



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	466 of 2023
Date of filing:	21.02.2023
First date of hearing:	25.04.2023
Date of decision:	29.01.2024

COMPLAINT NO. 466 of 2023

Vanita Ahuja,

Flat no.5046/3, Modern Housing Complex,

Manimajra, Chandigarh

.....COMPLAINANT

Versus

1. Green Space Infraheights Pvt. Ltd through its Director

Regd. Office:306, 3rd Floor, Indraprakash Building,
21- Barakhamba Road, New Delhi-110001.

2. PNB Housing Finance Limited

Regd. Office: 9th floor, Antriksh Bhawan,22, Kasturba Gandhi Marg,
New Delhi-110001.

3. PNB Housing Finance Limited

SCO no.323-324, First floor, Sector-35B, Chandigarh-160008

.....RESPONDENTS

CORAM: Parneet Singh Sachdev

Nadim Akhtar

Chairman

Member

Date of Hearing: 29.01.2024

Hearing: 4th

Present: - Mr. Arpandeeep Narula, counsel for complainant through VC.
Ms. Meenakshi Jyoti, counsel for respondent no.1 through VC.
None present on behalf of respondent no.2 & 3.

ORDER (PARNEET SINGH SACHDEV- CHAIRMAN)

1. Present complaint has been filed by the complainant on 21.02.2023 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, 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 project, sale consideration, 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 of the project	Shree Vardhman Green Space (Affordable Housing Colony)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Flat No. allotted	0106, tower -D, 1 st floor
5.	Flat area (Carpet area)	511 sq.ft
6.	Date of allotment	26.08.2015
7.	Date of Builder Buyer Agreement	02.04.2016
8.	Due date of offer of possession	Not available
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof,</i>

		<i>including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"</i>
10.	Total sale consideration	₹20,94,000/-
11.	Amount paid by complainant	₹18,50,143/-
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant had applied for a residential flat by paying an amount of ₹1,07,935/- on 25.05.2015 in affordable group housing colony namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, sector-14, Panchkula Extension-II, District. Panchkula, Haryana and complainant was allotted flat No.0106, Tower no. D, 1st floor in the project, namely; "Shree Vardhman

Green Space". A copy of allotment letter dated 26.08.2015 is annexed as Annexure-C-3.

4. That on 02.04.2016, a Flat Buyer Agreement (FBA) was executed between complainant and respondent for basic sale price of ₹20,94,000/- and same is annexed as Annexure C-5. Complainant made the payment of ₹18,50,143/- against the basic sale price. Copies of receipts are attached with complaint book.
5. As per clause 8(a) of flat buyer agreement, respondent no.1 was bound to deliver possession of flat within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. However, respondent no.1 failed to give possession of flat till date.
6. As per records submitted to this Authority, environmental clearance of the project was obtained by the respondent on 15.03.2016 and building plan was approved on 09.12.2014. That as per agreed terms and conditions of the Flat Buyer Agreement, respondent was under obligation to hand over the actual physical possession to the complainant on 15.06.2020, but the respondent company has failed to deliver the possession on time. Thus respondent has violated Section 19(4) of the RERA, Act 2016.
7. That complainant had availed the housing loan facility from the respondents no.2 & 3 for which tripartite agreement dated 31.03.2016



was executed between the complainant, respondent no.1 and respondents no.2 & 3. Respondent no.2 & 3 had sanctioned the loan facility towards the payment of sale/ purchase consideration of the residential flat in the project under instalment linked option to the tune of ₹15,62,603/-. Referring to clause 4 of the tripartite agreement, complainant has concluded that since the date of the disbursement of the loan amount particularly from the first instalment paid by the respondent no.2 & 3, the complainant is paying the pre-EMI which is in shape of the simple interest on the loan amount disbursed. However, since the complete disbursement of the loan amount (specific date is not mentioned in pleadings nor on record), the complainant is paying a sum of ₹17083/- per month to the respondent no.2 & 3 as EMI without having received the possession solely for the default committed by respondent no.1. Further, as per clause 13 of the agreement it has also been agreed that in case of cancellation of the allotment, the borrowers shall continue to make payment of EMIs or pre-EMIS as agreed in the loan agreement entered into with the respondent no.2 & 3 till the amount referred above is refunded by the builder failing which respondent no.2 and 3 shall have full rights to initiate legal proceedings against the borrower or the builder. Copy of tripartite agreement is attached as Annexure C-8.



