearance, whichever is later (hereinafter referred to as the commencement date). Environment clearance was granted to respondent vide letter dated 15.03.2016. Thus, the deemed date of possession works out to be 15.03.2020 and till date, neither possession has been handed over nor is the project complete.
5. That it is worthwhile to mention that complainant has made payments in time as per demand raised by respondent. The complainant has made total payment as follows:





Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	1638	18.06.2015	1,000/-	cash	18.06.2015
2.	Ack. No. 002446	23.06.2015	1,01,131/-	523017	03.07.2015
3.	-	08.09.2015	4,06,537/-	533141	08.09.2015
4.	1099	10.03.2016	2,54,140/-	533143	10.03.2016
5.	1597	09.09.2016	2,35,360/-	533144	09.09.2016
6.	2092	14.03.2017	2,45,250/-	533150	12.03.2017
7.	2637	12.09.2017	2,45,250/-	637276	12.09.2017
8.	3515	12.05.2018	2,94,300/-	637277	12.05.2018
9.	4019	17.01.2019	64,870/-	637278	16.01.2019
10.	4078	07.03.2019	2,00,000/-	637279	07.03.2019
	<b>Total</b>		<b>20,48,838/-</b>		

Complainant asserts that despite payment of all the amounts as per the payment schedule, respondent company has miserably failed to and over the possession of the allotted flat to the complainant. There is a delay of more than 2 years as on the date of filing of application. It is pertinent to mention that as per the statement of the complainant there has been no more construction activity going on the project, resultantly the future of the project is bleak, which is why the complainant seeks refund of the amount paid towards total sale consideration until now along-with interest.



**C. RELIEF SOUGHT:**

6. 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. 20,47,838/- to the complainant 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) Direct the respondent to pay compensation of Rs.50,000/- on account of mental stress, strain and harassment.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:**

7. Respondent has filed its reply and admitted booking of flat bearing no.0504 in Tower-A vide allotment letter dated 25.08.2015. It is stated that respondent-company has been developing the project "Shree Vardhaman Green Space" which is an affordable housing project located under Affordable Housing Project, 2013 of the Government of Haryana.:
8. It is submitted that captioned complaint is not maintainable as per Section 31 of the Real Estate (Regulation and Development) Act, 2016 and deserves to be dismissed on the following grounds:
  - a. That the complainant has put incorrect, incomplete and distorted version of the facts and circumstances.



- b. That the present complaint raises several issues which are beyond the purview of the Hon'ble Authority and can only be adjudicated by a civil court as it requires extensive evidence to be led by both parties, examination and cross-examination of witness for proper adjudication.
- c. That the complainant in his prayer is seeking refund of Rs.20,48,838.00 and compensation in his favour. He submits that as per the judgment passed by apex court in "*M/S Newtech Promoters And Developers Pvt Ltd vs. The State Of Uttar Pradesh Others reported 2021 (13) SCALE 466*", it is clearly mentioned that "under section 33(1), any aggrieved person may file a complaint with the adjudication officer for compensation under Section 12, 14, 18, and 19, in Form N which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank in favour of regulatory authority and payable at the main branch of that bank at the station where the rest of the said regulatory authority is situated." Thus, complainant can seek compensation not before the present Authority but before the court of Adjudicating Officer only.
9. That as per clause 8 (a) of the agreement, date of delivery of possession was tentative and subject to force majeure conditions. It is submitted that due to emergence of covid-19 pandemic, real estate sector and construction of the projects got seriously hampered. Further it is submitted that as per agreement, respondent was to start construction of





project from the date of receipt of environmental clearance which was granted on 15.03.2016. According to clause 8 (a) of the BBA, respondent committed to offer possession of said flat to allottee within a period of 4 years from date of approval of building plans or grant of environmental clearance whichever is later. From January 2020 onwards, things started going out of control of respondent due to covid-19 pandemic. Hence, respondent has not made any breach of any clause of agreement executed between parties and is not at fault. Thereafter, second COVID wave resulted in lockdown again with effect from April 2021 till June 2021. Thus, due to the abovementioned intervening circumstances and force majeure conditions as noted above, which were in nobody's control, the schedule as agreed disrupted.

10. Ld. Counsel for the respondent submitted that as per clause 4(a) of the agreement, timely payment of instalments shall be essence of the agreement, but complainant failed to make timely payment several times. Further, no timelines for delivery of possession was agreed between the party which means at the time of execution of BBA it was understood by allottees that in case there occurs any unforeseen circumstances beyond the control of respondent, any timeline may not be adhered to.
11. Ld. Counsel for the respondent further submits that the complainant is not entitled to any interest on the amounts deposited by him. Rather he submits that he is legally entitled to forfeit the money paid by the





complainant as per the settled terms and conditions, in case the complainant seeks to wriggle out of the binding terms of the buyer's agreement.

12. That further, he submitted that even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing. Thus, in view of the submission made above, no relief much less as claimed can be granted to the complainant.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:**

13. During oral arguments, learned counsel for complainant reiterated her arguments as were submitted in the complaint in writing. Complainant submitted that she is a retired sr. citizen aged 68 years, who invested in the project of the respondent, out of her retirement savings, in order to live peacefully for her remaining years. She sought to get the allotment cancelled due to the reason that she needed funds for urgent medical treatment, for which the said matter was taken up with the respondent vide e-mail dated 05.03.2018 wherein, complainant has specifically requested the respondent to cancel the unit/flat allotted to her and return the funds on urgent basis. However, respondent is silent on the amount of



charges to be deducted for allowing cancellation, which is against the principles of natural justice.

