



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	502 of 2019
Date of filing:	11.02.2019
Date of first hearing:	19.03.2019
Date of decision:	02.09.2024

M/s INB Overseas Pvt. Ltd,
Through its Director,
Address:- F-1303,
Celebrity Homes, Palam Vihar,
Gurgaon, Haryana.

VERSUS

....COMPLAINANT

1. MTK Infrastructure Pvt. Ltd,
Through its Directors,
Corporate office address B-13/29, 1st Floor,
Harsha Bhawan, Connaught Circus,
New Delhi. 110001
2. Elite Homes Pvt. Ltd,
Shop No. 30, M2K Mall, 16,
Mangalam Palace, District Centre,
Sector-3, Rohini, Delhi -110085.
3. M/s Saraf Synfab Pvt. Ltd.
Reg. office Address - H. No.110,
1st Floor, Pocket-3, Sector 24,
Rohini, Delhi.

....RESPONDENT(S)

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Adv. Harsh Sharma, Counsel for the complainant through VC.
Adv Manoj Vashishtha, Counsel for the respondents through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 11.02.2019 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

3. 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	M2K Country Heights situated at Sector - 5, Dharuhera, Rewari Haryana
2.	RERA registered/not registered	Unregistered
3.	Unit no	E-1104, Tower No. E
4.	Unit area	1170 sq. ft. (Built up Area) + 1425 Sq. Ft. (Super Area)



5.	Date of allotment	14.06.2010 (Single Apartment instead of earlier 4 dwelling units)
6.	Date of builder buyer agreement	02.01.2008 (unsigned)
7.	Due date of offer of possession (36 months + 6 months grace period)	15.12.2013
8.	Possession clause derived from the order dated 09.10.2019 passed by the Authority.	<i>"The Authority due to non-execution of a mutual agreement between the parties will, therefore, consider it fair to allow a reasonable period towards completion of the project. In most of the cases involving allotment of apartments, the period for completion prescribed by builders in the Builder Buyer's Agreements is thirty-six months plus six months' grace period. So, the Authority while adopting the same criterion in the present case will hold the deemed date of possession as forty-two months from the date of allotment i.e. 14.06.2010. Thus calculated, the deemed date of possession works out to December, 2013".</i>
9.	Basic sale price	₹ 25,19,464/- For each plot initially booked 4 dwelling units vide registration letter dated 04.05.2007 later merged as one unit.
10.	Amount paid by complainant	₹ 24,32,169/-
11.	Offer of possession	22.03.2016

B. FACTS OF THE COMPLAINT

4. That on 23.11.2006 the complainant made four applications with the respondent no.1 with an amount of Rs.12 lakhs (4 cheques of Rs.3 lakhs



each) and on 30.08.2007 the respondent no.1 allotted four dwelling units to the complainant. The complainant received a letter dated 02.01.2008 alongwith 4 sets of 'Builder Buyer's Agreements' for all the 4 apartments that to be executed between the complainant and respondent

5. That on 18.04.2009, complainant sought refund from respondent no.1 of their deposit of Rs. 12 lakhs alongwith 24% interest. On 06.05.2009, complainant again made request for the refund of their entire deposits, but no reply from the respondents till date.
6. That the complainant on 07.12.2009 made request to consolidate all the four dwelling units into one dwelling unit by adjusting the entire deposited amount. That on 14.06.2010, the complainant received a letter from the respondent company accepting the consolidation of all the four dwelling units into one dwelling unit, i.e., E-1104. The complainant has paid a total of Rs. 24,32,169/- for the unit in question.
7. That the complainant on 25.02.2015 again made request to the respondents for the refund but no reply till date. That the respondents offered the possession of the dwelling unit on 22.03.2016. Thereafter, complainant received invoice for maintenance charges dated 01.09.2016 for the period April, 2016 to September, 2016 for an amount of Rs. 19,666/-. Vide letter dated 12.09.2016, complainant raised their concern as to how maintenance is being asked without offer of possession and



demanded copy of Occupation Certificate. Now the complainant approached this Authority for relief of refund

C. RELIEFS SOUGHT

8. Complainant in her complaint has sought following relief:
- i. That the respondent be directed to refund the entire deposit of Rs. 24,32,169/- alongwith interest under the section 18 (1) and section 19(4) read with sections 34(f) and section 37 RERA and also compensation as per the provisions under section 18(2) RERA & the HARERA because the complainant does not want the possession of the apartment, construction of which took nearly ten years instead of 3 years period as assured by the respondents and whereby it was delayed substantially.
 - ii. That the respondents be also directed to pay a sum of Rs. One lakh to the complainant towards the cost of litigation and,
 - iii. To pass such order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 27.03.2024 pleading therein:

9. That the Complainant has no locus to file Complaint for refund of amount with interest under the Provision of Section 18(1) & 19(4) of RERA Act, as there is no agreement to sale executed between the parties, which is



mandate to invoke the Section 18 (1) & 19(4) of RERA Act to claim refund with interest. As such, no cause of action arose under the Provision of RERA Act and rules thereof and complaint is liable to be dismissed on this ground.

