



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1156 of 2023
Date of filing:	16.05.2023
First date of hearing:	08.08.2023
Date of decision:	16.12.2024

Rajnish Soni, W/o of Sh. Naveen Soni,
R/o VPO Mohal, Kullu, Himachal Pardesh.

.....COMPLAINANT

Versus

Green Space Infraheights Pvt. Ltd, through its Director,
Regd. Office:306, 3rd Floor, Indraprakash Building,
21- Barakhamba Road, New Delhi-110001.

Site Office: Shree Vardhman Green Space, Sector-14, Barwala Road on
NH-73, Panchkula Extension II, Panchkula, Haryana.

.....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr. Arpandeeep Narula, Ld. Counsel for complainant.

None present for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 16.05.2023 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 Group Housing Colony)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Flat No. allotted	708, Tower C, 7 th floor
5.	Flat area (Carpet area)	478 sq.ft



6.	Date of allotment	26.08.2015
7.	Date of execution Builder Buyer Agreement	Not available. A copy of builder buyer agreement mentioning unit details only is attached. However, said BBA is undated and unsigned by the parties.
8.	Due date of offer of possession	15.03.2020
9.	Possession clause in BBA	Not available
10.	Total sale consideration	₹20,47,435/- (as per pleadings of complainant)
11.	Amount paid by the complainant	₹19,56,785/-
12.	Offer of possession	Not given till date.

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant had applied for a residential 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 ₹1,01,131/- as booking amount and acknowledgment dated 28.05.2015 alongwith receipt dated 28.05.2015 is attached as Annexure C2.
4. Thereafter, respondent vide letter dated 13.08.2015 informed the complainant that draw of lots of flats will be held on 25.08.2015. A



copy of letter dated 13.08.2015 is attached as annexure C4. Complainant duly participated in the draw and respondent allotted flat no. 708, Tower C, 7th floor having carpet area of 478 sq. ft vide allotment letter dated 26.08.2015 which is annexed as Annexure C5.

5. Respondent company issued letter dated 15.03.2016 to the complainant mentioning that respondent company had got all the approvals from the concerned departments including demarcation plan, zoning plan, building plan, etc. True copy of letter is attached as Annexure C6.
6. It is admitted that basic sale price of the flat was ₹19,62,000/-. After inclusion of the other charges, total sale consideration of the flat is ₹20,47,435/-. Complainant has already paid ₹19,56,785/- to the respondent which comes to more than 95% of the total sale consideration as is clear from customer ledger dated 02.05.2019 attached as Annexure C8.
7. That complainant immediately after the issuance of allotment letter, repeatedly requested the respondent company to execute the builder buyer agreement but the respondent company postponed the matter on one pretext or other and attempted to dodge the complainant. Still the Indian Non Judicial e-stamp papers were purchased by the respondent company which were also appended with the flat buyer agreement, after filing up the flat buyer agreement in totality. Still the respondent



company failed to execute the said agreement. A true copy of flat buyer agreement booklet is attached as Annexure C12.

8. That complainant was assured by the respondent company that legal possession of the unit shall be delivered on or before 4 years from the date of approval of building plans or grant of environment clearance of the project whichever is later. As per approval records submitted before the Authority, Environment clearance of the project was obtained on 15.03.2016 and building plans were approved on 09.12.2024. That means respondent was bound to deliver the possession by 14.03.2020. However, respondent failed to fulfill its obligations to handover the possession.
9. That repeated requests have already been made to the respondent company to inform and update the complainant as to when the possession of the unit would be handed over. However, respondent failed to provide any meaningful responds to the queries of the complainant. That legal notice dated 02.05.2023, was also sent on behalf of the complainant calling upon the refund of the amount paid alongwith interest from the respondent company, but no reply has been received. A true copy of legal notice dated 02.05.2023 is attached as Annexure C19.
10. That in the present case, it is the failure on the part of the respondent to fulfill its obligations, responsibilities in handing over the



possession within the stipulated period. Accordingly, non-compliance of the mandate contained in section 11(4)(a), 11(4)(f) read with section 18(1) of the RERA Act of 2016 on the part of the respondent is established. Therefore, complainant being aggrieved by the conduct of the respondent is filing the present complaint before the Authority.

