



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1331 of 2020
Date of filing:	11.11.2020
Date of first hearing:	10.02.2021
Date of decision:	15.10.2024

1. Aditi kapour through Special Power of Attorney Holder Vipin Kumar Seth
2. Ankur Seth through Special Power of Attorney Holder
Both R/o House no. 247, Deepali Enclave, Pitampura, North West Delhi,
Delhi-110034.

....COMPLAINANT(S)

VERSUS

M/ Ansal Properties & Infrastructure Ltd,
Office: 115 Ansal Bhawan ,16 K G Marg
New Delhi 110001

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
Chander Shekhar **Member**

Present: Adv Vivek Sethi, learned counsel for the complainants
through video conference.

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

Geeta Rathee

ORDER:

1. Present complaint has been filed on 11.11.2020 by complainants 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 fulfill 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 complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Sector-36, Sonipat.
2.	Flat no.	0102-14-1102
3.	Area	1690 sq. ft.
4.	RERA registered/not registered	Un registered

Rathore

5.	Date of builder buyer agreement	14.03.2013
6.	Deemed date of possession (42+6)	14.03.2017; clause 5.1 Subject to clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project and the said flat as far as possible within 42 months, with an extended period of 6 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.
7.	Total sale price	Rs. 37,25,400/-
8.	Amount paid by complainant	Rs. 14,00,000/-
9.	Offer of possession	No offer

B. FACTS OF THE COMPLAINT

3. That the case of the complainants are that they booked a flat in respondent's residential project "Green Escape Apartments, Sector-35 Sonipat on 28.01.2012. Complainants entered into builder buyer

Patel

agreement with the respondent on 14.03.2013. As per clause 5.1 of the flat buyer agreement, respondent was to deliver possession of the allotted flat within a period of 42 months with extended period of 6 months from the date of execution of floor buyer 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.

4. Total sale consideration of the said flat was Rs. 37,25,400/-. Against said amount, complainants have paid an amount of Rs. 14,00,000/-. As per builder buyer agreement, deemed date of possession was 14.03.2017. That promoter cannot indefinitely defer the delivery of possession after receiving the substantial amount. The promoter is duty bound to deliver the possession within reasonable time.
5. That, further because of inordinate delay in completion of the project the respondent may kindly be directed to refund the deposited amount, along with the prescribe rate of interest, on amount deposited from their respective deposits till realization.

C. RELIEF SOUGHT

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



- i) To direct respondent to refund amount of ₹ 14,00,000/- paid towards allotted residential Flat/Unit No. 0102-14-1102 in Green Escape Apartments, Sector-35, Sonipat, Haryana- 131029.
- ii) To direct respondent to pay interest on delayed possession for more than 7 years as per Rule 15 of HRERA Rules, 2017 since 30.05.2015 to the complainants.
- iii) To direct the respondent to pay ₹ 5,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.
- iv) To direct the respondent to pay ₹ 5,00,000/- as compensation to the complainant as part of deficiency of service on your part.
- v) To direct the respondent to refund of all legal cost of ₹ 50,000/- incurred by the complainant.
- vi) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 10.08.2021 pleading therein:

7. That present complaint is not maintainable since both parties have already signed an settlement deed dated 06.05.2020 whereby alternative plot bearing no. 197 in Anand Lok, Sonapat was given to the complainants in



lieu of the unit no. 0102-14-1102, Green Escape, Sonapat. So, there is no cause of action in favour of complainants.

8. Present compliant is not maintainable as this Authority has no jurisdiction to entertain this complaint as the complainant has not come with clean hands and has concealed the material fact from this Hon'ble Authority.
9. That the Real Estate (Regulation and Development) has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. At this stage it is pertinent to submit that any new enactment of laws are to be applied prospectively as held by the Hon'ble Supreme Court in no of cases, in particular, in the matter of '**CIT vs. Vatika Township (P) Ltd**', it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact, it is well settled law that the retrospective operation of statute may introduce such element of unreasonableness as was held in State of **WB us. SC Bose (1954SCR 5787)** and **Express Newspapers P Ltd us. UOI /1959 SCR 12)**. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively. That it is further respectfully submitted that, recently in the matter of **Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI &Ors.** The Hon'ble High Court of Judicature at



Bombay, held that the provisions of RERA are retroactive in nature and not retrospective.

10. That the complainant has not filed the present complaint in proper form and the same is not as per the provisions of The Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of complaints), Regulations, 2018.
11. That in the reply respondent denies each and every averment or allegation made by the complainant, in the complaint.

E. ISSUES FOR ADJUDICATION

12. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

F. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANTS

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

- (i) Respondent has stated that the provisions of RERA Act, 2016 cannot be applied retrospectively. In this regard Authority has referred to reference can be made to the case titled M/s Newtech Promoters & Developers Pvt.



Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable



and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

- (ii) In this present complaint, complainants are seeking relief of refund of paid amount along with interest. In this regard reference is made to section 18 of the RERA Act, 2016 which deals with "Return of amount and compensation". Section 18 of RERA Act, 2016 is reproduced below:



"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

Section 18 which is covered under chapter 2 of the RERA Act (Functions and duties of the promoter) provides for an obligation on the promoter in case the promoter fails to complete or unable to give possession of an apartment plot and building as per agreement for sale.

