



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	840 of 2022
Date of filing:	10.05.2022
First date of hearing:	22.09.2022
Date of decision:	29.01.2024

COMPLAINT NO. 840 of 2022

1. Neelam Kumari W/o Pankaj Kumar Verma

Resident of House No.95, gali no.08-B, Shanti Nagar,
Manimajra, Chandigarh-160101.

2. Pankaj Kumar S/o Rameshwar Verma

Resident of House No.95, gali no.08-B, Shanti Nagar,
Manimajra, Chandigarh-160101.

.....COMPLAINANTS

Versus

1. Green Space Infraheights Pvt. Ltd

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

2. Green Space Infraheights Pvt. Ltd

Site office: Shree Vardhman Green Space
Sector-14, Barwala road, on NH-73,
Panchkula Extension-II, Haryana.

3. Axis Bank Limited

Trishul 3rd floor, opposite Samartheswar Temple,
Garden Eill Bridge, Ahmedabad,
Gujrat-380006.

.....RESPONDENTS

CORAM: Parneet Singh Sachdev

Chairman

Nadim Akhtar

Member

Date of Hearing: 29.01.2024

Hearing: 6th

Present: - Mr. Piyush, counsel for complainant through VC.

Mr. Vikas Singh proxy counsel for Ms. Meenakshi Jyoti, counsel
of respondent through VC.

ORDER (PARNEET SINGH SACHDEV- CHAIRMAN)

1. Present complaint has been filed by the complainants on 10.05.2022 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, the details of sale consideration, the amount paid by the complainants, 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
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered Unit No.	Registered (lapsed project)
4.	Flat No. allotted	0910, 9 th Floor, Tower E
5.	Flat area (Carpet area)	323 sq. ft
6.	Date of allotment	18.12.2018
7.	Date of Builder Buyer Agreement	21.02.2019
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</i>



		<i>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")"</i>
10.	Total sale consideration	₹13,40,500/-
11.	Amount paid by complainant	₹7,00,411/-
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant applied for a residential flat by paying an amount of ₹72,387/- on 18.02.2018 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 complainants were allotted flat No.0910, Tower no. E,



9th floor in the project "Shree Vardhman Green Space" and allotment letter is annexed as Annexure-C-2.

4. That on 21.02.2019, a Builder Buyer Agreement (BBA) was executed between complainants and respondent for basic sale price of ₹13,40,500/- and same is annexed as Annexure C-3.
5. That pursuant to clause 9(b) of the agreement complainants availed loan facilities from Axis Bank Ltd and finance the purchase of the said project which was duly approved by the said financial institution subject to approval of the respondent.
6. Further, complainants and respondent entered into a Tripartite Agreement dated 28.03.2019 with Axis Bank Ltd wherein loan amount of ₹5,55,637/- was sanctioned and disbursed by the Axis Bank Ltd. Copy of agreement is annexed as Annexure C-4.
7. That complainants made the payment of ₹7,00,411/- against the basic sale price. Copy of receipts is annexed as Annexure C-5.
8. Complainants were assured by the respondent company that legal physical possession of the flat was to be delivered in year 2019 and further on or before 4 years from the date of approval of building plan or grant of environmental clearance, whichever is later. As per records submitted before this Hon'ble 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 buyer agreement respondent was under obligation to hand over actual physical possession on 15.06.2020. Thus respondent company has failed to deliver the possession on time. Thus respondent has violated Section 19(4) of the RERA, Act 2016.

9. That respondent company has also submitted an affidavit on 04.11.2019 before this Hon'ble Authority to complete project and to deliver the possession of the flat which was purchased by allottee on 14.03.2020. same also stands corroborated from the affidavit dated 04.11.2019 which is annexed as Annexure C-7.

10. Complainants sent an email for seeking refund to the respondent company. However, respondent failed to provide any meaningful response to the queries of the complainants. Copy of email is annexed as Annexure C-8.

C. RELIEFS SOUGHT

11. Complainants have sought following relief :

- (i) Direct the respondent to refund the amount of ₹7,00,411/- to the complainants along with interest @18% per from the date of allotment till its realization.
- (ii) Direct the opposite parties to pay sum of ₹2,00,000/- to the complainants towards damage for mental torture, agony, discomfort



and undue hardship caused to them as result of the above acts/omissions on the part of the opposite parties.

