



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	576 of 2022
Date of filing:	07.04.2022
First date of hearing:	20.07.2022
Date of decision:	09.09.2024

COMPLAINT NO. 576 of 2022

Karan Sood,

S/o Sh. S.K sood,

R/o 59/5, New Rohtak Road, Karol Bagh, New Delhi-110005

.....COMPLAINANT

Versus

Housing Board Haryana

C-15, Awas Bhawan,

Sector-6, Panchkula, Harayana

.....RESPONDENT

**CORAM: Nadim Akhtar
Chander Shekhar**

**Member
Member**

Present: - Mr. T.P Singh Chauhan, Id counsel for the complainant.
Mr. Rajesh Kaul, learned counsel for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

Present complaint is filed by the complainant 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 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

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	Built up multi storeyed flats for industrial workers at Barhi, Sonipat
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	61-A
5.	Date of builder buyer agreement	Not executed
6.	Due date of offer of possession	28.02.2013 (as per pleadings of respondent in para no.5 of the written submissions)



7.	Possession clause in BBA	Not available
8.	Total sale consideration	₹15,65,409/-
9.	Amount paid by complainant	₹2,12,500/-
10.	Offer of possession given on	19.02.2018

B. FACTS OF THE PRESENT COMPLAINT

- i. That Housing Board Haryana issued an advertisement in the prospectus inviting applications for purchase of built up multi storeyed flats for industrial workers's and industrial units/ entrepreneurs in the project located at Barhi, District Sonipat (Annexure P/1).
- ii. That complainant applied under the above scheme of Housing Board Haryana through application form no.3104 and deposited an amount of Rs.79,000/- through demand draft as 10% for advance deposit for booking the flat. A copy of application form with copy of acknowledgment slip is annexed as Annexure P/2.
- iii. That respondent vide letter dated 19.01.2012 issued registration no.50 and further asked for depositing additional amount of Rs.1,20,000/-, the said letter is annexed as Annexure P/3. Complainant got another letter dated 24.09.2012 from respondent in which complainant was given an opportunity to make payment of ₹1,20,000/- alongwith interest to keep his booking. A copy of said letter is annexed as Annexure P/4. Complainant deposited the said amount for confirming his booking on



13.10.2012. A copy of demand draft in favour of Housing Board Haryana is annexed as Annexure P/5.

- iv. Complainant never received any communication from the respondent for 6 long years without issuing any acknowledgment or information relating to the booked flat. On 19.02.2018, complainant received acknowledgment. However, he was shocked to know that the total cost of the flat was raised to double from the previous mentioned amount without any explanation and option to the complainant to withdraw. A copy of letter dated 19.02.2018 is annexed as Annexure P/7.
- v. Aggrieved by the same, complainant visited the o/o Estate Manager, Sonipat for seeking explanation letter before increasing the price of the flat to double the initial amount mentioned in the brochure. The complainant clarified that the amount is not affordable to him and he would not be able to pay the amount mentioned above. Complainant requested them for surrender of flat, if the amount is not reduced to the initial amount. Respondent did not pay any heed to the request of the complainant and cancelled his allotment and said they would return the money of the complainant after deducting 50% from their earnest money.
- vi. Complainant visited the office of respondent twice and requested the authorities for refund. However, the authorities did not pay any heed to the requests of the complainant which left the complainant with no other



option but to file the present complaint. Further, HRERA Panchkula was faced with similar facts and circumstances in **complaint number 92 of 2019** in case of **Ram Mehar Singh V. Housing Board Haryana** and **complaint no.737 of 2019** titled as **Kuldeep Sharma versus Housing Board Haryana** wherein the Hon'ble Authority has ordered for refund to the complainants.

