



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	732 of 2022
Date of filing:	20.04.2022
First date of hearing:	30.06.2022
Date of decision:	25.04.2024

Naveen Ahuja S/o Sh. Satpal Ahuja

R/o Flat No. A-302, Garden Heights,

Bypass Road, Dist. Patiala, Punjab-147001

.....COMPLAINANT

Versus

Ansal Properties & Infrastructure Ltd.

Regd. Office: 115, Ansal Bhawan,

16- K.G. Marg, New Delhi-110001.

.....RESPONDENT

CORAM: Parneet Singh Sachdev

Nadim Akhtar

Dr. Geeta Rathee Singh

Chander Shekhar

Chairman

Member

Member

Member

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Present: - Mr. Savinder Singh Gill, Counsel for complainant through VC.
Mr.Sunny Tyagi, Counsel of respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed by the complainant on 20.04.2022 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	Sushant City, Yamuna Nagar.
2.	Name of the promoter	M/s Ansal Properties & Infrastructure ltd.
3.	RERA registered/not registered Unit No.	Not Registered



4.	Plot No. allotted	0037-B-1596
5.	Plot area (Carpet area)	420 Sq. Mtr.
6.	Date of allotment (As mentioned in the BBA)	26.03.2011
7.	Date of Builder Buyer Agreement	26.03.2011
8.	Due date of offer of possession	Not clear from record
9.	Possession clause in BBA	No possession clause in BBA
10.	Total sale consideration	₹43,41,548/-
11.	Amount paid by complainant	₹42,04,004/-
12.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

3. That the original allottee named Mr. Bhaskar Raheja had purchased a plot in the project of respondent namely; "Sushant City Yamuna Nagar" bearing no. 0037-B-1596, measuring 420 sq. mtr. vide builder buyer agreement dated 26.03.2011 for a total sale consideration of Rs.43,41,548.40/-.
4. That the complainant purchased the plot in question in resale from original allottee. Said plot was endorsed in the name of complainant on 14.01.2013.



5. That the complainant made the payment of ₹42,04,004/- against the total sale price and the copies of Accounts statement are annexed as Annexure C-3.
6. That the complainant states that he made all the payments due towards the sale consideration and requested the respondent multiple times about the delivery of possession but it was not of any use.
7. That the respondent deliberately did not include any possession clause or penalty clause in the agreement to wash off his responsibility towards timely delivery of possession and compensation on delay.
8. That the complainant has multiple times approached the respondent for settlement of dispute amicably but the respondent refused to redress the grievances of the complainant. Moreover, the project development was still incomplete.
9. It is alleged by the complainant that the respondent is not developing the project and there is no likelihood of the possession being handed over to the complainant in the near future. Moreover, the respondent did not have all the necessary approvals and sanctions from the competent authorities at the time of booking which depicts the unethical conduct on part of the respondent.



C. RELIEFS SOUGHT

In view of the facts mentioned in paragraph above, the Complainant prays for the following relief:

- a. To refund of the entire payment made to the respondent i.e. Rs. 42,04,004/- as per Section 18 of RERA along with interest to be calculated as per the provisions of RERA from the date of respective deposits till realization.
- b. To pay litigation expenses amounting to Rs. 1,00,000/-.
- c. And/or any other relief which this Hon'ble Authority deems fit and proper may kindly be granted in the favour of the complainant.

D. REPLY ON BEHALF OF RESPONDENT

10. Learned Counsel for the respondent had filed a detailed reply on 29.06.2022 pleading therein that the instant complaint filed by the complainant is not maintainable and the complainant has not come to this Authority with clean hands and has concealed the material facts and documents.
11. That the respondent denies each and every averment made by the complainant in the complaint. He states that the complainant was well aware of the dispute between the collaborator and the bank due to which the respondent's company will not be able to deliver the possession of the plot in the near future and despite knowing the above-mentioned circumstances, he purchased the plot in re-sale



after passing of interim order in the ongoing civil suit. Thus, depicting his intention for purchasing the plot was only to make speculative gains.

