



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2213 of 2022
Date of filing:	07.09.2022
First date of hearing:	08.02.2023
Date of decision:	29.01.2024

COMPLAINT NO. 2213 of 2022

Kriti Parashar

D/o Dr. Kailash Parashar,

R/o Parashar Nursing Home,

Rajgarh Road, Solan, Himachal Pradesh-173212

.....COMPLAINANT

Versus

Green Space Infraheights Pvt. Ltd

Regd. Office:306, 3rd Floor, Indraprakash Building,

21- Barakhamba Road, New Delhi-110001.

.....RESPONDENT

CORAM: Parneet Singh Sachdev

Chairman

Nadim Akhtar

Member

Date of Hearing: 29.01.2024

Hearing: 5th

Present: - Mr. Kailash Parashar, representative of complainant through VC.
Ms. Meenakshi Jyoti, counsel on behalf of respondent through VC.

ORDER (PARNEET SINGH SACHDEV- CHAIRMAN)

1. Complaint has been filed by the complainant on 07.09.2022 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 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	307, 3 rd Floor, tower F
5.	Flat area (Carpet area)	511 sq.ft
6.	Date of allotment	26.08.2015
7.	Date of Builder Buyer Agreement	Not executed
8.	Due date of offer of possession	Not available
9.	Possession clause in BBA	Not available
10.	Total sale consideration	Not available
11.	Amount paid by complainant	₹21,95,653/-
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 ₹1,07,935/- on 30.05.2015 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. Acknowledgment against the payment was issued by the respondent and annexed as Annexure C-1. Thereafter time to time payments were made by the complainant.

4. That on 26.08.2015, complainant was allotted 2 BHK flat No.307, Tower no.F, 3rd floor in the project "Shree Vardhman Green Space" which is annexed as Annexure C-4.
5. That complainant had made total payment of ₹21,95,653/- to the respondent despite that respondent failed to give the possession or refund of the paid amount. Therefore, complainant approach this Authority for refund of the paid amount.

C. RELIEFS SOUGHT

6. Complainant has sought following relief :
 - (i) Direct the respondent to refund the amount of ₹21,95,653/- with interest @15% p.a from the date of allotment till its realization;

D. REPLY ON BEHALF OF RESPONDENT

7. Notice was served to the respondent on 08.09.2022 which got successfully delivered on 12.09.2022. Despite availing four opportunities, respondent failed to file reply on time, though in earlier all four hearings, ld counsel represented the respondent. Therefore, authority deems fit to struck off the defence and decide the present complaint ex-parte.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

8. Representative of complainant reiterated the facts of the complaint and stated that on last date of hearing respondent was directed to file reply, however no reply has been filed by the respondent. He requested that case may be decided ex-parte based on the records available.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

10. The Authority has gone through the facts of complaint as submitted by the complainant. In light of the background of the matter, Authority observes as follows:

- i. It is admitted fact that by draw of lots held on 25.08.2015, complainant was allotted 2BHK flat bearing no. 307 at 3rd floor in Tower F in project "Shree Vardhman Green Space" on 26.08.2015 of respondent in sector-14, Panchkula extension -II, Haryana; having carpet area as 511 sq.ft. Copy of provisional allotment letter is annexed as Annexure C-4. It is contended by the complainant that despite paying an amount of ₹21,95,653/-, respondent failed to hand over possession to the complainant. On



considering the facts, it is clear that complainant had fulfilled her liability of paying amount on time, however, respondent did not adhere to his terms and conditions of provisional allotment letter and failed to hand over possession to the complainants. As in allotment letter, there is no specific time mentioned for deemed date of possession and also in absence of builder buyer agreement executed between the parties, law has already been settled by the Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr wherein it is observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, complainant was allotted flat on 26.08.2015 as per provisional allotment letter. Taking a period of 3 years from the date of allotment, i.e, 26.08.2015, as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 26.08.2018. Therefore, respondent had defaulted or failed to fulfill his 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.



- ii. 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.

- iii.** 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;

- iv.** 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”.

- v. 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%.
- vi. 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 complainant is entitled for refund of deposited amount along with interest. Thus, respondent 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 complainant the paid amount of ₹21,95,653/- 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 ₹39,06,560/- as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 29.01.2024
1.	₹1,07,935/-	30.05.2015	₹1,01,613/-
2.	₹4,33,458/-	20.09.2015	₹3,93,507/-
3.	₹2,71,238/-	11.03.2016	₹2,32,290/-
4.	₹2,52,262/-	05.09.2016	₹2,02,691/-
5.	₹2,61,750/-	20.03.2017	₹1,95,064/-
6.	₹2,93,160/-	12.09.2017	₹2,03,135/-
7.	₹2,93,160/-	19.09.2017	₹2,02,525/-
8.	₹2,82,690/-	19.03.2018	₹1,80,082/-
	Total=₹21,95,653/-		Total=17,10,907/-
Total amount to be refunded by respondent to complainant= ₹21,95,653/- + ₹17,10,907/- = ₹39,06,560/-			



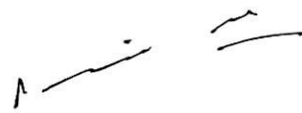
H. DIRECTIONS OF THE AUTHORITY

11.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 amount of ₹39,06,560/- to the complainant. Further, respondent is directed to pay cost of ₹25000/- payable to the Authority and ₹11,000/- payable to the complainant imposed vide order dated 04.05.2023,03.08.2023 and 18.10.2023.
- (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.

12.**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]