



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3324 of 2022
Date of filing:	19.12.2022
First date of hearing:	28.02.2023
Date of decision:	01.07.2024

COMPLAINT NO. 3324 of 2022

Shaliza Katoch, W/o Sh. Aditya Sumbria

Resident of Villa No.09, Omaxe City, Mullanpur,

New Chandigarh, Punjab-140901.

.....COMPLAINANT

Versus

M/s Green Space Infraheights Pvt. Ltd

through its Managing Director,

Regd. Office:306, 3rd Floor, Indraprakash Building,

21- Barakhamba Road, New Delhi-110001.

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Date of Hearing: 01.07.2024

Hearing: 7th

Present: - Mr. Ajay Chauhan, counsel for complainant through VC.

None appeared on behalf of respondent.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed by the complainant on 19.12.2022 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 complainant, 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	Shree Vardhman Green Space
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered Unit No.	Registered (lapsed project)
4.	Flat No. allotted	0503, 5 th Floor, Tower D



5.	Flat area (Carpet area)	511 sq. ft
6.	Date of allotment (As mentioned in the complainant's pleadings)	25.08.2015
7.	Date of Builder Buyer Agreement	16.01.2016
8.	Due date of offer of possession	15.03.2020
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")"</i>



10.	Basic sale consideration	₹20,94,000/-
11.	Amount paid by complainant	₹21,67,290/-
12.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that she had applied for a residential flat by paying an amount of ₹1,07,935/- on 17.05.2015 in Affordable Group Housing Colony namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, sector-14, Panchkula Extension-II, District. Panchkula, Haryana. A copy of acknowledgment receipt is annexed as Annexure C-1 and complainant was allotted flat No 0503, 5th Floor, Tower D in the project "Shree Vardhman Green Space".
4. That on 16.01.2016, Builder Buyer Agreement (BBA) was executed between complainant and respondent for basic sale price of ₹20,94,000/- and same is annexed as Annexure C-2. That the complainant made the payment of ₹5,23,500/- (as per BBA annexed as Annexure C-2) against the basic sale price. Thus, complainant had paid a sum of Rs. 21,67,290/- for the flat in question and the copies of receipts of above-mentioned amount are annexed as Annexure C-4.
5. Complainant asserts that the agreement did not mention any specific date/year for offering possession/ handing over possession of the



Apartment. Rather, as per the agreement, respondent had proposed to offer the possession of the said apartment to the complainant within a period of 4 years from the date of approval of Building plans or grant of environment clearance, whichever is later.

6. That subsequently the respondent got the project registered with the HRERA vide Reg. No. 87 of 2017 and the copy of the same is annexed as Annexure C-3. It is also alleged by the complainant that the above said registration was valid for a period commencing from 23.08.2017 to 14.03.2020. Thereafter, the above said registration has not been renewed. It is also pertinent to mention here that the complainant was repeatedly informed by the respondent that the construction work is going on at full swing and the project will be completed within stipulated time period. Thus, on such assurances, complainant paid all the sums demanded from her by the respondent.
7. That in the year 2018, complainant visited the site many times and after inspecting the site it was found that the structure of the project was not duly completed and no construction work is going on. It is also alleged by the complainant that the respondent has no intention to complete the project. Therefore, the complainant has approached the officials of the respondent company many times but it was of no avail. That the respondent has failed to comply with its obligations of



handing over possession as per the time frame and even after lapse of 7 years, project has not been completed till date.

8. That the complainant relied upon the judgment of the Authority titled as “Priya Bagga Vs. Green Space Infraheights Pvt. Ltd.” i.e. Complaint No. 14 of 2022 relating to the same project this Hon’ble Authority was pleased to order the refund of amount as per Rules prescribed.

C. RELIEFS SOUGHT

9. Complainant prays for the following relief:
- i. The registration, if any, granted to the respondent for the project may be revoked under Section 7 of the RERA Act for violating the provisions of the RERA;
 - ii. In exercise of powers under Section 35 of the Act, direct the respondent to place on record all statutory approvals and sanctions of the project;
 - iii. In exercise of powers under section 35 of Act and Rule 21 of HRE (R&D) Rules, 2017, direct the respondent to provide complete details of EDC/IDC and statutory dues paid to the Competent authority and pending demands if any;
 - iv. Direct the Respondent to refund the entire amount paid by the complainant along with delay interest as per Rule 15 of RERA



Rules, 2017, i.e., @ State Bank of India highest marginal cost of landing rate plus 2%.