10. The Apartment Buyer Agreement ("ABA") was never executed between the parties. It is important to submit that a ABA was sent to the complainant along with a forwarding letter dated 02.01.2008. But the complainant failed to adhere the terms of booking/application form and did not sign and returned the ABA till date. It is pertinent to mention that, the respondent has sent various request letters, reminder letter and follows ups to the complainant for the execution of the ABA but the complainant neglected and failed to get executed ABA
11. That the Hon'ble Authority has no jurisdiction to entertain the present complaint as the complainant has not come to this authority with clean hands and has concealed the material facts. The Complainant have been continuing defaulter and having deliberately failed to make the payment of various instalment within the time prescribed.
12. That all the false and frivolous issues/grievances including refund issue raised by Complainant vide its various letters written from 25.04.2007 till 25.06.2009 stand amicably and completely settled between the parties and accordingly, after amicable settlement of all the issues, the Complainant submitted letter in December, 2009 with authority for



withdrawal of complaint filed against answering OP and said Promoter. However, the complainant has concealed the material facts from this Hon'ble Authority.

13. That the Complaint is liable to be dismissed as it is barred by the principle of delay and laches. The complainant had allotted 4 Nos. of Apartments on 27.07.2007 and informed vide Allotment advice letter dated 13.08.2007 and subsequently provided Apartment Buyer Agreement for execution vide Covering Letter dated 02.01. 2008. That possession of apartment and refund of amount etc. were subject to execution of the Apartment Buyer Agreement but the same was never executed between the parties as the Complainant never signed and returned back to answering OP for its execution. The complainant now after passage of more than 11 years from the date of receipt of Agreement for execution, cannot be allowed to raise the flimsy and frivolous objections at such juncture where the Tower E (Apartment No. E-1104) is already completed and answering OP already sent offer of Possession letter in March, 2016, whereas the complainant has not even bothered to execute the Apartment Buyer Agreement even after receipt of several reminders dated 04.04.2008, 21.04.2008, 12.05.2008, 05.06.2008, 14.07.2008, 18.08.2008, 18.09.2008 and follow-ups.
14. That on receipt of Occupancy Certificate for Tower E & F from the Authority including subject Tower E in which Complainant's apartment



No. E-1104 is located, the possession of the subject apartment was offered by respondent to the complainant vide offer of possession letter dated 22.03.2016 with the request to take physical possession within 30 days on payment the outstanding dues of Rs.3,13,543/-. These dues were payable by Complainant at the stage of offer of Possession. The present Complaint has been filed by the Complainant in August 2018, i.e., after around 29 months of receipts of offer of Possession letter in March, 2016. However, complainant has failed to pay the outstanding dues and is avoiding to taken over Possession of apartment by raising the unnecessary issues

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

15. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant has requested for refund of the amount deposited by him along with interest. Learned counsel for respondents stated that respondents have completed the construction of the project and has offered possession of the said unit on 22.03.2016 after obtaining the occupation certificate. Ld. counsel for the respondents argued that the complainant is chronic defaulter in payment of unit in question, earlier he booked four dwelling units and then requested for the consolidation of four units into one unit. Ld. Counsel for the respondents prayed to the



authority that the date of allotment be considered as allotment of single dwelling unit, i.e., 14.06.2010, instead of date of allotment of earlier four dwelling units.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

17. 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 as follows:

(i) With respect to the objection raised by the respondents that there is no agreement to sale executed between the parties, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from their hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit, but her bonafide belief stood shaken when the promoter failed to handover legally valid possession of the booked unit without any reasonable cause. The promoter/respondent voluntarily accepted the payments from the complainant/allottee. At that stage, complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act, 2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA



Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference: -

“Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent”.

Complainant has been allotted unit in the project of respondents by the respondents/promoters itself and said fact is duly revealed in allotment letter. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self-utilization or investment purpose. So, the plea of respondent that complainant herein is speculator investor does not hold merit and same is rejected.