8. That prior to the execution of the tripartite agreement dated 31.03.2016, respondent no.1 has also issued letter dated 26.03.2016 to respondent no.2 and 3 granting written permission to mortgage the flat in question also mentioning that respondent no.1 has no objection with regard to grant of loan and mortgage the said flat. In the said letter, respondent no.1 had categorically stated that respondent no.1 had obtained necessary permissions/approvals for construction of said dwelling unit from the concerned authorities. A copy of letter dated 26.03.2016 is attached as Annexure C-9.
9. That construction of said project is nowhere near completion and foundation has not even been completed, more than 85% amount already paid by the complainant; against the home loan, the complainant had been paying regular pre-EMI which sum also the respondent no.1 is liable to pay to the complainant, details will be supplied at the time of final adjudication with latest calculations.
10. Complainant issued legal notice dated 10.02.2023 calling upon respondent no.1 to refund the amount paid along with interest. However, respondent failed to provide any meaningful response to the queries of the complainant. Copy of the legal notice is annexed as Annexure C-16.



C. RELIEFS SOUGHT

11. Complainant sought following relief :

- (i) Direct the respondent no.1 to refund the amount of ₹18,50,143/- to the complainant along with interest @18% per annum, to be calculated individually for every individual instalment paid from the very date starting from 26.05.2015 till its realization.
- (ii) Direct respondent no.1 company to pay charges paid by the complainant to the respondent no.2 & 3 towards Pre-EMI/EMIs from the date when respondent no.2 & 3 started charging, till actual refund.
- (iii) Direct the opposite parties to pay sum of ₹5,00,000/- to the complainant towards damage for mental torture, agony, discomfort and undue hardship caused to her as result of the above acts/omissions on the part of the respondent company.
- (iv) Direct respondent company to pay ₹1,50,000/- as litigation expenses to the complainant by way of acceptance of this complaint with costs.
- (v) Pass any other relief in favour of the complainant, which Hon'ble Authority may deems fit, just and proper in the facts and circumstances.

D. REPLY ON BEHALF OF RESPONDENT No.1

12. Notice was served to the respondent on 24.02.2023 which got successfully delivered on 27.02.2023. Despite availing three



opportunities on 25.04.2023, 02.08.2023 and 08.11.2023, respondent failed to file reply, though in all three hearings, ld counsel represented the respondent. Therefore, Authority deems fit to struck off the defence and decide the present complaint ex-parte.

E. REPLY ON BEHALF OF RESPONDENT NO.2 and 3

13. It is stated that complaint is not maintainable against the answering respondent no.2&3. Complainant had entered into a tripartite agreement dated 31.03.2016 with respondent no.1, and 2 &3 in regard to purchase of one residential unit in the project, namely; Shree Vardhman Green Space located at Panchkula extension. In the said agreement, answering respondents were also party and had agreed to pay the due consideration for unit on behalf of complainant and consequently complainant had agreed to pay monthly instalment to the answering respondent. That loan of an amount of ₹15,62,603/- was sanctioned to the complainant vide sanction letter dated 22.03.2016. Copy of sanction letter is attached as Annexure R-1. Disbursement kit dated 28.03.2016 in respect of above said loan is attached as Annexure R-2. It is to mention that complainant has not levelled even an iota of allegations on account of deficiency in service or default on part of answering respondents.



14. That no default or contravention of any provisions of RERA, Act 2016 is alleged against answering respondents. Therefore, no cause of action against the respondents.
15. Complainant had not approached this Authority with clean hands. Answering respondents have sanctioned the loan to the complainant and paid the amount of the developer. Role of answering respondents is complete the moment entire payment is paid to the developer. It is vehemently submitted that answering respondents have no concern whatsoever with regard to delivery, thus present complaint is not maintainable.
16. That clause 8 of tripartite agreement dated 31.0.2016 stipulates that the cancellation of allotment by the builder or /and surrender/ withdrawal by the borrower from the scheme for any reasons, the borrower shall continue to make payments of EMIs and /or Pre-EMIs as agreed in loan agreement entered into the PNBHFL till the amount referred above is refunded by the builder failing which PNBHFL shall right to initiate legal action against the borrower and builder. Hence, from no stretch of imagination it can be said the borrower was forced to pay the EMIs to the answering respondents.
17. That as per the general terms and conditions supplied to the complainant at the time of sanction of loan, in case of any dispute between the borrower and answering respondents, same shall be