(iii) Direct respondent company to pay ₹1,50,000/- a litigation expenses to the complainants by way of acceptance of this complaint with costs.

(iv) Pass any other relief in favour of the complainants , which Hon'ble Authority may deems fit, just and proper in the facts and circumstances.

D. REPLY ON BEHALF OF RESPONDENT 1 AND 2

12. Notice was served to the respondent on 11.05.2022 which got successfully delivered on 16.05.2022. Despite availing five opportunities, respondent failed to file reply on time, though in earlier all five hearings, ld counsel represented the respondents. Therefore, authority deems fit to struck off the defence and decide the present complaint ex-parte.

E. REPLY ON BEHALF OF RESPONDENT NO.3

13. Complainants have no locus standii to initiate legal proceedings against the respondent no.3. that in present complaint grievance of the complainants is against respondent no.1 and 2 who had allegedly failed to deliver its commitments in terms of the buyer agreement and is aggrieved of the delay in handing over of possession of the flat by respondent no.1 and 2.



14. Respondent no.3 has nothing to do in respect of the completion of construction of unit booked by the complainants. Respondent no.3 has given loan to the complainants and loan was disbursed on the consent of the complainants . moreover, no relief has been sought against the respondent no.3.

15. Complainants has availed loan of ₹5,73,356/- vide loan account no.PHR004104214696 and an amount of ₹3,23,134/- is still due towards the said loan. Copy of loan account statement of complainants is attached as Annexure R-3/2.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. Counsel for complainants reiterated the facts of the complaint and stated that on last date of hearing respondents were directed to file reply, however no reply has been filed by the respondents. Ld counsel requested that case may be decided ex-parte based on the records available. 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 and 2.



G. ISSUE FOR ADJUDICATION

17. Whether the complainants are entitled to refund of amount deposited by the complainants along with interest in terms of Section 18 of RERA, Act of 2016?

H. OBSERVATIONS AND DECISION OF AUTHORITY

18. 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 complainants booked a flat in the real estate project “Shree Vardhman Green Space” being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainants were allotted flat no.0910, Tower E, in said project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The builder buyer agreement was executed between the parties on 21.02.2019. Complainants had paid a total of ₹7,00,411/- against the basic sale price of ₹13,40,500/- .

19. As per clause 8 (a) of agreement respondent/developer was under obligation to hand over possession to the complainants 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.9 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, date of handing over of possession comes to 15.03.2020.

20. 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 and 2 failed to hand over possession to the complainants. Further, complainants vide email dated 23.04.2022, shows their intention to withdraw from the project and requested for refund from the respondent no.1 and 2. Respondent no.1 and 2 failed to revert to the email sent by the complainants. 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 complainants would be that possession of the flat will be delivered within a reasonable period of time. However, respondent no.1 and 2 have failed to fulfill their obligations as promised to the complainants. Thus, complainants are at liberty to exercise their right to withdraw from the project on account of default on the part of respondents to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

21. 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.

22.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;

23.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".

24.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%.



25. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainants are entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainants 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 ₹7,00,411/- 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 ₹10,59,096/- as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 29.01.2024
1.	₹50,000/-	04.12.2018	27,987/-
2.	₹22,387/-	04.12.2018	12,531/-
3.	₹72,387/-	27.12.2018	40,023/-
4.	₹5,55,637/-	21.06.2019	2,78,144/-
	Total=₹7,00,411/-		₹3,58,685/-



Total amount to be refunded by respondent to complainant=
₹7,00,411/- + ₹3,58,685/- =₹10,59,096/-

26. Also, complainants had made respondent no.3 as party, however, no specific relief has been claimed from respondent no.3. therefore no specific directions are passed against the respondent no.3.

27. Further, the complainants are 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 PvtL 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

28.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 no.1 and 2 is directed to refund the entire amount of ₹10,59,096/- to the complainants. Further, respondent is directed to pay cost of ₹25000/- payable to the Authority and ₹12,000/- payable to the complainants imposed vide order dated 09.02.2023,10.05.2023 and 08.08.2023.
- (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.

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



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NADIM AKHTAR

[MEMBER]



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PARNEET SINGH SACHDEV

[CHAIRMAN]