C. RELIEF SOUGHT

Complainant sought following relief:

- (i) That the deposit of complainant of Rs.2,12,500/- shall be refunded with interest @17%P.A.which becomes Rs.3,98,110/- Total amount becomes Rs.6,10,610/-.
- (ii) Rs.50,000/- as cost of legal and other expenses.
- (iii) Complainant be compensated with harassment and mental trauma Rs. 50,000/-
- (iv) Any other order that the authority deems fit.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Respondent filed its reply on 10.10.2023, wherein it is submitted that:-

- i. That present complaint is not maintainable in the present form against the respondent and instant complaint is liable to be dismissed as no cause of action has accrued in favour of the complainant to file the present complaint. Complainant had filed the present complaint without



exhausting the proper remedies available to him and without approaching the Housing Board authorities for redressal of his grievance.

Hence the present complaint is premature and thus liable to be dismissed.

- ii. That present project was launched in the year 2010 and at that time RERA Act had not come into existence. Therefore, Authority has no jurisdiction.
- iii. That the complainant has portrayed the answering respondent as a Developer of Real Estate whereas Housing Board Haryana (hereinafter the Board) is an establishment of Government of Haryana under the Haryana Housing Board Act 1971 (Haryana Act No. 20 of 1971). The respondent is a statutory body and not a mere Real Estate Developer.
- iv. That complainant has applied for Type-B-I flat at Barhi against his Provisional Regd. No. 50 and Final Regd. No. 50. Allotment letter dated 19.02.2018 was issued by the concerned Estate Manager and complainant was allotted Flat No. 61-A, Type-I flat, at Barhi and possession was offered to the complainant. It is the complainant who failed to deposit the allotment money and to take possession of flat.
- v. Complainant has not deposited allotment money for taking possession of flat and allotment of flat was cancelled. Hence the complainant is only entitled for refund of deposited amount as per clause-13 of Haryana



Housing Board Act (Allotment Management and Sale of Tenements Regulation, 1972). Clause 13 is reproduced as under:

Clause 13 Refund of amount of initial payment:

"Where any applicant is allotted a tenement under those regulation but he fails to take possession of the same within a period of 30 days from the date of receipt of the allotment letter issued to him/her or surrenders the same at any time his/her name shall be removed from the allotment register and 50% of the amount deposited with the application at the time of registration shall be forfeited to the Board and balance refunded to him/her without interest".

As per provisions contained in above regulation, an amount of Rs.1,59,500/- has been refunded by Housing Board Haryana to the complainant vide Cheque No. 961837, dated 22.09.2023, copy enclosed as Annexure R-1. That the complainant is neither entitled for refund of claimed amount of Rs.3,98,110/- with 17% per annum interest nor entitled for any compensation.

- vi. That the present project was planned in such a way as to likely be available for allotment by 28.02.2013. However, the construction of the same was delayed due to delay of the contractor and work was completed in the year 2014. Thereafter, in the year 2017, development works were completed. Accordingly, possession was offered to the allottees on the cost calculated on actual expenditure. Hence, the respondent board is at no fault and has acted genuinely, fairly, un-



arbitrarily based on uniform approach and natural justice. In fact the flats were advertised at tentative cost in 2010 and the cost was subject to change as per the increase in construction cost, ELC and other factors. Project was completed in year 2017, there was no intentional or willful delay on part of the respondent Board, but the same had occurred due to circumstances beyond the control and the final cost of the flat was intimated to the complainant after taking all the factors into consideration. The complainant is misrepresenting that the tentative cost mentioned in the brochure was the final cost and hence he is referring to the demand raised as per the final cost, as an escalation.

- vii. All these claims of the complainant are false, baseless and illegal. The complainant has concealed all the above said true and material facts from this Hon'ble Authority. Therefore, the complainant deserves no sympathy or relief from this Hon'ble Authority and the present complaint is liable to be dismissed with costs on this ground alone.
- viii. The judgment relied upon by the complainant is not applicable to the facts of the present case as each and every case has its own facts and each case has to stand on its own legs.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

During the course of hearing ld counsel for the complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund alongwith interest. On the other hand, ld counsel for respondent requested for one more opportunity to argue the case as there is change of counsel of the respondent and he had received the file of present complaint recently. Moreover, respondent had refunded the amount to the complainant as per the policy of the respondent.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS OF THE AUTHORITY

After taking into consideration the facts and circumstances of the case and arguments put forth by both the parties and judgements referred by the complainant, Authority observes that following issues needs to be decided by this Authority.