12. The respondent states that the complainant has paid sum of Rs. 41,89,596.6/- with interest of Rs. 22,517/- out of the total sale consideration and denies the amount claimed by the complainant in his pleadings.
13. The respondent denies the complainant's allegation regarding the approvals and states that the respondent company had obtained licenses and necessary approval and had started development of the project. Moreover, the company had also invited applications for allotment of plots in the township and the plots were also allotted to the allottees whose plot falls over the land exclusively owned by the respondent. However, due to the legal action taken by the bank against the collaborator the development work was adversely affected and the respondent company was unable to offer possession of the plot to the allottees.
14. That the complainant is not entitled to any relief and the present complaint is liable to be dismissed with cost.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Ld. Counsel for the respondent submitted that respondent is in the process of streamlining the project.

F. ISSUE FOR ADJUDICATION

15. 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 AND DECISION OF AUTHORITY

16. 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 had purchased a plot in resale from the original allottee in the project of respondent namely; "Sushant City Yamuna Nagar" bearing no. 0037-B-1596, measuring 420 sq. mtr. Plot was duly endorsed in the name of complainant by the respondent on 14.01.2013.



17. Admittedly, the builder buyer agreement was executed between the parties (original allottee and respondent) on 26.03.2011. Complainant had paid a total of ₹42,04,004/- against the basic sale price of ₹43,41,548.40/-.
18. It is pertinent to mention here that there is no clause pertaining to deemed date of possession in the executed builder buyer agreement and no date in specific was committed by respondent for delivery of possession to original allottee/complainant. Authority observes that in the absence of clause with respect to handing over of possession in the plot buyer agreement, it cannot be specifically ascertained as to when the possession of said plot was due to be given to the complainant. The Hon'ble Apex Court, in the case citation, 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) has held that in the absence of any specific date of handing over possession in the BBA, it can safely be held that the deemed date of possession as 3 years from the date of buyer agreement. Therefore, the deemed date of possession in the present complaint is taken 3 years from the date of agreement i.e. 26.03.2011 which works out to be 26.03.2014.
19. As observed in aforesaid paragraph, the respondent was under obligation to handover possession of plot latest upto 26.03.2014 after completing the development works in the project. However,



the respondent has failed to hand over possession to the complainant till date. It is the stand of respondent that present complaint is not maintainable. But no reason/grounds in specific have been stated in written reply supporting its assertion. Further, respondent has stated that legal action taken by the bank against the collaborator had adversely affected the development work due to which respondent company was unable to offer possession of the plot to the allottees including complainant. However, the respondent has not attached any documentary evidence to establish the fact that respondent has completed obligations of its part. Therefore, plea of respondent is rejected being devoid of merit.

20. The respondent has also taken a plea that the complainant has purchased the plot in resale from the original allottee. Under RERD Act, the customer/buyer/purchaser fall within the purview of the term Allottee. Sec 2(d) of the RERD Act defines "Allottee" in relation to a real estate project as a person to whom a plot, apartment, or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfers or otherwise. Hence the plea of the respondent is not tenable.



21. The complainant has paid an amount of Rs 42,04,004/-. It is only legitimate that he would expect the respondent to deliver possession in a reasonable time period. However, the respondent has failed to fulfil its obligations towards the complainant. Thus, complainant is at liberty to exercise his 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.
22. 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.

23. 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;

24. 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”.

25. 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. 25.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

26. 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”.

27. From above discussion, it is proven on record that the respondent has not fulfilled its obligations pertaining to handing over of possession of booked unit to complainant cast upon it under RERA Act,2016. This entitles the complainant to seek refund of deposited



amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainant. Therefore, 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 ₹42,04,004/- 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 said amount works out to ₹ 51,44,699/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 25.04.2024
1.	36,39,167	14.01.2013	44,56,933/-
2.	2,75,370	24.01.2013	3,36,430/-
3.	14,070	30.01.2013	17,165/-
4.	2,75,397	21.02.2013	3,34,171/-
Total=	42,04,004/-		51,44,699/-
Total amount to be refunded to the complainant = ₹4204004/- + ₹ 5144699/- = ₹ 93,48,703/-			

28. Further, the complainant is seeking cost of litigation. 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 litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

29. 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:

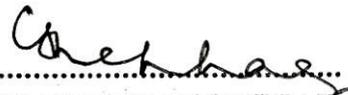
- a. Respondent is directed to refund the entire amount of ₹42,04,004/- with interest of ₹51,44,699/- to the complainant. It is further clarified that respondent will



remain liable to pay interest to the complainant till the actual realization of the amount.

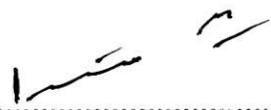
- b. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET S SACHDEV
[CHAIRMAN]