- v. Direct the Respondent to additionally pay appropriate compensation for unfair trade practices of the project to the Complainant, at the rate of 24% compound interest from the date of handover of cheques, to accord due compensation for the financial agony suffered by the Complainant.
- vi. Direct the Respondent to pay compensation of Rs. 10,00,000/- on account of harassment, mental agony and hospitalization, caused to the Complainant on account of deficiency in service and unfair trade practices.
- vii. Allow any other relief which this Hon'ble Authority may deem fit and appropriate under the facts and circumstances of the present case.

D. REPLY ON BEHALF OF RESPONDENT

10. Notice was served upon to the respondent on 23.12.2022 which got successfully delivered on 02.01.2023. Despite availing six opportunities, respondent failed to file reply on time, though in earlier all six hearings, ld. counsel represented the respondent. Therefore, Authority deems it fit to struck off the defence of the respondent and decide the present complaint as ex-parte.



**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT
AND RESPONDENT**

11. Counsel for complainant reiterated the facts of the complaint and stated that on last date of hearing respondent was directed to file reply, however no reply has been filed by the respondent. Ld counsel requested that case may be decided ex-parte based on the records available.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

13. 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 booked a flat in the real estate project "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.0503, Tower D, in said project at sector-14, Panchkula Extension II, District Panchkula, Haryana. The builder buyer agreement was executed between the parties on 16.01.2016. Complainant had paid a total of ₹21,67,290/- against the basic sale price of ₹20,94,000/- .



14. As per clause 8 (a) of agreement respondent/developer was under an obligation to hand over possession to the complainants within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. While dealing with other cases against the same respondent namely; Green Space Infraheights Pvt. Ltd, Authority came to know that respondent/developer received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, date of handing over of possession comes to 15.03.2020.

15. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee, however, respondent has failed to hand over possession to the complainant. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying her hand earned money, legitimate expectations of the complainant would be that possession of the flat will be delivered within a reasonable period of time. However, respondent has failed to fulfil their obligations as promised to the complainant. Thus, complainant is at liberty to exercise her 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.

16. 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.

17.The definition of term 'interest' is defined under Section 2(z) 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;"

18.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”.

19. 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., 01.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.95%.

20. From above discussions, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the interest to the complainant from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund the paid amount of ₹21,67,290/- 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 10.95% (8.95% + 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 10.95% till the date of this order and total amount works out to ₹/-as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 01.07.2024
1.	₹5,23,500/-	16.01.2016	₹485285/-
2.	₹261750/-	06.04.2016	₹236282/-
3.	₹261750/-	27.09.2016	₹222618/-
4.	₹261750/-	25.02.2017	₹210761/-
5.	₹293160/-	04.12.2017	₹211251/-
6.	₹282690/-	14.03.2018	₹195226/-
7.	₹282690/-	05.11.2018	₹175211/-
	Total=₹21,67,290/-		₹17,36,634/-
Total amount to be refunded by respondent to complainant= ₹21,67,290/- + ₹17,36,634/- =₹39,03,924/-			

21. Vide order dated 29.04.2024, Id counsel for complainant submitted that amount of ₹5,23,500/- is mentioned in BBA at page 25 of complaint and date of paid amount is to be taken as 16.01.2016 which is date of signing of agreement.



22. Reliefs under clause (i), (ii), (iii) are neither pressed upon, nor argued during the course of hearing. Therefore, no directions are passed on these issues.

23. Further, complainant is seeking damages for harassment, mental agony, hospitalization and compensation for unfair trade practices. 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 for mental torture, agony, discomfort and undue hardship of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

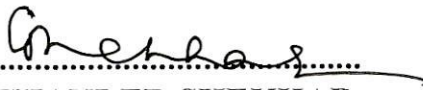
24. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 to ensure compliance of obligations cast upon the respondent/promoter as per



the function entrusted to the Authority under Section 34(f) of the RERA Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹21,67,290/- along with interest of ₹17,36,634/- to the complainant. Further, respondent is directed to pay cost of ₹25000/- payable to the Authority imposed vide order dated 07.12.2023 and ₹5000/- imposed vide order dated 18.05.2023. Also, ₹2000/- payable to the complainant imposed vide order dated 18.05.2023.
- (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 against the respondent.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]