



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	768 of 2020
Date of filing:	13.08.2020
Date of first hearing:	15.09.2020
Date of decision:	19.12.2023

Mr. Om Prakash Yadav, S/o Lt. Sh. Sohan Lal Yadav,

R/o House No.-234, Village Rajokari,

Yadav Mohalla,

New Delhi- 110038

.....COMPLAINANT

Versus

1. M/s Avalon Projects (A unit of GRJ Distributors and Developers Pvt. Ltd.)

Through its Authorized Signatory:

Plot no. 166, G.F, Udyog Vihar Phase-01, Sector-20, Gurgaon, Near
MDH Export House(PRESENT ADDRESS)

2. GRJ Distributors and Developers Pvt. Ltd,

Through its managing Director,

having its Registered Office at:

64, Scindia House, Connaught Place,

New Delhi- 110001

.....RESPONDENTS

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

Present: - Mr. Arjun Kundra, counsel for complainant through VC
 Mr. Hemant Saini, counsel for both respondents

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 13.08.2020 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 thereunder, wherein it is inter-alia prescribed that the promoters 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 have been detailed in following table:

S. No.	Particulars	Details
1.	Name and location of project	Avalon Rangoli, Sector-24, Dharuhera, Rewari
2.	Nature of the Project	Residential

3.	RERA registered/not registered	Unregistered
4.	Originally apartment booked by Sh. Vineet Bhayana on	14.01.2012
5.	Agreement with original allottee executed on	04.03.2013
6.	Agreement executed between present complainant and respondent no.1	02.04.2013
7.	Booking amount paid by present complainant	₹ 20,97,872/-
8.	Apartment no.	701, Block- A4, 7 th floor
9.	Apartment area	1300 sq.ft.
10.	Deemed Date of Possession	As per clause 2(a); 42 months from date of signing of the agreement (excluding a reasonable grace period for circumstances beyond the control of developer). Accordingly, DOP comes to 02.10.2016
11.	Basic sale price	₹ 26,95,000/-
12.	Total Price	₹ 35,19,500/-
13.	Plan opted by complainant	Construction Link Plan
14.	Amount paid by complainant	₹ 33,93,996/-



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

3. Originally Mr. Vincet Bhayana booked a residential apartment on 14.01.2012 in the real estate project developed by the promoter and executed a builder buyer agreement (herein after referred as BBA) on 04.03.2013. Present complainant executed BBA with respondent no.1 on 02.04.2013, which is annexed at Page no. 74-114 of complaint book.
4. According to clause 2(a) of the BBA, respondent committed to complete the construction and offer possession of the allotted apartment within 42 months (excluding a reasonable grace period for circumstances beyond the control of Developer) from the date of the signing of agreement. Accordingly due date of possession comes to 02.10.2016. Total sale price was Rs. 35,19,500/- out of which the complainant had paid Rs. 33,93,996/- on different dates.
5. Complainant further alleged that he had contacted respondents several times in order to get a clear picture as to the position of construction and status of possession from respondent since 2016. However, it was not replied until 16.05.2017, when respondents issued a letter, informing therein that Phase-I of the project was completed and possession in those regard will be offered shortly. With regard to



Phase-II, final work will begin shortly, wherein complainant apartment is situated. Even as per latest letter dated 04.05.2019, respondents company has once again informed that only final work of Phase-II is pending and possession will tentatively be offered by September 2019. Though, as per clause 2(a) of builder buyer agreement respondents were under an obligation to handover possession of booked apartment by 02.10.2016 but possession has not been offered till date. Complainant stated that letters issued by respondents itself proves that respondents were lacking behind in their own opted plan for construction. Therefore, complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest.

C. RELIEF SOUGHT:

6. The complainant in his complaint has sought following reliefs:
 - i. Direct the respondent to refund the amount of Rs. 33,93,996/- and pay compensation in the form of interest @ 18% p.a. on the amount already paid by the complainant to the respondent, from the date of deposit till actual realization.



