



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	888 of 2023
Date of filing:	10.04.2023
Date of first hearing:	17.05.2023
Date of decision:	09.11.2023

Sh.Ashwani Mehta, S/o Sh. Radha Kishan,
Resident of Flat no. 271(FF),
Indian express Society, Sector-48-A, Chandigarh,
Now resident of House no. 77, Shivalik Enclave,
NAC, Manimajra, Chandigarh.

....COMPLAINANT

VERSUS

M/s Samar Estate Pvt. Ltd,
through its Managing Director Sh. Vinod Bagai,
Regd. Office: House no. 87, Sector-7, Panchkula.

....RESPONDENT

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

Present: Adv. Vishal Madaan, Id. counsel for the complainant.
 None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 10.04.2023 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	ESS VEE APARTMENTS, Sector-20, Panchkula, Haryana.
2.	Nature of Project	Residential Group Housing Project
3.	Flat no.	J-202, 2 nd Floor, Tower-J
4.	Area	1725 sq. ft.
5.	RERA registered/ not registered	Registered vide registration no. HRERA-PKL-54 of 2018 and suspended by



		HRERA-PKL, Panchkula vide order dated 28.01.2020 in Suo Moto complaint no. 2807 of 2019
6.	Date of application for allotment	20.04.2011
7.	Date of allotment	Not mentioned
8.	Date of Flat/ Builder Buyer Agreement	17.02.2012
9.	Deemed date of possession	<p>As per clause 32 of the BBA executed on 07.09.2011, developer contemplated to complete the construction of said flat within a period of 36 months, from date of commencement of construction unless there is delay or failure due to reasons mentioned in present agreement or due to failure of apartment allottees to pay the price of the said apartment in accordance with the schedule of payments agreed between them or upon failure of allottee to abide by all or any of the terms and conditions of the agreement.</p> <p>Note: As per assertion of complainant, the project was launched in 2007 and construction was also started in October, 2007. Thus, DDOP is March 2010.</p>
10.	Basic sale price	Rs.67,70,000/-
11.	Amount paid by complainant	Rs.64,22,286/-
12.	Offer of possession	Not offered



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT:

3. That allottee Smt. Anju Bala w/o Sh. Keshav Goyal, booked a 3 Bed Room flat bearing no.202 in Tower-J, measuring 1725 sq. ft. in the project of the respondent namely, "Ess Vee Apartment", Sector-20, Panchkula at the basic sale price of Rs.67,70,000/-. Booking amount of Rs.6,77,000/- was acknowledged to have been paid vide receipt no. 555 dated 11.05.2011 to the respondent. Later on, complainant got transferred the said flat no. J 202 in his favour by making payment to Smt. Anju Bala through respondent and stepped into the shows of Smt. Anju Bala. The respondent further executed a flat buyer agreement on 17.02.2012 in favour of complainant.
4. That as per clause 32 of the said flat buyer agreement executed on 17.02.2012, respondent was obliged to complete construction of the said flat within 36 months from the date of commencement of construction. The project was launched in October 2007 and construction also started at the same time. If 36 months are taken from the execution of the flat buyer agreement dated 17.02.2012, time period to complete the project expired on 17.02.2015. Till date, neither possession has been handed over nor is project complete despite receiving huge amount from the complainant.



5. That complainant obtained a housing loan from Punjab and Sind bank and made payments in time as per the demand raised by the respondent and made total payment as follows:

Sr. no.	Receipt no./ Punjab and Sind Bank receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	955	11.05.2011	6,77,000/-	016728	10.04.2011
2.	997	20.05.2011	10,15,500/-	016731	20.05.2011
3.	1537	13.02.2012	6,77,000/-	RTGS	13.02.2012
4.	1566	17.02.2012	61,014/-	356776	14.02.2012
5.	1700	02.07.2012	61,000/-	cash	02.07.2012
6.	2152	09.10.2013	24,00,000/-	Bank transfer	09.10.2013
7.	2226	28.01.2014	3,86,773/-	Bank transfer	28.01.2014
8.	2302	19.03.2014	4,00,778/-	Bank transfer	19.03.2014
9.	2590	16.03.2016	3,92,000/-	Bank transfer	16.03.2016
10.	2671	05.07.2016	3,51,221/-	Bank transfer	05.07.2016
	Total		64,22,286/-		

