



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	851 of 2023
Date of filing:	10.04.2023
Date of first hearing:	31.05.2023
Date of decision:	30.01.2024

1. Sanjiv Chouhan s/o Dharampal Chouhan
2. Rinki Chouhan, w/o Sanjiv Chouhan

Both Residents of 8337, Horncastle Ave Roseville, California, USA 95747.
Local Address: 6/36, W.E.A, Karol Bagh, New Delhi.

...COMPLAINANTS

VERSUS

M/s Ansal Properties & Infrastructure Ltd.,
Office Address 115, Ansal Bhawan, 16, Kasturba Gandhi Marg,
New Delhi- 110001

2nd address: Ansal Sushant City, Village Rasoi, Kundli, Sonapat, Haryana.

...RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Present: Ms. Aakanksha Kochar, learned counsel for the complainant through video conference.

Mr. Sunny Tyagi, learned counsel for the respondent through video conference.

ORDER

1. Present complaint was filed on 10.04.2023 by the complainants under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETIALS

2. The particulars of the unit booked by the complainants, the details of the sale consideration, the amount paid by the complainant and the details of the project are detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Sonipat
2.	RERA Registered/not registered	Registered- HRERA-PKL-SNP-173-2019 dated 30.10.2019.
3.	Flat No.	0102-36-04

Sunny Tyagi

4.	Area	2259sq. ft. (251 sq.mtr.)
5.	Date of booking	04.10.2011
6.	Date of allotment	11.10.2011
7.	Date of flat buyer agreement (BBA)	11.10.2011
8.	Deemed date of possession	10.10.2015 as per clause 5.2 of FBA as follow:- <i>Subject to Clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavor to complete the development said residential project and the said flat as far as possible within 42 (forty two) months, with an extended period of 6 (six) months, from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later.</i>
9.	Basic sale consideration	Rs. 41,79,150/- as per FBA.
10.	Amount paid by the complainants	Rs.32,38,794/-
11.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the case of the complainants is that they had booked a flat in Block No-36, 4th floor, in respondent's residential project "Green Escape Apartments,

Pattee

Sonipat on basis of sale price i.e. Rs. 1850/- per sq. The said booking was made vide application form dated 04.10.2011 annexed as Annexure C-1 with complaint file.

4. That the buyers have requested for allotment of a flat, having an approximate super area admeasuring 2259 sq. fts., (251 sq.mtr.) in "Green Escape", pursuant which, a flat no. 0102-36-04 having an approximate area admeasuring 2259 sq. ft. was provisionally allotted to complainants.
5. That a flat buyer Agreement was executed between the respondent and the complainants on 11.10.2011, annexed as Annexure C-3 with complaint file.
6. That as per clause 3.1 of FBA, the total sale consideration of the unit was Rs. 41,79,150/- i.e., Rs. 1850/- per sq. ft. and the said amount was to be paid by complainants as per payment plan annexed as annexure C-4.
7. That the complainants from 11.10.2011 to 06.08.2012 made a total payment of Rs.32,38,794/- as and when demanded by the respondent and the respondent has also issued receipts in this regard. The statement of accounts as proof of said payments has been annexed as Annexure C-13 from page no. 50 to 53 of complaint file.
8. That according to the clause 5.2 of the flat buyer's agreement the respondent had to offer possession of the said apartment, within a period of 42 months from the date of execution of agreement or from the date of approval of



layout plans etc. with a grace period of six months, which means that the respondent had to offer possession of the said apartment in March 2015, which the respondent failed to do so.

9. Even after 12 years of booking of the plot the respondent has failed to complete the construction of the project and has failed to deliver the possession of the unit and has violated the terms of their own contract.
10. That the complainants, being aggrieved, filed a present complaint seeking the refund of their deposited amount along with interest from various dates of payments from the respondent for his failure to deliver the possession of the flat, as per the terms and conditions of the agreement. Hence, this complaint.

C. RELIEF SOUGHT

11. In view of the facts mentioned above, complainants pray for the following reliefs:

- a) To refund the amount of Rs. 32,38,794/- alongwith interest @18% and to pay compensation along with damages, punitive damages and litigation expenses for not handing over the possession of the unit/floor in question to the complainants in the stipulated time period of 42 months from the date of execution of buyers agreement.



