



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>3304 of 2022</b>
<b>Date of filing:</b>	<b>19.12.2022</b>
<b>Date of first hearing:</b>	<b>28.02.2023</b>
<b>Date of decision:</b>	<b>07.11.2023</b>

Manish Goyal, S/o Sh. Anand Gupta,  
Resident of B1-908 SRS Royal Hills, SRS City Neharpar,  
Back Side of Modern DPS, Sector-87, Kheri Kalan(113),  
Faridabad (Haryana) 121002

....COMPLAINANT

VERSUS

1. Vashihsth Estaates Ltd.,  
through its Managing Director Sh. Surinder Kumar Vashishth,  
Regd. Office: D-84, 2<sup>nd</sup> Floor, Okhla Industrial Area,  
Phase-1, South Delhi, Delhi-110020.
2. M/s SRS Retreat Services Ltd.  
through its managing director Sh. Nanak Chand Tayal,  
Regd. Office at SRS Multiplex, Mezannine Floor, City Centre,  
Sector-12, Faridabad, Haryana (121007),  
(Presently confined in Neemka Jail, Faridabad, Haryana)

....RESPONDENTS



4.	Area	483.648 sq. ft.
5.	RERA registered/ not registered	Un-Registered
6.	Date of booking	16.03.2015 and paid booking amount of Rs.1,00,000/-
7.	Date of allotment	28.08.2015
8.	Date of Flat/ Builder Buyer Agreement	28.08.2015
9.	Deemed date of possession (36+6)	12.09.2023  As per Affordable Housing Policy, 2013, the project is to be completed within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Revised building plans were approved on 12.09.2019.
10.	Basic sale price	Rs.19,83,321/-
11.	Amount paid by complainant	Rs.5,14,463/-
12.	Offer of possession	Not offered till date.

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

3. In the year 2015, complainant/allottee, Mr. Manish Goyal, booked a unit in an affordable housing project, namely, "SRS High-tech Affordable Homes" at sector-87, Faridabad, Haryana by payment of booking amount of Rs.1,00,000/- on 16.03.2015 to respondent no.2, i.e., SRS Retreat



Services Ltd. Draw of lots was conducted on 05.08.2015 and complainant was allotted flat no. 1406, floor number-14, Tower- B2 in Parklands Pride having area of 483.648 sq. ft. vide allotment letter dated 28.08.2015. as per complainant, a pre-printed, arbitrary and unilateral flat/ floor buyer agreement was executed between respondent no.2 and complainant on 28.08.2015. Total sale consideration of the flat was fixed at Rs.19,83,321/-. Complainant/allottee paid a sum of Rs.5,14,463/-, as and when the demands were raised by the respondent in the following manner:

Sr. No.	Principal Amount (in Rs.)	Date of payment	Mode of Payment	Proof of Payment
1.	1,00,000/-	16.03.2015	Cheque no. 022643	Receipt no. 691
2.	4,14,463/-	01.09.2015	Cheque no. 986630	Receipt no. 1330
<b>Total</b>	<b>5,14,463/-</b>	-	-	-

Copy of receipts are annexed at page no. 18-23 of the complaint book.

4. Thereafter the said project was transferred from SRS Retreat Services Ltd. (respondent no. 2) to High-tech Construction Pvt. Ltd. on 23.01.2018. Then said license was transferred from High-tech Construction Pvt. Ltd. to Vashishth Estates Ltd. (respondent no.1) on 10.08.2022.

5. That both the respondents are blaming each other for the failure of the project, and as per facts enunciated in complaint, it has been communicated by respondent no.1 i.e. Vashishth Estates Ltd. that they don't have any obligation and would neither provide possession of said flat/ floor nor would they refund the amount paid by complainant. Even a legal notice was sent to Respondent no.1, wherein complainant communicated to them that he does not want to continue with the project and want refund of paid amount of Rs.5,14,463/- without any deduction.
6. That for the first time cause of action arose on 16.03.2015, when Rs.1,00,000/- was given by the complainant as booking amount to respondent no.2, i.e., SRS High-Tech Affordable Homes. Further on 28.08.2015, when allotment letter was issued by respondent no.2 and complainant was allotted flat and furthermore when flat buyer agreement was executed between the parties on 28.08.2015 and lastly on 01.09.2015, when complainant paid the last installment. Thereafter, it was on 10.08.2022, when the respondent was obliged to deliver possession of said flat, wherein he neither delivered the possession nor showed any intention to refund the amount paid by complainant.
7. Therefore, till date, neither possession has been handed over to the complainant nor project is complete as yet, due to which complainant prays for refund along with interest.