It is worthwhile to mention that some receipts from serial no. 1-5 in the above table are attached with this complaint from page no.22-26 and out of



the aforementioned payments, some of original receipts of amount of Rs.39,30,772/- are with the Punjab and Sind Bank, sector-17 C, Chandigarh. However, complainant obtained account statement from respondent builder which reflects payment of Rs.39,30,772/- made by him i.e., last 5 payments as reflected in above table made on 09.10.2013, 28.01.2014, 19.03.2014, 16.03.2016, and 05.07.2016. The same are annexed with an application filed on 07.11.2023. It is to be noted that the receipt nos. of these amount made by bank transfer is reflected in A/c statement of respondent builder attached with the complaint on page no.20.

6. That the respondent had failed to complete the project and had stopped construction of the said project since last 6-7. Further, Authority had earlier allowed approximately 90-95 complaints by directing refund of the deposited amount along with interest to all the allottees of the project vide order dated 09.10.2019 and further suspended the RERA Registration of the project vide order dated 28.01.2020 in complaint no.2807 of 2019 accompanied by a direction debarring the respondent from selling flats, due to huge delay in completion of construction of the said project. It is pertinent to mention that presently, respondent is not in a position to deliver the flats to the allottees.



C. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT:

7. Ld. counsel for complainant reiterated arguments as mentioned at Para 3-6 of this order. He stated that since directors of the respondent company are confined in Jail in some other cases, no one is representing them in many other similar matters. Also the project is going to be auctioned by the orders passed by Hon'ble High Court, his case may be decided on merits so that complainant's claim be also satisfied with other allottees from sale/auction proceeds of the project.

D. RELIEF SOUGHT:

8. In view of the facts mentioned above, the complainant pray for the following relief(s):-

- a) To direct the respondent to refund the deposited amount of Rs.64,22,286/- 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) Cancel the RERA registration of the project namely, "ESS VEE Apartments" of the Respondent at sector-20, Panchkula, Haryana



under RERA read with relevant Rules for violating the provisions of the RERA Act, 2016;

c) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case may be granted to the complainant.

E. REPLY:

9. Despite successful service of notice to the respondent on 19.04.2023, respondent has not filed its reply. Today also, none has appeared on behalf of respondent. It is pertinent to note that proceedings before the Authority are summary in nature and can be decided on the basis of documents available on record. Sufficient opportunities have been afforded to respondent to file reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of the respondent, Authority decides to proceed with this matter ex-parte.

F. ISSUES FOR ADJUDICATION:

10. 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:

11. On perusal of the record, it is observed that despite successful service of notice on 19.04.2023, none has appeared on behalf of respondent nor reply



has been filed. It is also observed that respondent has not been appearing in other complaint matters related to the real estate project since almost a year. Ld. counsel for complainant has requested the Authority to decide this case on merits in terms of earlier decided cases without affording any further opportunity to the respondent. Ld. counsel for complainant drew the attention of Authority towards the fact that project is going to be auctioned soon and if the matter is decided it shall serve the interest of justice as complainant shall also become entitled to recover his refund amount and interest out of the money collected from auction of the project. Authority observes that in such circumstances where respondent promoter is repeatedly defaulting in appearing before the Authority in numerous other cases, including the present case, even after affording sufficient opportunities, there is no point in granting further adjournment. Therefore in the interest of justice, Authority decides to adjudicate the matter ex parte.

11. It is pertinent to mention that complainant in his complaint has asserted that project was launched in October 2007, construction too started at the same time. Therefore, as per clause 32 of flat buyer's agreement executed on 07.09.2011, respondent company was duty bound to complete construction of the said project within a period of 36 months which expired in 2010, approximately 13 years prior to the filing of the present complaint in the



Authority. However, on perusal of file it is observed that complainant has failed to place on record any document to prove that construction of project started in October 2007. Thus, mere oral statement of complainant is not sufficient enough to establish the fact with regard to date of commencement of construction. Nevertheless, respondent executed flat buyer agreement on 07.09.2011, and in absence of exact date of commencement of construction, it appears logical to compute 36 months from the date of execution of flat buyer agreement. Accordingly, deemed date of possession comes to be 07.09.2014. Even by this date, respondent failed miserably to complete construction and hand over possession of the flat to complainant.