- (i) Firstly, whether the present complaint is maintainable before the Authority or not? In this regard the Authority observes, it needs to be examined whether respondent (Housing Board Haryana) falls under the definition of promoter provided in RERA Act, 2016 and



whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of “promoter” under section 2(zk) needs to be perused. Definition is provided below:

(zk) “promoter” means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

*(iii) any **development authority** or any other public body in respect of allottees of—*

*(a) **buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or***

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots;

or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments



or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Plain reading of the definition given under section 2(zk) makes it clear that any development authority in respect of allottee of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments. Here, Housing Board Haryana is a Development Authority and that with the authority of Government of Haryana who has issued an allotment letter to complainant on 19.02.2018 of Flat No. 61-A Type-I flat at Barhi, Sonipat. Hence, Housing Board is covered under the definition of promoter under section 2(zk).

(ii) The flat was allotted by the respondent to the complainant-allottee, as per S.2(d) of the RERA Act, "allottee" is defined as follows:

(d) "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:

As per Ss. 2(zj) & (zn) of the RERA Act. "project" & "real estate project" are defined respectively as follows:

(zj) "project" means the real estate project as defined in clause (zn):

(zn) "real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

A conjoint reading of the above sections shows that Housing Board is a promoter in respect of allottees of flats sold by it in its real estate project and therefore, there exists a relationship of an allottee and promoter between the parties. Since, relationship of an allottee and promoter between complainant and respondent is established and the issues deals with real estate project developed



by respondent, hence, provisions of RERA Act, 2016 apply to the matter and Authority has the exclusive jurisdiction to deal with the matter. Furthermore, the preamble of RERA Act, 2016 provides as under.

An Act to establish the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the real estate regulatory authority and the adjudicating officer and for matters connected therewith or incidental thereto;

The RERA Act, 2016 basically regulates relationship between buyer (i.e., allottee) and seller (i.e., promoter) of real estate, i.e., plot, apartment or building, as the case may be and matters incidental thereto. Hon'ble Bombay High Court in the case **Neelkamal Realtors Suburban Pvt. Ltd. and Ors. v. Union of India and Ors.** 06.12.2017 - BOMHC, observed: *"In my opinion RERA does not fall under Entry 42 in List III- Concurrent List of the Seventh Schedule, namely, Acquisition and requisitioning of property. RERA fall under Entry 6, namely, Transfer of property*



other than agricultural land; registration of deeds and documents, Entry 7-contracts, including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural land and Entry 46, namely, jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in List III-Concurrent list of the Seventh Schedule".

The scope of this Act is limited to contracts between buyers and promoters and transfer to property. Both these items fall within the concurrent list III: entry-6 and entry-7 read with entry-46. This Act regulates the transactions relating to the sale of above-mentioned real estate products, for an orderly growth of real estate market, by protecting the interests of different stake holders in a balanced manner and facilitating the consumer/buyer to make informed choice. Therefore, the Authority has jurisdiction to decide the present matter.

(iii) Second issue is whether complainant is entitled for refund or not?

In this regard, it is admitted fact that complainant had applied for allotment of flat under a scheme floated by respondent in year 2010. Said scheme was aimed at providing houses to industrial workers. The price of the house in the advertisement given by the



respondent was Rs.7.90 lacs. A person applying under the scheme was required to pay 10% of the total price as booking amount. The complainant after adjudging his own financial position and capability to purchase house at the quoted price, had applied in response to respondent's advertisement. The respondent within a reasonable time of booking was expected to disclose the exact price of house to the complainant and also to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably or even to demand double the sale price of the house because such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated for industrial workers. The government provides land for building of houses under such scheme at subsidized rates and also facilitates arrangement of loan on subsidized rate to allottees of such scheme. The whole idea is to squeeze the sale price of flats to a level within the reach of industrial workers. How can the respondent then be allowed to render the allottees of such a scheme to face a situation when it becomes practically impossible for them to purchase the



house at the rate double than for which they had agreed to purchase it.

