



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	239 of 2020
Date of filing:	25.02.2020
Date of first hearing:	25.08.2020
Date of decision:	23.08.2023

Rishi Rajgarhia, S/o Sh. Ashok Kr. Rajgarhia,
Resident of House no. N-23, Ground Floor,
Malviya Nagar, New Delhi-110017

....COMPLAINANT

VERSUS

M/s Ferrous Township Pvt. Ltd,
through its Director Sh. Ashish Seth,
Regd. Office: Seth Farm, KH No. 41, M.G. Road,
Ghitorni, Near Indian Oil, New Delhi DL 110024 IN.

....RESPONDENT

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

Present: None for the Complainant.

Adv. Piyush Kumar, proxy counsel for Adv. Shubhneet
Hans, counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was been filed on 25.02.2020 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	Ferrous Megapolis City, Sector-70 Faridabad, Haryana.
2.	Plot no.	C-177, park facing plot
3.	Area	200 sq. yds.
4.	RERA registered/ not registered	Un-Registered
5.	Date of booking	10.02.2012
6.	Date of allotment	31.08.2012



7.	Date of Flat/ Builder Buyer Agreement	21.11.2012
8.	Deemed date of possession (36+6)	21.11.2015 As per clause 34, developer had to complete the construction of the said plot within 36 months from the date of start of development or from the date of agreement whichever is later, subject to Force Majeure circumstances and also subject to timely payments.
9.	Basic sale price	Rs.55,96,000/-
10.	Amount paid by complainant	Rs.49,41,365/-
11.	Offer of possession	Not offered

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

3. Complainant had booked a plot bearing no. B-160, having park on two sides and north and east facing in respondent's project "Ferrous Megapolis City", situated at Sector-70, Faridabad by paying an amount of Rs. 5,60,000/- as earnest money on 10.02.2012. Total sales consideration of the plot was Rs.71,00,000/-. Thereafter, respondent promoter demanded further payment but that was for a different plot, i.e., C-165 instead of plot B-160. On being questioned by the complainant, he clarified that allotted plot is exactly the same, with only change in plot



number because of categorization of blocks. Thereafter, complainant was again re-allocated another smaller plot, i.e., plot C-177 measuring 200 sq. yards. Both parties signed builder buyer agreement on 21.11.2012 for plot no. C-177 against total sales consideration of Rs. 55,96,000/- out of which complainant has paid Rs. 49,41,365/-. The said amount is paid in following manner:

Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	52	10.02.2012	5,60,000/-	16116	08.02.2012
2.	352	26.03.2012	8,24,660/-	736565	26.03.2012
3.	1270	09.01.2013	22,36,340/-	882453	08.01.2013
4.	1400	28.03.2013	6,63,500/-	457435	20.03.2013
5.	1686	01.10.2013	6,56,865/-	439905	23.09.2013
	Total		49,41,365/-		

4. As per clause 34 of the builder buyer agreement, possession of booked property was to be delivered within 36 months from the date of start of development and/or from the date of the agreement whichever is later. Therefore, deemed date of possession in this case is 21.11.2015. Complainant also visited the project site but there were no signs of development of project and till date, neither possession has been handed over nor is the project complete. Therefore, complainant prayed for refund along with permissible interest as per Rule 15 of HRERA Rules,



2017 framed under RERA Rules, 2016, on the ground that respondent has not completed the project even after lapse of 11 years from the date of booking and it is not likely to be completed in near future due to mismanagement.

C. RELIEF SOUGHT:

5. 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. 49,41,365/- 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 compensate the petitioner for loss and mental agony;
- c) Direct the respondent to compensate the complainant for legal cost;
- d) Any other relief/direction which the Hon'ble Authority deems fit as per the rules and provisions contained in the Act.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

6. The respondent vide his written submissions dated 07.09.2020, received in Authority on 12.10.2020, submitted that it has not been able to



complete the project due to force majeure circumstances, i.e., a litigation was going on in the Hon'ble Punjab and Haryana High Court (CWP No. 25226 of 2023) challenging partition proceedings of some piece of land. Hon'ble Punjab and Haryana High Court vide its order dated 01.07.2014 directed parties to maintain status quo with respect to that land in question. Writ petition was disposed off on 09.05.2016 with direction to remand back the matter to Assistant Collector, Ballabgarh for fresh adjudication. To safeguard the interest of allottees, respondent challenged this order dated 09.05.2016, by way of LPA No. 2129, 2131, 2081 and 2142 of 2016 and vide order dated 26.10.2016, Hon'ble Punjab and Haryana High Court stayed passing of final order and fixed the matter for 30.09.2020. The respondent asserts that in clause-44 of builder buyer agreement, it is mentioned that in the event of happening of any unforeseen circumstances including any court case/decree/ stay which are beyond the control of the developer, the developer shall not be held responsible or liable for not performing any of the obligations of undertaking in a timely manner as stipulated in the Agreement. Thus, respondent promoter demands reasonable extension of time for completion of project in question. Respondent has also submitted that the period during which land in question remained under stay be excluded from 36 months' time period for delivery of possession to complainant. He further stated that plot no. B-160 was changed to C-177 after consent



and full satisfaction of complainant. Thus, allegation as to re-allocation of plot is meaningless.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

