



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2300 of 2023
Date of filing:	17.10.2023
First date of hearing:	29.01.2024
Date of decision:	18.11.2024

Randhir Singh Birdi & Gagandeep Kaur,
R/o H.No.1049, Urban Estate Phase 2,
Patiala, Punjab 147001.

.....COMPLAINANTS

Versus

M/s Green Space Infraheights Pvt. Ltd,
Regd. Office:306, 3rd Floor, Indraprakash Building,
21- Barakhamba Road, New Delhi-110001.

.....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Paritosh Vaid, Ld. counsel for complainant.

None present for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 17.10.2023 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 RERA, 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

2. The particulars of the project, sale consideration, 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	Shree Vardhman Green Space (Affordable Housing Colony)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Flat No. allotted	0903, Tower- G, 9 th floor
5.	Flat area (Carpet area)	511 sq.ft
6.	Date of allotment	21.12.2017
7.	Date of execution Builder Buyer Agreement	26.05.2018
8.	Due date of offer of possession	15.03.2020
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to force majeure circumstances, intervention of statutory</i>

		<i>authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")"</i>
10.	Total sale consideration	₹20,94,000/-
11.	Amount paid by complainant	₹21,63,235/-
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Case of the complainants is that complainants had applied for a residential 1BHK flat in an affordable group housing project namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, Sector-14, Panchkula Extension-II, District, Panchkula, Haryana by paying a



sum of ₹72,163/- as booking amount vide demand draft no. 584149 dated 11.05.2015. Copy of demand draft is annexed as Annexure C-1. Complainants were allotted flat No.806, Tower no. E, 8th floor towards total basic price of ₹14,00,000/- in the project, namely; "Shree Vardhman Green Space".

4. Complainants received letter dated 17.10.2016 regarding commencement of construction work in the project and update of project was also shared with the complainants. Copy of letter dated 17.10.2016 is annexed as Annexure C-3. Thereafter, complainants requested the respondent to upgrade the allotment of complainants from 1BHK to 2BHK and amount of ₹10,82,963/- which paid by the complainants towards 1BHK be adjusted towards allotment of 2BHK flat. Request letter dated 17.09.2017 is annexed as Annexure C-4.
5. After request made by the complainants, respondent issued fresh allotment letter dated 21.12.2017 for 2BHK flat bearing no.903, Tower-G, 9th floor in the same project. Copy of allotment letter dated 21.12.2017 is annexed as Annexure C-7.
6. That on 26.05.2018, a Builder Buyer Agreement (BBA) was executed between complainant and respondent for basic sale price of ₹20,94,000/- and a copy of same is annexed as Annexure C-8. Complainant made the payment of ₹21,63,235/- against the basic sale price. Copies of receipts are attached with complaint book.



7. As per clause 8(a) of builder buyer agreement, respondent was bound to deliver possession of flat within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. However, respondent failed to give the possession of flat till date.
8. As per records submitted to this Authority, environmental clearance of the project was obtained by the respondent on 15.03.2016 and building plans were approved on 09.12.2014. That as per agreed terms and conditions of the Builder Buyer Agreement, respondent was under an obligation to hand over the actual physical possession to the complainants on 15.03.2020, but the respondent company has failed to deliver the possession on time. Thus respondent has violated Section 19(4) of the RERA, Act 2016.
9. That respondent has failed to perform its obligations as per the agreed terms and conditions of the Builder Buyer Agreement. That after due date of possession, complainants contacted the respondent on many occasions to inquire about the status of the project but respondent failed to give any satisfactorily reply to the complainants. Further, complainants themselves visited the project site and to their surprise no construction was taking place at the site.
10. Complainants are now no more interested to take possession of the flat and are now seeking refund of the paid amounts alongwith interest as per Section 18 of the RERA Act of 2016.



C. RELIEFS SOUGHT

11. Complainants sought following reliefs :

- (i) To direct the respondent to refund a sum of ₹21,63,235/- with interest from date of receiving till date of realization as per the provisions of RERA Act of 2016.
- (ii) To direct the respondent to pay ₹2,50,000/- as compensation to the complainant on account of unfair trade practice.
- (iii) To direct the respondent to pay ₹2,50,000/- on account of physical harassment and mental agony to the complainants.
- (iv) To direct the respondent to pay ₹1,10,000/- on account of litigation charges.
- (v) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

D. REPLY ON BEHALF OF RESPONDENT

12. Notice was served to the respondent on 14.11.2023 which got successfully delivered on 17.11.2023. Despite availing three opportunities, respondent failed to file reply, though in all three hearings, Id counsel represented the respondent. Therefore, Authority deems it fit to struck off the defence of the respondent and decide the present complaint ex-parte.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

13. Counsel for complainants reiterated the facts of the complaint and stated that respondent was given numerous opportunities and was directed to file reply, however no reply has been filed by the respondent till date. Ld counsel requested that case may be decided ex-parte based on the records available as complainants are seeking refund of the amount paid to the respondent for which receipts are already on record.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

15. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the submissions made by complainants counsel, Authority observes that the complainants booked a 2BHK flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainants were allotted flat no.903, Tower G, 8th floor admeasuring 511 sq.ft. in said project at sector-14, Panchkula Extension-II, District Panchkula,



Haryana. The builder buyer agreement was executed between the parties on 26.05.2018. Complainants had paid a total of ₹21,63,235/- against the basic sale price of ₹20,94,000/- .

16. As per clause 8 (a) of the agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. It came to knowledge of the Authority while dealing with complaints against the same builder, i.e., Green Space Infraheights Pvt. Ltd received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, deemed date of handing over of possession comes to 15.03.2020.

17. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottees. The project of the respondent is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hand earned money, legitimate expectations of the complainants would be that possession of the flat will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainants. Thus, complainants are at liberty to exercise their



right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

18. 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 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.

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. 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".

21. 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., 18.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

22. 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 complainants are entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the interest from the dates the amounts were paid till the actual realization of the amount to the complainants. Authority directs respondent to refund the amount of ₹21,63,235/- along with interest to the complainants 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 11.10% (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 11.10% till the date of this order and total amount works out to ₹37,73,013/- as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 18.11.2024
1.	₹1,04,700/-	28.09.2017	₹83071/-
2.	₹4,81,620/-	02.01.2018	₹368067/-
3.	₹10,71,000/-	03.03.2018	₹798945/-
4.	₹5,05,620/-	26.06.2018	₹359500/-
5.	₹295/-	07.12.2018	₹195/-
	Total=₹21,63,235/-		₹16,09,778/-
Total amount to be refunded by respondent to complainant= ₹21,63,235/- + ₹1609778/- = ₹37,73,013/-			

23. Further, the complainants are seeking damages for mental agony and harassment, litigation charges, damages. 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 for mental torture, agony, discomfort and undue hardship of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

24. The Authority hereby passes this order and issue 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 paid amount of ₹21,63,235/- with interest of ₹16,09,778/- to the complainants. It is further clarified that respondent will remain liable to pay interest to the complainants till the actual realization of the amount.

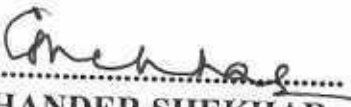
(ii) Also, respondent is directed to pay total cost of ₹15,000/- payable to the Authority and ₹7000/- payable to the complainants imposed by the Authority vide its orders dated 29.04.2024 and 09.09.2024.

(iii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule



16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow.

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


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]