- b) To pay interest for the default period i.e. from 04.10.2011 (date of booking) till the respondent handed over the possession of the plot alongwith interest @ 18% per annum to the complainants.
- c) To pay Rs.10 lakhs as compensation to the complainants because of escalation in the rates of internal renovation/furnishings.
- d) To pay compensation to the tune of Rs. 10,00,000/- for mental agony and harassment suffered by the complainants.
- e) To pay punitive damages to the extent of Rs. 10,00,000/-.
- f) To pay the litigation expenses to the tune of Rs. 55,000/-.
- g) Any other order or direction which this Hon'ble Authority may deem fit and proper in the peculiar facts and circumstances be issued in favour of the complainants and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- 12. Despite been given adequate opportunity to file reply vide order dated 20.09.2023 and respondent has not filed any detailed reply in the present case. Today, Id. counsel for the respondent stated that reply need not be filed in this case as respondent is not in a position to construct the unit and give possession due to financial crunches.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT



13. During oral arguments, learned counsel for the complainant reiterated the arguments as were submitted in writing. Ld. counsel for the complainants stated that complainants have lost faith in respondent project and wants to withdraw from said project and thus insisted only for refund of paid up amount of Rs. 32,38,794/- along with interest. Ld. counsel for the respondent stated that respondent is not in a position to construct the unit and give possession due to financial crunches.

F. ISSUES FOR ADJUDICATION

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

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT


15. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:-

- i. It is admitted by parties that complainant was allotted Unit no. 0102-36-04 on 11.10.2011 in the Real Estate Project namely "Green Escape Apartments, Sonipat" being developed by respondent promoter M/s Ansal Properties & Infrastructure Limited. Flat Buyer Agreement was executed on dated



11.10.2011. It is not disputed that complainant has paid an amount of Rs. 32,38,794/- against Basic Sale Price of Rs.41,79,150/-. As per clause 5.2 of the Flat Buyer Agreement the promoter was obligated to handover the possession of the unit within 42 months along with 6 months grace period from the execution of Flat Buyer Agreement i.e., by 10.10.2015. However, the promoter failed to deliver the possession of the unit within time stipulated in the Flat Buyer Agreement. Therefore, the complainants filed the present complaint on 10.04.2023 expressing their intention to not to continue with the project the respondent. However, the Respondent has taken a defence that delay in construction has been due to financial constraints and respondent is not in a position to complete the project and handover the possession of the unit to the complainants.

- ii. Authority observes that the flat buyer agreement was signed way back in the year 2011 and the project is not complete nor likely to be completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat as per agreement of sale. The

A handwritten signature in blue ink, appearing to read 'Rajeev', with a horizontal line underneath it.

cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. This is a case of breach of contract by the respondent, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.

- iii. Further, Hon'ble Supreme Court in the matter of "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" 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."*


Rathee

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.

- iv. This project is already delayed by several years. It is still not complete and admittedly respondents are not in a position to complete the project within reasonable time, therefore, Authority finds it to be fit case for allowing refund in favor of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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"

- v. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short

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MCLR) as on date i.e., 23.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR 2% i.e., 10.85%.

- vi. The definition of term "interest" is defined under Section 2(za) of the Act which is as under:

"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;

- vii. Accordingly, respondents will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Complainant has sought refund of Rs. 32,38,794 /- and the proof of payment of said amount has been annexed at page 50 to 53 of complaint file. Hence, Authority directs respondents to refund to the complainant the paid amount of Rs. 32,38,794/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules,

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2017 i.e. at the rate of SBI highest marginal cost of lending rate (MC1R)-2% which as on date works on 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 Rs. 29,42,831/-as per detail given in the table below:

Principal Amount	Interest Accrued till the date of order i.e., 30.01.2024	Total Amount Payable To Complainants (Principal amount +interest)
Rs. 32,38,794/-	Rs.40,19,243 /-	Rs. 72,58,037/-

16. The complainant is also seeking compensation in clause c, d, e and f of reliefs on account of mental agony, harassment, litigation costs, punitive damages and escalation in rates of internal renovation/furnishing. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.", 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 compensations.

I. DIRECTIONS OF THE AUTHORITY

17. 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:

- (i) Respondent is directed to refund the entire amount of Rs. 72,58,037/- to the complainants.
- (ii) Further, Respondent is directed to pay the earlier imposed cost of Rs. 5000/- payable to Authority and Rs. 2,000/- payable to complainant imposed vide order dated 20.09.2023 .
- (iii) 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.



18. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.

Chander Shekhar

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CHANDER SHEKHAR
[MEMBER]

Dr. Geeta Rathee Singh

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Dr. GEETA RATHEE SINGH
[MEMBER]