- ii. Direct the respondent to pay a lump sum compensation of Rs. 5,00,000/- for mental agony and harassment cause to the complainants.
- iii. Direct the respondent to pay a sum of ₹ Rs. 50,000/- as litigation expenses to the complainants.
- iv. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

D. REPLY:

7. As per office record notices to respondents were successfully delivered on 17.08.2020 and 20.08.2020. Thereafter matter was heard on 15.09.2020, whereby respondents were given an opportunity to file reply by 07.09.2020 but respondents failed to file reply within the time for which cost of ₹ 10,000/- was imposed upon the respondents and were given another opportunity to file reply before next date of hearing, i.e, 08.10.2020. Thereafter, case was listed for hearing on 08.10.2020, 29.10.2020, 22.09.2022, 01.02.2023, 20.04.2023, 19.07.2023 and 08.11.2023. On the last date of hearing, i.e., 08.11.2023, Authority had categorically observed that even after availing 8 opportunities, respondents failed to file reply. Since cases before Authority are summary proceedings and respondents took no hide to file reply, defence of respondents to file reply was struck off. Respondents were also directed to



pay earlier imposed costs vide order dated 01.02.2023(cost of ₹ 5000/- payable to Authority and cost of ₹ 2000/- payable to complainant) and vide order dated 19.07.2023 (additional cost of ₹ 10,000/- payable to Authority and ₹ 5000/- payable to complainant).

8. Today, also Mr. Hemant Saini, learned counsel for respondents made his oral submissions only. Taking into consideration above facts and circumstances, Authority has decided to proceed with the matter on merits according to documents placed on record.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

9. During oral arguments learned counsel for the complainant reiterated the submissions recorded in para 3 to 6 of this order. Further, he also stated that captioned complaint was filed in the year 2020. Even after inordinate delay of almost seven years from the due date of possession, respondents have failed to offer the possession of the booked apartment to the complainant till date. Further, with respect to repeated statements made by the counsel for respondents of settlement, complainant has clarified that till today, there has been no settlement talks initiated by respondents and complainant are now no more willing to take the possession of booked apartment. Therefore, complainant had pressed upon relief of refund along with interest as his hard earned money stand stuck with the respondents since the year 2014. Lastly,



complainant also clarified that statement of account attached with the file at page no. 117 of complaint book be taken as payment proof.

10. On the other hand, Sh. Hemant Saini, counsel for the respondents made a statement that project in question stands complete in all respects although Occupation Certificate for the same is yet to be received from the concerned department as there are certain finishing works pending. Respondents are likely to get the Occupation Certificate from competent Authority shortly. Further, he submitted that if prayer of complainant seeking refund is allowed at this stage, it will hamper the whole project as the amount paid by the complainant is already invested in the completion of the project. In interest of hundreds of other allottees, refund may not be allowed as respondents are already facing financial hardship and is not in a position to refund the paid amount to the complainant. He further stated that respondents are ready to give possession of the unit in question to complainant as unit is complete in all respect, the only issue is that Occupation Certificate of the project is not with the respondent as on date. Lastly, counsel for respondents also stated that he is also trying to settle the matter between parties in the interest of complainant as well as other allottees as project stands developed by respondents, only technical issue with regard to Occupation Certificate is yet to be obtained.



F. ISSUES FOR ADJUDICATION:

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

G. OBSERVATIONS OF THE AUTHORITY:

12. From perusal of the record submitted by the complainant and also on the basis of arguments advanced by both parties, it is an admitted fact that complainant was allotted apartment no. 701, Block-A4 admeasuring 1300 sq.ft in project, namely, "Avalon Rangoli", located in Sector 24, Dharuhera, Rewari being developed by respondent-promoter "Avalon Projects (A unit of GRJ Distributors and Developers Pvt. Ltd.". As per the clause 2(a) of BBA dated 02.04.2013, respondent-promoter had committed to handover the possession of the apartment within 42 months from the date of the signing of agreement. Hence, 02.10.2016 shall be considered as the deemed date of possession.
13. Further, complainant has stated that construction of the project is yet not complete and respondents had miserably failed to handover the possession to the complainant even after inordinate delay of almost seven years. However, respondents had already taken a substantial amount of ₹ 33,93,996/- from the complainant from the year 2013-2017 itself. Despite being granted adequate opportunity, respondents have failed to file/submit any documents in their defence to show that



construction of the project is complete and occupation certificate has been received from the competent Authority. In view of the aforesaid facts and circumstances, complainant being an innocent allottee who has invested his hard earned money in the project with the hope to get an apartment and who was to get possession of the unit by 09.03.2019, cannot be forced/ compelled to wait endlessly for the unit; specifically when there is no bonafide effort shown on the part of the promoter to complete the project.

14. 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."

In this regard the Hon'ble Supreme Court in above mentioned judgment had settled 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.