**C. RELIEF SOUGHT:**

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-
- a) Pass an appropriate award by directing respondent no.1 to refund the entire amount paid till date i.e. Rs. 5,14,463/- without any deduction to the complainant.
  - b) Pass an appropriate award directing the Respondent no.1 to pay interest at the scheduled rate of interest from the date of actual payment till the date of actual refund;
  - c) Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts and circumstances of the present complaint.

**D. REPLY OF RESPONDENT**

**i. ON BEHALF OF RESPONDENT NO. 1:**

9. That respondent no.1 in his preliminary objections has submitted that the present case is merely an abuse of process of law as the issues put forth are already settled and possession has been taken over. It is submitted that initially licence no.146/2014 dated 01.09.2014 was granted to respondent no.2 by DTCP for setting up of an Affordable Housing Colony for an area measuring 5.00694 acres falling in the revenue estate of village Baselwa, Sector-87, Faridabad (Haryana). Thereafter, aforesaid license was transferred and developer was changed to M/s Hightech construction co.



Pvt. Ltd. vide order dated 23.01.2018 of Ld. DTCP. Thereupon vide order dated 10.08.2022, aforesaid license was again transferred in favour of Respondent no.1. that after transfer of aforesaid license in name of respondent no.1, the company further applied before the Hon'ble Authority for change of project name from "High-tech Affordable Homes" to "Vashishth Heights", which was duly changed vide its order dated 17.10.2022.

10. That respondent no.1 submits that as per clause 1(iv) of the Affordable Housing Policy, 2013, the project shall be required to be necessarily complied within 4 years from the date of approval of the building plans or grant of environmental clearance, whichever is later. On 12.09.2019, building plan was approved by competent Authority and in view of clause 1(iv) of the policy, the date of completion of project would be 12.09.2023.
11. Moreover, the completion date of the project namely, High-tech Affordable Homes was 31.12.2021. However this Hon'ble Authority vide order dated 06.05.2022 granted additional 9 months' time to respondent no.1 to complete the said project and that they further seek extension of the time from the Authority, which is pending adjudication.
12. Further, it is pleaded by respondent no.1 that due to ban on construction activities imposed by NGT from time to time and lastly in the months of October-November, 2019, has further led to delay in the completion of



the project. Also, respondent no.1 submits that he has to face charges and costs an expenses in getting all the above permissions renewed and in particular the renewal of license and costs of registration under RERA. The respondents have not received any exaggerated advance amounts from the complainant as construction today is more advanced than the amount received. Thus, in all probabilities, the complaint deserves to be returned for being pre-mature.

13. Further, respondents disputes Builder Buyer Agreement (BBA) annexed by complainant and denies amount paid by complainant and date of execution of builder buyer agreement. It is submitted that complete alleged amount has been paid to M/s SRS Retreat Services Ltd. and no further amount has been paid by respondent to by complainant. Moreover, name of present complainant was never forwarded to the answering respondent by the predecessor as his name is not included thereto in the list of 511 successful allottees from whom amounts were received by M/s SRS Retreats Services. A copy of list has also been annexed with reply as annexure R-8.

ii. **ON BEHALF OF RESPONDENT NO.2:**

It is pertinent to mention that Director of respondent no.2 company is confined in Neemka Jail, Faridabad. Notice was duly served upon Mr. Deepak, his office colleague on 21.04.2023, who accepted notice on





behalf of Director of SRS Retreat Services Ltd. But none appeared on their behalf and no reply has been filed by them till date.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:**