In the present complaint as per clause 5.1 of the BBA the promoter was obligated to handover the possession of the unit within 48 months from the execution of BBA i.e. by 14.03.2017. However, the promoter failed to deliver the possession of the unit within time stipulated in the BBA. Further, complainant had paid an amount of Rs. 14,00,000/- in the year 2013 to respondent out of the BSP of Rs. 37,25,4000/- which is 40 % of the BSP, whereas respondent till date had not stated the reasons of delay in deliver of possession or current status of the construction of the



unit in question. Rather respondent stated that a settlement agreement was executed between parties on 06.05.2020 whereby alternative plot bearing no. 197 in Anand Lok, Sonapat was given to the complainants in lieu of the unit no. 0102-14-1102, Green Escape, Sonapat. Therefore, now complainant cannot seek relief of refund for unit bearing no. 0102-14-1102. In this regard, Authority deems appropriate to refer to the order dated 07.07.2022, whereby Authority already had dealt with this issue.

Relevant part of the order is reproduced below:

“2. On the last date of hearing, both parties were granted last opportunity to place on record any additional facts with supporting documents. Today, learned counsel for the respondent refereed to page no. 15-20 of reply, whereby a copy of settlement deeds executed between the parties on 06.05.2020 has been annexed. According to said settlement deed, complainant has accepted an alternative plot bearing no. 197 in Anand Lok, Sonapat in lieu of the unit in question. So, complainant cannot be entitled for refund of the amount paid for flat bearing no. 102, as same has been substituted with plot no. 197 by complainant’s consent vide said settlement deed. Therefore, complaints prayer for cannot be allowed at this stage.

3. On the contrary, learned counsel for the complainant submitted that although settlement deed dated 06.05.2020 was executed between parties and complainant has accepted the alternative plot bearing no. 197 in another project of respondent namely, “ Anand Lok, Sonipat” but respondent has failed to abide by said settlement deed as till date, complainant has not even received any allotment letter with regard to substituted plot bearing no. 197. Therefore, complainant prayed for refund of his hard earned money paid for plot in question i.e. 102.

4. After hearing both parties and going through records, Authority during hearing asked a specific question to learned counsel for the respondent that settlement deed



has been executed between the parties on 06.05.2020 i.e. almost two years from now, then why complainant has not been given possession of said allotted alternative plot till date. Authority is of the view that even if a settlement deed has been arrived between parties, it should also be executed in a letter and spirit in a time bound manner. Therefore, last opportunity is being granted to the respondent to prove that plot no. 197 was allotted to the complainant and possession of the same was also offered to him in time failing which relief claimed by complainant of refund will be granted on the next date of hearing."

From above stated order, it is clear that complainant had alleged that respondent had not acted upon said settlement even allotment letter was not issued by respondent till date. Respondent was given enough opportunities since year 2022 to prove that any of the parties had acted upon the said settlement, but respondent had failed to produce any document in his favour till date. Therefore, denying the relief of complainant on account of settlement which is infructuous will delay the ends of justice. Further, on perusal of file, it is revealed that complainant had provided a chart on page no. 18 and 19 of the complaint book, stating that same relief has already been allowed in various other complaints by this Authority on account of non-construction of the project. Therefore, such circumstances where the flat buyer agreement was signed way back in the year 2013 and the projects are 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, the complainant



would be entitled to relief of refund as he cannot be forced to wait endlessly for completion of project. As on date, the complainants are aggrieved person who has not been handed over possession of the flat as per agreement of sale. Complainants/allottees, in exercise of their right under the provisions of this Act has demanded refund of the amount paid by him. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, an allottee shall be liable on demand to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest, at such rate as may be prescribed. Furthermore, respondent in his reply has not placed on record any document to show whether occupation certificate has been applied or not and if yes then what is the status of the occupation certificate application. In these circumstances it is presumed that respondent has not received occupation certificate till date.

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.”

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.

- (iii) This project is already delayed by seven years and respondent had not shown any sign of its completion in near future, therefore, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainants will be entitled to refund of the paid amount from the dates of various payments till realisation. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term ‘interest’ is defined under Section 2(z a) 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: “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”..”

- (iv) 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. 30.07.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.



- (v) Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 11.1% (9.10% + 2.00%) from the date of various payments till actual realization of the amount.
- (vi) Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 15.10.2024 at the rate of 11.1% and said amount works out to ₹ 32,02,459/-. Complainants shall be entitled to further interest on the paid amount till realization beginning from 16.10.2024 at the rate of 11.1%:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 15.10.2024 (in ₹)
1.	3,00,000/-	15.01.2013	3,91,572/-
2.	3,00,000/-	14.02.2013	3,88,835/-
3.	2,50,000/-	18.03.2013	3,21,596/-
4.	1,50,000/-	18.03.2013	1,92,958/-
5.	2,00,000/-	16.04.2013	2,55,513/-
6.	2,00,000/-	13.06.2013	2,51,985/-



Total:	14,00,000/-		18,02,459/-
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14. Lastly, relief clause iii, iv, v at page no. 30 of complaint book states that complainants are seeking compensation to the tune of ₹. 5,00,000/- on account of damages to the complainant and amount of ₹ 5,00,000/- as compensation to the complainant as part of deficiency of service along with litigation cost of Rs. 50,000/-. 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 of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

15. 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 ₹ 32,02,459/- (till date of order i.e 15.10.2024) to the complainants and pay further interest beginning from 16.10.2024 till actual realization of the amount at the rate of 11.1%.

(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.

(iii) Respondent is directed to pay the earlier imposed cost of ₹ 25,000/- payable to the Authority vide order dated 19.01.2023 and ₹ 5,000/- payable to the Authority vide order dated 12.03.2024 within 2 weeks of the uploading of this order.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHIE SINGH
[MEMBER]