15. Further, in consonance to the judgment passed by Hon'ble Supreme in case of *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P & Ors*, this Authority has earlier also passed similar orders in **Complaint No. 183 of 2021 titled as Shrishti Wadhwa and Jolly Wadhwa Vs Raheja Developers Pvt. Ltd.** decided on 06.05.2022, involving similar/ identical facts. Thus, the Authority decides to dispose of the captioned matter in same terms of the above stated complaint. Relevant part of which has been reproduced below for reference:

"iii) Next argument of respondents is that the project could not be completed on account of diversion of funds from RERA account by the financier M/s DMI Finance Pvt. Ltd. Here again respondents are severely contradicting themselves. On one hand they are stating that project is not registered, but in the same breath they are saying that M/s DMI Finance Pvt. Ltd. is taking away money from RERA Account



of the project. Again respondents have failed to even check facts of the matter.

iv) Regardless of above position, respondent-company has got loan of Rs.55 crores sanctioned, out of which admittedly Rs.33 crores have been disbursed. Nothing at all has been stated where this amount of Rs. 33 crores has been invested, and whether it has been invested in the project or invested somewhere else. They have not even stated what properties have been hypothecated against the loan. Respondents have failed to submit quarterly progress and have not even submitted any certificate of Chartered Accountant that said loan which has been got sanctioned for the project has been invested on the project itself.

On the other hand admittedly however, money collected from complainants has not been invested on the project. Nothing at all has been stated as to how much money was collected from complainants and how much money has been invested. RERA Act mandates that at least 70% money collected from allottees is to be invested on development of the project.

v) As per provisions of RERA Act and Rules no lien could have been created on the RERA account. 70% of the money received from the allottees has to be invested on the project. The respondent promoters appears to have severely defaulted in respect of legal obligations cast upon them under RERA Act. They have got the project registered and have operated RERA account as per law, but respondents have created lien in favour of of M/s DMI Finance Pvt. Ltd. without even informing the Authority about it. It is a blatant illegality committed by the respondents which in fact amounts to breach of law and trust. The allottees had entrusted their money with the promoter with an expectation that the same will be invested in the project and their booked apartment will be delivered in time. The promoter on the other hand, dealt with the money so deposited by the allottee-complainants like its private money and allowed a lien to be created in favour of 3rd party.

vi) There appears to be a clear mismanagement of funds by the respondent. The project ought to have

been completed with the help of Rs.33 crores raised by way of loan and the money contributed by complainant-allottees. Only a detailed forensic audit would reveal whether the money collected by way of loan and installments paid by the complainants have been invested in the project or the said money has been diverted towards other purposes.

Authority decides to send a copy of this order to the Project Section to initiate inquiry in the matter.

8) Respondents-promoters have not submitted any time-line as to when project is likely to be completed. They are only hiding behind bald technicalities like jurisdiction of the Authority to justify their utter failure in completing the project. Photographs of the projects presented by complainants clearly show that the project is at very preliminary stages. It is not possible to be completed in foreseeable future. Since nothing substantial is happening on the ground, the promoters are going to find it difficult to arrange more money either from the allottees or from financiers. In any case, respondent is in serious disputes with both of them.

9) In such circumstances, when there is no hope of completion of project in foreseeable future, Authority is duty bound to allow relief of refund as prayed by complainants. Accordingly, Authority orders refund of entire amount paid by complainants along with interest.

16. Hence, Authority hereby allows refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed in Rule 15 of HRERA Rules, 2017. Section 18 is reproduced below for reference:

18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or



(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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 (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”.



The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

"2(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;"

17. 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., 19.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
18. Accordingly, respondents shall be liable to pay the complainant interest from the date on which amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ 33,93,996/- 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 on which amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.85% till the date of this order and said amount works out to ₹ 72,77,286/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 19.12.2023
1.	₹20,97,872/-	21.03.2013	24,48,309
2.	₹2,66,051/-	02.04.2013	3,09,544
3.	₹3,22,121/-	08.05.2013	3,71,333
4.	₹2,52,664/-	08.06.2013	2,88,937
5.	₹1,38,914/-	17.10.2013	1,53,447
6.	₹1,38,914/-	18.03.2014	1,47,170
7.	₹ 1,38,914/-	15.12.2014	1,35,939
8.	₹ 38,546/-	17.02.2017	28,611
Total	₹33,93,996/-		₹ 38,83,290/-
Total payable amount	₹ 72,77,286/-		

19. The complainant is seeking compensation on account of harassment and mental agony under Section 12 of RERA Act, 2016. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

H. DIRECTIONS OF THE AUTHORITY

20. 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) Respondents are directed to refund an amount of ₹ 72,77,286/- to the complainant as specified in the table provided in para 18 of this order.
- (ii) A period of 90 days is given to the respondents to comply with the direction given in this order as provided in Rule 16 of



Haryana Real Estate (Regulation & Development) Rules, 2017

failing which legal consequences would follow.

21. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading of the orders on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]