7. Today, none appeared on behalf of complainant. However, on the last date of hearing i.e. on 26.04.2024, ld. counsel for complainant requested that the case be decided on merits as efforts of settlement made did not reach finality. Authority was informed that Insolvency proceeding has been initiated and moratorium was declared by Hon'ble National Company Law Tribunal against respondent promoter namely "Ferrous Infrastructure Pvt. Ltd", therefore, the case was adjourned to 23.08.2023 for hearing.
8. However later, it was brought to the notice of Authority that moratorium has been declared against respondent promoter namely "Ferrous Infrastructure Pvt. Ltd." and not Ferrous Township Pvt. Ltd. This captioned complaint is against the respondent promoter namely "Ferrous Township Pvt. Ltd." which is not under NCLT. Therefore, Authority deems it appropriate to decide the case on basis of averments already made by counsels for both the parties and on basis of documents available on record.

A handwritten signature in blue ink, appearing to read "G. Ramesh", is written over a horizontal blue line.

F. ISSUES FOR ADJUDICATION:

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

G. OBSERVATIONS OF THE AUTHORITY:

10. The Authority has gone through the rival contentions and the documents placed on record. It is admitted by both the parties that the complainant booked a plot bearing no. B-160, having park on two sides and north and east facing in respondent's project "Ferrous Megapolis City", situated at Sector-70, Faridabad by paying an amount of Rs. 5,60,000/- as earnest money on 10.02.2012. Further, both parties signed builder buyer agreement on 21.11.2012 for plot no. C-177, which was allocated to him 3rd time, (1st and 2nd being B-160 and C-165 respectively), against total sales consideration of Rs. 55,96,000/-, out of which complainant has paid an amount of Rs. 49,41,365/-. However, no possession has been offered by respondent till date.
11. It is observed that the respondent was obliged to complete construction of project and handover possession to allottee by 21.11.2015, i.e., within 36 months from the date of execution of builder buyer agreement as per clause 34 of the said agreement. However, respondent has pleaded that he was not able to complete the project within scheduled time due to force majeure circumstances. Respondent in his reply has stated that some litigation was going on before Hon'ble Punjab and Haryana High Court



(CWP no. 25226 of 2013) at Chandigarh wherein partition proceedings of some piece of builder's land was challenged as a result of which Hon'ble High court had directed parties to maintain status quo with respect to the said land in question. The said writ petition was disposed off on 09.05.2016 with a direction to remand back matter to Assistant Collector, Ballabgarh for fresh adjudication. Thereafter, respondent builder, challenged the above said order dated 09.05.2016, by way of LPA no. 2129, 2131, 2081 and 2142 of 2016, which resulted in stay of order dated 09.05.2016. It is observed that said petition was even disposed off by Hon'ble High Court at Punjab and Haryana at Chandigarh vide order dated 09.11.2023 with an observation that approval/mode of partition and issuance of Sanad Taqsim does not suffer from any illegality nor infirmity.

12. It is observed that such pending litigations does not amount to force majeure circumstances as complainant cannot be allowed to suffer on account of pending litigation between respondent builder /promoter and other parties who are not allottees. Moreover, respondent took money from allottees for purpose of project in 2013 itself and he has not placed on record any document to prove that respondent was not at fault in any way due to proceedings going on before the Hon'ble High Court of Punjab and Haryana at Chandigarh. Thus, respondent builder is not allowed the defence of force majeure circumstances and is held liable for


G. Ramesh

delay in completion of project during the time period. Therefore, the deemed date of possession in present case, as per clause 34 of ploy buyer agreement is 21.11.2015 with no further extension of time due to reason as pleaded by respondent.

13. 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."

14. This 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 in Rule 15 of HRERA Rules, 2017. The 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;

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".

15. 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. 23.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 10.75%.
16. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹49,41,365/-/- 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.

17. Authority has got calculated total amount along-with interest till the date of this order, i.e. 23.05.2023 which works out to ₹1,06,45,373/- as per detail given in the table below:

Sr. No.	Principal Amount (in Rs.)	Date of Payment	Interest Accrued till 23.08.2023 (in Rs.)	Total
1.	5,60,000/-	10.02.2012	6,94,856/-	12,54,856/-
2.	8,24,660/-	26.03.2012	10,12,321/-	18,36,981/-
3.	22,36,340/-	09.01.2013	25,54,896/-	47,91,236/-
4.	6,63,500/-	28.03.2013	7,42,770/-	14,06,270/-
5.	6,56,865/-	01.10.2013	6,99,165/-	13,56,030/-
Total	49,41,365/-	-	57,04,008/-	1,06,45,373/-

18. The complainants are seeking compensation for legal costs and on account of mental and physical harassment caused to the complainant for loss and mental agony. 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 of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY:

19. 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.1,06,45,373/-** to the complainant as specified in the table provided in para 17 of this order. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the amount.



- (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.
- (iii) The complaint is accordingly **disposed of**. File be consigned to Record room after uploading order on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


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