14. That the captioned complaint relates to the failure of acknowledgement of payments made by complainant by both the respondents.
15. In relation to non-production of builder buyer agreement it has been submitted that since he changed his house 3 times, therefore, he has lost it and could produce only one page of it.
16. Further, in regards to the relationship between Hightech Construction Company Limited /Vashishth Estates Limited, the complainant brings to the attention of this Authority that respondent no.1 (Vashishth Estates Limited) cannot shy away from its responsibilities on the pretext of its argument that it has not received the data from the respondent no.2 (SRS Retreat Services Limited). It is a fact that respondent no. 1 has always been a party to the project since beginning.
17. That Department of Town and Country Planning, Haryana (DTCP) issued license no. 146 of 2014 in favour of SRS Retreat Services Limited and High Tech Construction Company Limited (both in Collaboration Agreement) for setting up of an Affordable Group Housing Colony for an area measuring 5.00694 acres in sector 87, Faridabad. As per license, the land of SRS Retreat Services Ltd. is 3.41944 acres and land of Hightech



Construction Company Pvt. Ltd. is 1.5875 acres, out of the total land area of the entire project. Thereafter, license no. 146 of 2014 was transferred to Hightech Construction Co. Pvt. Ltd (the collaborator in the licence with SRS Retreat Services Limited) vide order dated 23.01.2018. That license for the entire land measuring 5.00694 acres of Hightech Construction Co. Pvt. Ltd was again transferred under Rule 17 of the Haryana Development & Regulation of Urban Areas Rules, 1976 to Respondent No.1 (Vashishth Estates Limited) vide policy order dated 18.02.2015.

18. That it is pertinent to mention that both the companies, i.e., Hightech & Vashishth Estates Limited have same set of Directors, belonging to the same family since beginning. This can be best judged by the information available from MCA site. Copy of Company Master Data of the companies, i.e., Hightech Construction Company and Vashishth Estates Limited are annexed with submissions made on behalf of complainant.
19. That as per the order of DTCP, respondent no. 1 is the current Developer/Promoter of the said project and as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the Directors of the respondent no. 1 fall under the category of "Promoter" and are bound by the duties and obligations mentioned in the said act. Further it is also an obligation of promoter to refund the entire amount paid by complainant including interest on the same.



20. In regards to SRS Retreat Services Limited, the Corporate Insolvency Resolution Process (CIRP) has been initiated against them by the order dated 22.12.2022 passed by NCLT, Chandigarh Bench in CP (IB) No. 86/Chd/Hry/2022 titled as *LIC Housing Finance Limited Vs. SRS Retreat Services Limited* and Mr. Shyam Arora R/o 96, Aravali Apartment, Alaknanda, New Delhi has been appointed as the insolvency resolution professional for the process. Ld. counsel for complainant stated that since director of the respondent company are confined in jail in some other cases, no one has represented them since two years and also the project is going to be auctioned by the orders passed by Hon'ble High Court, his case may be decided on the basis of facts available on file so that complainants claim be also satisfied with other allottees from sale/auction proceeds of the project.
21. Moreover, it has been argued by the counsel for complainant that since the project has been transferred to respondent no.1 therefore, liability is cast upon respondent no.1 to refund the said amount and that 50% stake lies with respondent no.1, which is why duty is cast upon respondent no. 1 to refund the said amount.

**F. ARGUMENTS OF RESPONDENT NO.1**

22. Ld. counsel appearing on behalf of the respondent no.1 submits before the Authority that he has placed on record certain documents along with answers to some queries by way of an affidavit. He submitted that present



project was a joint venture of M/s SRS Retreat Ltd. and M/s Hightech Construction Company Pvt. Ltd., operating through a "Joint Venture Agreement" dated 09.06.2017, wherein factum of SRS being the active partner and High-Tech being a silent partner is recorded and factum of transfer of funds are also mentioned along with list of allottees. Thereupon, said project was transferred in the name of M/s High-Tech Construction Company Pvt. Ltd. and further transfer was made in name of respondent no.1 which has been duly approved by DTCP (Director Town and Country Planning, Haryana) and this Hon'ble Authority.

