



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	2042 of 2023
<b>Date of filing:</b>	20.09.2023
<b>Date of first hearing:</b>	18.10.2023
<b>Date of decision:</b>	10.12.2024

Sandhya Jain and Sumeet Singla  
R/o 108 SFS Flats, Ashok Vihar,  
Phase IV, Delhi-110052

....COMPLAINANT

VERSUS

M/ Ansal Properties & Infrastructure Ltd,  
Office: 15 Ansal Bhawan ,16 K G Marg  
New Delhi 110001

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Present:**

Adv. Himani, Proxy for Adv. Harshit Batra, learned counsel for the complainants through video conference.

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

**ORDER**

1. Present complaint has been filed on 20.09.2023 by 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 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 complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Phase-2, Sonipat.
2.	Flat no.	0102-26-0403
3.	Area	1638 sq. ft.
4.	RERA registered/not registered	Registered / HRERA-PKL-SNP-173-2019



5.	Date of booking	28.01.2006
6.	Date of allotment	02.11.2006
7.	Date of builder buyer agreement	07.03.2012
9.	Deemed date of possession (42+6)	07.09.2015; 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.
10.	Basic sale price	Rs. 26,20,800/-
11.	Amount paid by complainant	Rs. 29,96,485/-
12.	Offer of possession	No offer

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**B. FACTS OF THE COMPLAINT**

3. Case of the complainants is that they booked a flat in respondent's residential project "Green Escape Apartments" at Sonipat on 28.01.2006. After the said booking, respondent issued an allotment letter dated 02.11.2006 to the complainants thereby mentioning the total sales price of the flat as Rs. 26,20,800/-.
4. Complainants entered into flat buyer agreement with the respondent on 12.02.2007 for unit/flat bearing no. 360103, admeasuring 1638 Sq. Ft. As per clause 12 of the flat buyer agreement, the due date of handing over the possession of the unit shall be 30 months from the date of sanction of building plans.
5. The total consideration of the said flat was Rs. 26,80,000/- against said amount, complainants have paid an amount of Rs. 29,96,485/-.
6. That, after signing of the agreement, the complainant on 12.09.2011, received a letter from the respondent stating that the unit of the complainant has been changed as the construction of the project is yet to be started. Complainant has stated that as per flat buyer agreement due date of delivery of the unit was 12.08.2009, whereas per letter dated

  
A handwritten signature in blue ink, appearing to read 'Rattue', is written over a horizontal line.

12.09.2011 respondent had not been started the construction whereas the construction of the Project was not started till 12.09.2011.

7. Subsequent to letter dated 12.09.2011, respondent issued new builder buyer agreement dated 07.03.2012, as per which a unit bearing no. 0102-26-0403 was allotted to the complainants for total sale consideration Rs. 26,80,000/-. Complainant had already paid an amount of Rs. 26,96,485/- in the year 2020.

8. That, as per Clause 5.1 of the new buyer's agreement dated 07.03.2012, the due date of possession of the said unit is stipulated as 42 months from the date of execution of the agreement, which comes out to be 07.09.2015. However, till date no offer of possession has been made by respondent to the complainants.

**C. RELIEF SOUGHT**

9. Complainants in their complaint pray for the following relief(s):-

- a) Pass an appropriate award directing the respondent to provide the refund of the paid amount of Rs. 29,96,485/- alongwith interest @ MCLR + 2% from the date of payment till date of realization of amounts.
- b) Any other relief/direction which the Hon'ble Authority deems may deem fit and proper on the facts and in the circumstances of the case, may also be passed in favour of the complainants of amount.



**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed reply on 01.04.2024 pleading therein:

10. That present complaint is not maintainable as this Authority has no jurisdiction to entertain this complaint as the complainants have not come with clean hands and has concealed the material fact from this Hon'ble Authority.
11. Builder buyer agreement was executed much prior to coming into force of the RERA Act and, thus provisions of the Real Estate (Regulation and Development), Act 2016 are not applicable retrospectively. It is averred the Real Estate (Regulation and Development) has been made fully operational with effect from 1<sup>st</sup> 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 vs. 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.

12. 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. That the respondent started the construction of unit on 16.4.2014 and the super structure of the tower has been completed and only finishing work is pending, however work has been stopped at the site for the last 4 years due to financial crunch and reasons beyond the control of the respondent and will take about 16-18 months in completion of work.
13. That in the reply Respondent denies each and every averment or allegation made by the complainants, in the complaint.

**E. ARGUMENTS OF LEARNED COUNSEL FOR BOTH THE PARTIES**



14. During oral arguments learned counsel for the complainant reiterated arguments as mentioned at Para 3-8 of this order. Ld. counsel for the respondent reiterated para 12 and para 13 mentioned in this order.

**F. ISSUES FOR ADJUDICATION**

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

**G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

16. 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 rendered by both parties, Authority observes and orders as follows:

- (i) One of the averments of respondents is that the present compliant is not maintainable as provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement dated 07.03.2012, previously executed between them and same cannot be examined under the provisions of RERA Act, 2016. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of





flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd.** Relevant part of the order is being reproduced below:

*“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act save the provisions of the agreements made between the buyers and seller.”*

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd** it has been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going



projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, therefore this Authority has complete jurisdiction to entertain the captioned complaint. In the instant case, however, relief of refund has been sought.