settled by arbitration as per clause 10.8 of the agreement. Further, as per clause 10.7, in case of any dispute the Courts of Delhi shall have exclusive jurisdiction to adjudicate the same.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

18. Counsel for complainant reiterated the facts of the complaint and stated that respondent no.1 was given opportunities and directed to file reply, however no reply has been filed by the respondent no.1. Ld counsel requested that case may be decided ex-parte based on the records available as complainant is seeking simple refund of the amount paid to the respondent for which receipts are already on record. Authority specifically sought status of grant of occupation certificate and latest status of project, but no satisfactory reply was given by the counsel for respondent no.1.

G. ISSUE FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

20. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the



complainant booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.0106, Tower D, in said project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The builder buyer agreement was executed between the parties on 02.04.2016. Complainant had paid a total of ₹18,50,143/- against the basic sale price of ₹20,94,000/- .

21. As per clause 8 (a) of agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced as under :

"Clause 8 (a) "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalment of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"



As per the pleadings mentioned in para no.19 of the complaint, respondent/ developer received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, deemed date of handing over of possession comes to 15.03.2020.

22. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee. However, respondent no.1 failed to hand over possession to the complainant. Further, complainant sent legal notice dated 10.02.2023 seeking refund which is annexed as Annexure C-16. However, respondent no.1 again failed to revert to the legal notice sent by the complainant. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hand earned money, legitimate expectations of the complainant would be that possession of the flat will be delivered within a reasonable period of time. However, respondent no.1 has failed to fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise her right to withdraw from the project on account of default on the part of respondent to offer legally valid possession



and seek refund of the paid amount along with interest as per section 18 of RERA Act.

23. Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" in Civil Appeal no. 6745-6749 of 2021 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. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

24.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;

25.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 (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”.

26. 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%.

27. From above discussion, it is amply proved on record that the respondent no.1 has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent no.1 will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹18,50,143/- 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 along with interest calculated at the rate of 10.85% till the date of this order and total amount works out to ₹33,20,148/- as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 29.01.2024
1.	₹1,07,935/-	26.05.2015	₹101741/-
2.	₹42,327/-	09.09.2015	₹38564/-
3.	₹2,90,000/-	09.09.2015	₹264220/-
4.	₹1,01,131/-	15.12.2015	₹89225/-
5.	₹2,61,750/-	19.04.2016	₹221130/-
6.	₹2,61,750/-	16.09.2016	₹209459/-
7.	₹2,61,750/-	02.03.2017	₹196465/-
8.	₹2,61,750/-	08.09.2017	₹181681/-
9.	₹2,61,750/-	09.03.2018	₹167520/-
	Total=₹18,50,143/-		₹14,70,005/-
Total amount to be refunded by respondent to complainant= ₹18,50,143/- + ₹ 14,70,005/- = ₹33,20,148/-			

28. Also, complainant had made respondent no.2 & 3 as party, however, no specific relief has been claimed nor argued during course of hearing from respondent no.2 & 3. Therefore, no specific directions are passed against the respondent no.2 & 3.

29. Further, the complainant is seeking damages for mental torture, agony, discomfort and undue hardship and litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief for mental torture, agony, discomfort and undue hardship of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

30. 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 no.1 is directed to refund amount of ₹33,20,148/- to the complainant as specified in the table provided in para 27 of this order. It is further clarified that respondent will remain liable to pay the complainant interest till the actual realization of the amount.
- (ii) Also, respondent no.1 is directed to pay total cost of ₹15,000/- payable to the Authority and ₹6000/- payable to the complainant imposed vide orders dated 02.08.2023 and 08.11.2023.
- (iii) 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.

31. Disposed off. File be consigned to record room after uploading of the order on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]