23. Further clarification in regard to status of other allottees, detail of money collected from other allottees and no. of vacant units, it has been submitted by respondent no.1 through an affidavit that:
- a. That respondent no.1 has not provided any details in regard to settlement of rights of people who were not given an allotment letter after draw of lots but a stand was taken by SRS Retreats that they have settled the accounts of all people left after formulation of 511 allottees.
  - b. That the details of money collected by predecessor of the respondent no.1 stands mentioned in the aforementioned agreement as well as in list of 511 allottees, the list which has duly recognized all the 511 allottees qua which mention has been made in aforesaid agreement.
  - c. Moreover, complainant is presently residing in project of SRS Co. Ltd. i.e., in SRS Royal hills.



- d. That there are nil units that lie vacant in the said project.
24. That the respondent no.1 disputes that there is only one page of builder buyer agreement annexed with the complaint of which SRS is a signatory. Further, SRS and High-tech together work in collaboration, wherein SRS is an active partner who had invited applications in relation to his project and at the time of transfer of project a list of 511 allottees was forwarded to respondent no.1 in which complainant does not fall. Further there exists no re-sale agreement between respondent no.1 and complainant and he denied receipt/ transfer of any amount from complainant and further submitted that all accounts lie settled. Thus, they are not liable to refund the said amount as have received no payments that were made by complainant to respondent no.2.

**G. ISSUES FOR ADJUDICATION:**

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

**H. OBSERVATIONS OF THE AUTHORITY:**

26. Authority observes that the complainant/allottee, Mr. Manish Goyal, had booked a unit in affordable housing project "SRS High-Tech Affordable Homes" at sector-87, Faridabad, Haryana by payment of booking amount of Rs.1,00,000/- on 16.03.2015 to respondent no.2, i.e., SRS Retreat Services Ltd, which is verified from the receipt attached at page no.18 of complaint book. Secondly, draw of lots was conducted on 05.08.2015 and



complainant was allotted flat no. 1406, floor number-14, tower- B2 in Parklands Pride having area of 483.648 sq. ft. vide allotment letter dated 28.08.2015, which is verified from allotment letter annexed at page no.15 of complaint book. Since, allotment was made in favour of the complainant and builder buyer agreement was executed, relationship of allottee and promoter between the complainant and respondent no. 2 is established. Definition of promoter is as under;

*Section 2(zk) "promoter" means,  
a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees;*

27. It is pertinent to note that total sale consideration of the flat was fixed at Rs.19,83,321/- of which no proof is annexed. Complainant/allottee paid a sum of Rs.5,14,463/- as and when the demands were raised by the respondent, which are duly proved by receipts issued by respondent no.2 annexed at page no.18-24 of complaint book.
28. It is submitted by complainant that a flat/ floor buyer agreement was executed on 28.08.2015 with respondent no.2 but the same is not proved as only first two pages of the said agreement are annexed with the complaint book. Ld. counsel for complainant submits before the Authority that the agreement which was executed on 28.08.2015 has been



misplaced inadvertently by him due to the fact that he shifted his accommodation thrice. However, second page of it that has been annexed at page no.17, which shows that, said agreement was executed between respondent no. 2 and complainant in the month of August, 2015, but no other proof has been provided by him. As reply has not been filed by respondent no.2, it becomes incumbent to admit that said builder buyer agreement was executed between the parties as reasonable explanation has been afforded by complainant before the Authority.

29. Further, as per submissions made by both the parties, it is concluded that project is governed by Affordable Housing Policy, 2013 introduced by Government of Haryana, which provides that project is to be completed within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. It is provided in the policy that such date shall be referred to as the "date of commencement of project" for the purpose of policy. It is pertinent to note that environment clearance was granted on 19.02.2016 in the name of respondent no.2, which was corrected and respondent no.1's name was incorporated on 16.08.2018. Further it is pertinent to note that Chief Town country Planner, Haryana cum Chairman, approved the revised building plan on 12.09.2019 for that project. Therefore, as per Affordable Housing Policy of 2013, possession was to be handed over within a period of 4 years



from the date of approval of revised building plans, i.e., on 12.09.2023.