- (iv) The respondent in present case has not completed the project within a reasonable time and has disclosed the exact price of the house to the complainant after 8 years of the launching of the project. The respondent has been utilizing an amount of Rs.2,12,500/- lacs, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained. The only submission made by respondent counsel to escape the liability of refunding the amount alongwith interest is that the project for which possession was planned to be delivered by 28.02.2013, could not be completed due to delay caused by contractor who was engaged for carrying out construction work. Undeniably, the contractor was engaged as per the choice of respondent and the respondent was expected to supervise the work of contractor and in case of necessity, was also expected to change the contractor for the purpose of ensuring timely delivery. So, the argument put forth by respondent's learned counsel deserves rejection and the respondent cannot escape his own liability by shifting blame to contractor.



(v) No doubt that there are bye laws of the respondent board which provides for deduction of 50% of the amount paid at the time of registration, in case an allottee wants to withdraw from the project/does not take possession within 30 days of offer of possession, but the principle so enshrined in bye laws, in considered opinion of the Authority, will be applicable only in those cases where there is no default on the part of respondent board in discharging its obligation towards allottees. The respondent Board cannot be allowed to take shelter of such bye laws for deduction of 50% of said amount in case of an allottee for whom the respondent himself has created circumstances rendering him practically unable to bear the cost of the house. The present case falls in this category because the respondent due to his own negligent act has created such circumstances. So, the Authority finds it a fit case for refund of paid amount without any deduction.

(vi) 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 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 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.

(vii) 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;

(viii) 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".

- (ix) Complainant in its complaint has sought refund of paid amount with interest @17%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
- (x) 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 respective dates, i.e., 22.09.2023 is 8.75% and 09.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e., 10.75% and 11.10%.
- (xi) From above discussion, 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 along with interest. Thus, respondent will be liable to pay the



complainant, interest from date of payments till the date of refund, i.e., 22.09.2023. Further, as respondent had already refunded an amount of ₹1,59,500/- to the complainant on 22.09.2023, thus, respondent is liable to refund the balance principal amount, i.e., 53,000/- and interest w.r.t said amount from date of refund till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principal amount	Date of payments	Date of refund	Interest from date of payments till date of refund
1.	₹79,000/-	01.11.2010	22.09.2023	₹109565/-
2.	₹1,33,500/-	13.10.2012	22.09.2023	₹157156/-
	Total= ₹2,12,500/-			Total= ₹2,66,721/-

Sr.no	Balance principal amount (principal amount -refunded amount)	Date of refund	Date of order	Interest from date of refund till date of order
1.	₹53,000/-	22.09.2023	09.09.2024	₹5706/-

Total amount to be refunded to the complainant

$$= ₹2,66,721/- + ₹53,000/- + ₹5706/- = ₹3,25,427/-$$

(xii) Further, the complainant is seeking compensation on account of mental harassment caused to the complainant and litigation

expenses. 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.

J. DIRECTIONS OF THE AUTHORITY

Hence, the Authority hereby passes this order in the present complaint 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 pay interest of ₹2,66,721/- on paid amount of ₹2,12,500/- as per calculations given on page no.21 of this order. As respondent had already refunded an



amount of ₹1,59,500/- to the complainant on 22.09.2023, thus, respondent is liable to refund the balance principal amount of ₹53,000/- alongwith interest from date of refund till the actual realization of the amount. However, for the purpose of calculation interest of ₹5706/- has been calculated by the Authority on balance amount of ₹53,000/- from 22.09.2023 till the date of this order.

- (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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]