(ii) The complainant had initially booked four apartments with the respondent in his project M2K County, Dharuhera, district Rewari and had paid a sum of Rs. 12 lakhs to the respondent in the year 2006. They later requested the respondent for consolidation of said four apartments into one apartment. The respondent acceded to their request vide letter dated 14.06.2010 and while allotting them apartment no. E-1104 on the



eleventh floor of Tower E, measuring 1170 Sq. fts. having a total super area measuring 1425 sq. fts., had asked them to remit the balance instalments. The complainant has averred that they had paid a total sum of Rs. 24,32,169/- till date to the respondent. Their grievance is that the respondent has not executed buyer's agreement till date and has failed to complete the project and deliver possession of the apartment. So, their prayer is for refund of the paid amount along with interest.

(iii) The respondent's plea is that they had sent a draft of Buyer's Agreement to the complainant on 02.01.2008 and since the latter had not sent their response till date, the agreement could not be executed. Their further plea is that the complainant was asked to opt for the manner in which they intend to pay the balance instalments and when they did not send any response, various demand letters were issued to them conveying that their failure to make a specific option will tantamount to accepting of construction-based option for payment of balance instalments. It was further pleaded that the complainant had subsequently committed default in payment of instalments demanded from them. According to the respondent, the concerned department had granted them occupation certificate for the project in 2016 and they had thereafter offered possession of the apartment to the complainant on 22.03.2016. However, the complainant has neither paid the balance instalments due from them



nor have come forward to accept the offer. So, the complaint is liable to be dismissed.

(iv) After hearing both the parties and going through the documents placed on record, the Authority finds that although the complainant company had initially booked four apartments but they had later voluntarily opted to have only one apartment in the project. The respondent agreed to his request and had adjusted the earlier payments towards the price of single apartment. The respondent later sent letter dated 30.08.2007 (attached as OP-7) with his reply for enquiring from the complainant about his option regarding payment of instalments. The complainant did not respond to the aforementioned letter and the respondent thereafter sent a letter dated 19.11.2007 (Annexure OP-9), wherein, it was mentioned that the option of paying instalments as per construction link plan will become applicable against them in case their response is not received within 10 days. In this regard Authority observes that complainant could not produce any proof for making a particular option in time and therefore, it has to be presumed that they had opted for Construction Link Payment Plan.

(v) As per order dated 09.10.2019 Authority observes that, due to non-execution of a mutual agreement between the parties, it is fair to allow a reasonable period towards completion of the project. In most of the cases involving allotment of apartments, the period for completion prescribed

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by builders in the Builder Buyer's Agreements is thirty-six months plus six months' grace period. So, the Authority while adopting the same criterion in the present case held the deemed date of possession as forty-two months from the date of allotment i.e. 14.06.2010. Thus, Authority had already decided that the deemed date of possession would be December, 2013.

(vi) That the complainant is insisting upon the relief of refund by relying upon the judgement passed by the 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."

Authority observed that the ibid decision of the Hon'ble Supreme Court has settled 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.

18. The project in question did not get completed within the time stipulated as mentioned in order dated 09.10.2019 i.e., by December, 2013 and possession could not be delivered by the respondent during the said period. In these circumstances the complainant cannot be compelled to accept offer of possession of the unit at this belated stage. Therefore, Authority finds it to be a fit case for allowing refund along with interest in favour of complainant.
19. The definition of 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.

20. 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. 02.09.2024 is 11.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

21. Rule 15 of HIRERA 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".

22. Thus, respondent is liable to pay the interest to the complainant from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs 24,32,169/- 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 11% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. For the purpose of calculations Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order



and total amount of interest works out to Rs 41,74,546/- as per detail given in the table below:

In the present complaint no. 502/2019, complainant claims to have paid an amount of Rs 24,32,169/-, and receipts of for the same have been attached in the file.

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 02.09.2024
1..	3,00,000	28.11.2006	5,92,010
2.	3,00,000	28.11.2006	5,92,010
3.	3,00,000	28.11.2006	5,92,010
4.	3,00,000	28.11.2006	5,92,010
5.	5.63,025	08.09.2010	8,74,770
6..	2,55,716	13.07.2011	3,37,353
7.	1,05,983	25.08.2011	1,53,352
8.	2,11,970	18.11.2011	3,01,231
9.	95,475	20.11.2014	1,03,800
10.			Total= 41,74,546/- /-
11..	Total Payable to complainant	24,32,169/- + 41,74,546/-	66,06,715/-

H. DIRECTIONS OF THE AUTHORITY


23. 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) Respondents is directed to refund the paid amount to the respective complainants with interest as calculated in tables mentioned above in paragraph 19 of this order. It is further clarified that respondent will remain liable to pay interest to the respective complainants till the actual realization of the amount.

(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.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]