C. RELIEFS SOUGHT

11. Complainants sought following reliefs :

- (i) Direct the respondent company to refund a sum of ₹19,56,785/- to the complainant alongwith interest at the rate of 18% p.a. to be calculated individually for every individual instalment paid from that very date starting from 28.05.2015, till the date of actual realisation.
- (ii) Direct the respondent company to pay a sum of ₹5,00,000/- to the complainant towards the damages for the mental torture, agony, discomfort and undue hardship caused to him as a result of the above acts/omissions on the part of the respondent company.
- (iii) Direct the respondent company to pay ₹1,50,000/- as litigation charges to the complainant by way of acceptance of this complaint with cost.
- (iv) Pass any other or further relief in favour of the complainant and against the respondent company, including costs, which this Hon'be



Authority may deem fit, just and proper in the facts and circumstances of the case.

D. REPLY ON BEHALF OF RESPONDENT

12. Notice was served to the respondent on 26.05.2023 which got successfully delivered on 29.05.2023. Despite availing five opportunities, respondent failed to file reply, though in four hearings, ld 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. Ld. counsel for complainant reiterated the facts of the complaint and stated that vide order dated 22.11.2023, complainant was directed to file receipt or affidavit of the amount of ₹90,650/- paid to the respondent. In compliance of the said order, ld counsel for complainant submitted the customer ledger during the course of hearing. Further, he stated that numerous opportunities have been given to the respondent, but no reply has been filed by the respondent till date. Thus, Ld counsel for complainant requested that case may be decided ex-parte based on the records available as complainant is seeking refund of the amount (paid) to the respondent.



F. ISSUE FOR ADJUDICATION

14. Whether the complainant is entitled to refund of the amount deposited by her 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 complainant counsel, Authority observes that the complainant booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.708, Tower C, 7th floor admeasuring 478 sq.ft. in said project at sector-14, Panchkula Extension-II, District Panchkula, Haryana. Complainant had paid a total of ₹19,56,785/- against the total sale price of ₹20,47,435/- (as per pleadings of complainant).

16. Though no builder buyer agreement was executed between the parties, the fact remains that respondent allotted a unit in favour of complainant and said allotment was governed by "Affordable Housing Policy- 2013". As per clause 5 (iii) (b) of said policy, possession was to be offered within 4 years from date of sanction of building plans or receipt of environmental clearance whichever is



later. Said clause of Affordable Housing Policy 2013, is reproduced for reference:

“Clause 5(iii) (b) : All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance. Any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form alongwith 5% amount of the total cost of the flat.”

As per the pleadings of the complainant and documents attached by the complaint, it is clear that respondent company 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 the 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 fulfil its obligations as promised to the complainants. Thus, complainant is at liberty to exercise her 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. Complainant in her complaint has sought refund of paid amount with interest @18%. 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. 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., 16.12.2024 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 complainant is 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 complainant. Authority directs respondent to refund the amount of ₹19,56,785/- along with interest to the complainant 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 ₹36,69,900/- as per detail given in the table below:

Sr.no	Principal amount in ₹	Date of payments	Interest accrued till 16.12.2024 in ₹
1.	101131/-	28.05.2015	107365/-
2.	406134/-	20.09.2015	416967/-

3.	245250/-	10.08.2016	227552/-
4.	245250/-	17.09.2016	224718/-
5.	245250/-	25.03.2017	210622/-
6.	33680/-	15.09.2017	27142/-
7.	241000/-	15.09.2017	194220/-
8.	264870/-	16.03.2018	198796/-
9.	66220/-	24.10.2018	45230/-
10.	100000/-	22.04.2019	62829/-
11.	8000/-	23.04.2019	5024/-
	Total=₹19,56,785/-		₹17,20,465/-
Total amount to be refunded by respondent to complainant = ₹19,56,785/-+ ₹17,20,465/- = ₹36,77,250/-			

23. Further, the complainant is seeking damages for mental agony, torture, discomfort, undue hardship and litigation charges. 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 complainant is 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 ₹19,56,785/- with interest of ₹17,20,465/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the date of actual realization of the amount.

(ii) Respondent is also directed to pay total cost of ₹15,000/- payable to the Authority and ₹7000/- payable to the complainant imposed by the Authority vide its orders dated 22.11.2023 and 05.08.2024.

(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.



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.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