12. Further, it is noted that Authority has on earlier occasions elucidated that the present project, i.e., 'Ess Vee Apartments' is unlikely to see the light of the day and has thereby allowed refund in like matters to various other allottees in the same project in bunch of cases earlier decided on 09.10.2019 with lead case bearing **Complaint No. 865 of 2019 titled as Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.**, due to the following reasons:-

i. Promoter while seeking registration of the project had disclosed that first phase of the project which was earlier scheduled to be completed in December, 2009 will be completed by December, 2019, second phase of the project which was earlier scheduled for



completion in August, 2014 would be completed by March, 2019 and third phase of the project which was earlier scheduled to be completed in December, 2015 would be completed by December 2019. However, the promoter inspite of seeking several adjournments has not been able to arrange funds for further investment in the project and therefore it is unlikely for him to complete the project and handover possession to the allottees on the time so projected;

ii. Promoter has mismanaged his finances and due to non-payment of loans raised from the banks and financial institutions has already incurred huge interest liability;

iii. Promoter's interest liability will also be huge towards allottees on account of already caused delay of 4 to 10 years in completing the project and delivering possession. The allottees who have lost faith in the promoter and have been waiting of possession of their apartments for the last more than 4 to 10 years are unlikely to pay more money to the respondent.

iv. The Town and Country Planning Department has already clarified that it cannot take over the project for completion and the



department is only concerned with recovery of arrears of 198.65 lakhs on account of Internal Development Charges.

v. The allottees of the project have also expressed their inability to join together for forming an association for the purpose of taking over and completing the project.

13. Therefore, on basis of above stated reasons, Authority is of the considered view that complainant in the captioned complaint is at parity with other complainants/allottees, which have been granted relief of refund and is hereby entitled to refund in the present matter in terms of the decision already rendered by this Authority in lead case No. 865 of 2019 titled as ***Mamta Gupta Versus M/s Samar Estate Pvt. Ltd.***
14. 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"

12. The aforesaid decision of the Hon'ble 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".

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 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 complainant interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹64,22,286/- 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 ₹1,37,29,342 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 09.11.2023 (in Rs.)	TOTAL (in Rs.)
1.	6,77,000/-	11.05.2011	9,10,417/-	15,87,417/-
2.	10,15,500/-	20.05.2011	13,62,933/-	23,78,433/-
3.	6,77,000/-	13.02.2012	8,54,986/-	15,31,986/-
4.	61,014/-	17.02.2012	76,983/-	1,37,997/-
5.	61,000/-	02.07.2012	74,522/-	1,35,522/-
6.	24,00,000/-	09.10.2013	26,04,033/-	50,04,033/-
7.	3,86,773/-	28.01.2014	4,07,010/-	7,93,783/-
8.	4,00,778/-	19.03.2014	4,15,846/-	8,16,624/-
9.	3,92,000/-	16.03.2016	3,22,688/-	7,14,688/-
10.	3,51,221/-	05.07.2016	2,77,638/-	6,28,859/-
Total	64,22,286/-	-	73,07,056/-	1,37,29,342/-



That it is worthwhile to mention that out of the aforementioned payments some of original receipts are with the Punjab and Sind Bank, Sector-17 C, Chandigarh. However, complainant obtained the account statement from the respondent builder in which all the payments made by the complainant and by the bank on the instructions of complainant are reflected. The same is accepted by the Authority as a valid proof of all the payments made by the complainant through Punjab and Sind Bank, i.e., of Rs. 39,30,772/- paid on 09.10.2013, 28.01.2014, 19.03.2014, 16.03.2016, 05.07.2016, reflected in above table as last 5 payments.

17. Further, complainants are seeking relief regarding cancellation of RERA Registration of the project namely, Ess Vee Apartments, Sector-20, Panchkula under RERA. In this regard, it is observed that said relief has not been pressed by the complainants during arguments. Therefore, this relief is declined as not pressed.

H. DIRECTIONS OF THE AUTHORITY:

18. 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.1,37,29,342/-** to the complainants.
- (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. However, delay interest shall be payable by the respondent till the date of realization of amount paid by the complainant.
- (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]