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”*

- (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*

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*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, which enumerates functions and duties of the promoter, provides for an obligation on part of the promoter. In case, the promoter fails to complete or unable to hand over possession of an apartment plot and building as per agreement for sale.

In the present complaint as per clause 5.1 of the subsequent flat buyer agreement dated 07.03.2012 promoter was obligated to handover the possession of the unit within 42 months from the execution of flat buyer agreement i.e. by 07.09.2015. However, the promoter failed to deliver the possession of the unit within time stipulated in the FBA.

- (iii) Further, as admitted by the respondent itself in its reply at para 15 that unit in question is still not complete and is likely to take one and half more year time for completion after commencement of construction work. Construction of unit on was started on 16.4.2014 and the super structure



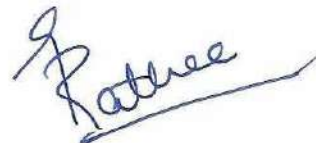
of the tower has been completed and only finishing work is pending but the work has been stopped at the site for the last 4 years due to financial crunch and reasons beyond the control of the respondent and will take about one and half more year in completion of work.

- (iv) Complainants on the other hand, had filed the present complaint on 20.09.2023 seeking relief of refund which shows the intent of complainant to withdraw from the project. Respondent has taken a defence that delay in construction has been due to financial constraints and reasons beyond the control of the promoter w.r.t financial constraints. In this regard, Authority observes that the complainant had paid an amount of Rs. 29,96,485/- in the year itself with last amount being paid in 2020 to respondent whereas admitting respondent initiated the construction of the unit on 16.04.2014. Meaning thereby, the complainants have an paid amount more than the total sale consideration to respondent before even start of court. Nevertheless, respondent had failed to construct the project within time stipulated in flat buyer agreement. The plea of financial crunches raised by respondent for the simple reason that is not tenable, rather the Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred if the money paid by the allottees was not misappropriated by the respondent/promoter instead of this it was no financial crunches



would have been arrived used towards construction of the project. Secondly, with respect to the plea of respondent that due to reasons beyond control complainant could not completed. Authority observes, that it is a very general statement having not been supported by any document, therefore, same is not tenable.

- (v) In view of the fact of the case it is, observed that an extraordinary delay of 6 years has already been caused in handing over possession from the due date of offer of possession. Hence, the complainant would be entitled to relief of refund as he cannot be forced/compelled to wait endlessly for completion of project. 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 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 respondents. In the case of breach of contract, argument that provisions of RERA Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. The general law of the land will regulate such situation and not provision of the agreement.



- (vi) As per observation recorded in proceeding paragraphs, complainants in exercise of their rights U/S 18 of RERA Act, 2016 had prayed for relief at page no. 15 of amount Rs. 29,96,485/-along with interest. As per file, receipts of amount Rs. 29,96,485/-has been annexed. Therefore, amount of Rs.29,96,485/- is liable to be refunded. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he 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.
- (vii) 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.

(viii) 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 (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”.*

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) Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 10.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.
- (x) The definition of term ‘interest’ is defined under Section 2(z) 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;

- (xi) 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. 29,96,485/- payment proof of said amount of Rs. 29,96,485/- have been annexed at Annexure C5(Colly). Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ Rs.29,96,485/- 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 11.1% (9.10% + 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 11.1% till the date of this order and said amount works out to ₹ 42,29,038 /- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 10.12.2024
1.	250000	28/01/2006	523981
2.	100000	28/01/2006	209592
3.	52000	11/12/2006	103975

*[Handwritten Signature]*

4.	160800	19/02/2007	318100
5.	321600	02/07/2007	623192
6.	323127	14/05/2008	595001
7.	65000	29/07/2008	118188
8.	65000	06/10/2008	116824
9.	65000	15/11/2008	116033
10.	26902	22/11/2011	39008
11.	26000	22/11/2011	37700
12.	231323	18/04/2014	273652
13.	16143	20/08/2014	18488
14.	200000	20/08/2014	229055
15.	216143	14/01/2015	237881
16.	219000	16/08/2016	202397
17.	219200	21/04/2017	186050
18.	219100	12/07/2017	180502
19.	220147	17/11/2020	99419
Total	29,96,485/-		42,29,038


#### H. DIRECTIONS OF THE AUTHORITY

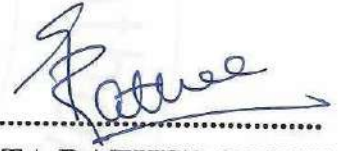
17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation

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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 entire amount of ₹ 72,25,523/- to the complainant. Interest shall be continued to be paid till the date, the amount and interest thereupon is refunded.
  - (ii) A period of 90 days is given to the respondents 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**  
[MEMBER]

  
.....  
**Dr. GEETA RATHEE SINGH**  
[MEMBER]