14. Aggrieved by the default on the part of the respondent to fulfill his obligations, the complainant has filed present complaint seeking refund of the entire amount along with interest..

**F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT:**

15. During oral arguments, learned counsel for respondent reiterated his arguments as were submitted in writing.

**G. ISSUES FOR ADJUDICATION:**

- a. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016?
- b. Whether the complainant is entitled to compensation of Rs.50,000/- on ground of mental agony, stress and harassment?

**H. OBSERVATIONS OF THE AUTHORITY:**

After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes that the complainant was allotted flat no.0504 in the affordable group housing colony namely, "Shree Vardhman Green Space" situated in sector 14 at Panchkula. Extension II in 2015. Flat buyer agreement between complainant and respondent was executed on 11.01.2016 for basic sale consideration of Rs.19,62,000/- against which complainant paid Rs.20,47,838/- i.e. more than the basic sale price. With agreement having



been executed on 11.01.2016 and full payment having been made by year 2019, legitimate expectation is generated that possession will be delivered within time period stipulated in flat buyer agreement. As per clause 8(a) of the agreement, due date of delivery of possession was within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. As admitted by the respondent in its reply environment clearance was granted on 15.03.2016, meaning thereby that the respondent was obligated to deliver the project by 15.03.2020. However, the respondent has taken a plea that time stipulated in clause 8(a) is subject to force majeure conditions and owing to outbreak of covid-19 pandemic, it could not deliver the project within the stipulated time. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

*“69... The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*





*... The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used as an excuse for non-performance of contract for which deadline was much before the outbreak itself. ”*

In this regard, it is observed that the nation-wide lockdown was imposed on 24.03.2020 i.e., subsequent to the lapse of deemed date of possession. Therefore, the respondent cannot be allowed to take advantage of an event that happened post deemed date of possession for not handing over the project within stipulated time.

16. Further, complainant has filed this complaint after waiting for more than 2 years for an offer of possession and in these 2 years, respondent never reached out complainant/allottee or made any efforts to complete the project. Complainant alleges that structure of the project as was there in 2017 is in same condition even now. No further work has been carried out and there is nobody working at the project site. The project is lying abandoned. Authority observes that even in its written reply, respondent has stated nothing with regard to timelines for completion of the project. If indeed the project is not being constructed at all, confidence of allottees



is bound to be defeated and they are bound to get apprehensive about fate of their investments.

17. The promoter is responsible for all obligations, responsibilities and function under the provisions of the Act 2016 or the Rules and the Regulations made thereunder or to the allottee as per agreement for sale under section 11 (4)(a) of the RERA Act 2016. Here the promoter has failed to complete or unable to hand over the possession of the unit on the date as stipulated by it in agreement for sale under section 4 (2)(1)(D) of the RERA Act 2016. Now, the complainant in exercise of her right under section 18, wishes to withdraw from the project, then promoter is liable to the allottee, without prejudice to any other remedy available, to return the amount received by him in respect of the units with interest at such rate as may be prescribed. In this regard, the Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others*" has observed that the allottee has an unqualified right to seek refund of the 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"*

6. 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 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 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 definition of term 'interest' is defined under Section 2(z) 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..”*



18. 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. 01.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 10.75%.
19. 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 complainant the paid amount of ₹20,48,838/- 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 ₹ 35,15,618/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 05.10.2023 (in Rs.)	TOTAL (in Rs.)
1)	1,000/-	18.06.2015	893/-	1,893/-
2)	1,01,131/-	23.06.2015	90,160/-	1,91,291/-
3)	4,06,537/-	08.09.2015	3,53,214/-	7,59,751/-
4)	2,54,140/-	10.03.2016	2,07,034/-	4,61,174/-
5)	2,36,360/-	09.09.2016	1,79,810/-	4,16,170/-



6)	2,45,250/-	14.03.2017	1,73,138/-	4,18,388/-
7)	2,45,250/-	12.09.2017	1,59,992/-	4,05,242/-
8)	2,94,300/-	12.05.2018	1,71,015/-	4,65,315/-
9)	64,870/-	17.01.2019	32,919/-	97,789/-
10)	2,00,000/-	07.03.2019	98,605/-	2,98,605/-
<b>Total</b>	<b>20,48,838/-</b>		<b>14,66,780/-</b>	<b>35,15,618/-</b>

20. Regarding relief of compensation sought by the complainant under the heads: mental stress, strain and harassment, it is made clear that nothing stated in this order shall debar the complainant from filing a complaint before the Adjudicating Officer to claim such compensations as she may be entitled under the law.

**I. DIRECTIONS OF THE AUTHORITY:**

21. Taking into account above facts and circumstances, 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:

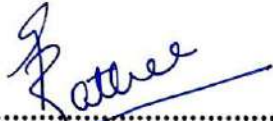
- (i) Respondent is directed to refund the entire amount of Rs.35,15,618/- to the complainant.





- (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.

22. 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]