Thus, the complaint is not immature as objected to by respondent no.1.

30. Furthermore, it is an admitted case of the respondent that initially licence no.146/2014 dated 01.09.2014 was granted to respondent no.2 by DTCP for setting up of an Affordable Housing Colony for an area measuring 5.00694 acres falling in the revenue estate of village Baselwa, sector-87, Faridabad, Haryana. Thereafter, aforesaid license was transferred and developer was changed to M/s Hightech Construction Co. Pvt. Ltd. vide order dated 23.01.2018 of Ld. DTCP. Thereupon, aforesaid license was again transferred in favour of respondent no.1. It is duly proved that after obtaining the said aforesaid license in name of respondent no.1, the company further applied before the Hon'ble Authority for change of project name from High-tech Affordable homes to "Vashishth Heights", which was duly changed vide its order dated 17.10.2022.
31. Thereafter, a joint venture agreement dated 09.06.2017 was executed between M/s SRS Retreat Pvt. Ltd, M/s High-tech Construction Company Pvt. Ltd., and M/s Trishul Realcon Pvt. Ltd., wherein at page no.3 it has been provided that 511 main dwelling units in the colony stands allotted to applicants as on the date of execution of this joint venture agreement out of which 307 flats are available for sale, which is reproduced as follows:





*"...AND WHEREAS 511 main dwelling units in the aforesaid colony stands allotted to applicants as on date of execution of this agreement, which have paid a total of Rs.30,17,39,624/- till date. Remaining 307 flats are available for sale in accordance with affordable housing policy, 2013 of Government of Haryana. Out of 56 shops 12 shops have been allotted and sum of Rs. 86,35,844/- have been received from their allottees. Details of allottees of main dwelling units and shops have are contained in Annexure A and B."*

It is pertinent to note that as per the list of draw of lots annexed with the copy of reply as annexure R-8, list of 826 applicants have been declared to be as "successful applicants", however as per above information, a total of 818 allottees have been provided for, which brings forward a discrepancy of 8 applicants that lies unexplained.

32. Further as per receipts attached with the present complaint, it becomes clear that onus lies upon respondent no.2 to re-pay the amount that was accepted but no allotment was made in his favour. Further as per the reply filed by respondent no.1, he received no list which could verify that he was bound to deliver flat to the complainant. Also due to the reason that complainant was unable to prove that respondent no.1 was liable to repay the said amount paid in account of SRS (respondent no.2), it is concluded that respondent no.1 is not liable to repay the said amount. Further, as a rule of law, he who receives the money incurs the liability to repay the



same, if promises are left unfulfilled. Therefore, respondent no.2 is liable to refund the entire amount of Rs.5,14,463/- to complainant no.1.

33. Furthermore, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and Others***" has observed that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done on agreed date. Relevant Para 25 of *ibid* 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"*

The aforesaid 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. 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".*

34. 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. 01.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 10.75%.

35. Accordingly, respondent no.2 i.e. SRS Retreat Services Ltd. shall be liable to pay to the complainant, interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent no.2 to refund to the complainants the paid amount of ₹5,14,463/- 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. Authority has got calculated the total amount along with interest at the rate of 10.75% till the date of this order and said amount works out to ₹9,72,485/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 07.11.2023 (in Rs.)	TOTAL (in Rs.)
1.	1,00,000/-	16.03.2015	93,039/-	1,93,039/-
2.	4,14,463/-	01.09.2015	3,64,983/-	7,79,446/-
<b>Total</b>	<b>5,14,463/-</b>	-	<b>4,58,022/-</b>	<b>9,72,485/-</b>

*had*

**I. DIRECTIONS OF THE AUTHORITY:**

36. 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.9,72,485/- to the complainant.
- (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.



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



.....  
**NADIM AKHTAR**  
[MEMBER]