

Mr. Hemant Saini, Id. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by complainant on 27.12.2019 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 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	“Divine City” Ganaur, Sonapat, Haryana.
2.	Name of promoter	Mera Baba Real Estate Pvt. Ltd.
3.	Date of booking	28.02.2008
4.	Unit area	215 sq. yds. as stated by the complainant in the pleadings.
5.	Date of allotment	Allotment not made



6.	Date of builder buyer agreement	Not executed
7.	Total Sale Price	₹27,51,000/-
8.	Amount paid by the complainant	₹ 22,50,000/- as stated by the complainant.
9.	Due date of possession	Within two years i.e. 28.02.2010, as stated by the complainant.
10.	Offer of possession	Not given till date.

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant Mr. Ramesh Chandra Raturi booked a villa measuring 215 sq. yds. for the total sale consideration of ₹27,51,000/- by depositing an advance booking amount of ₹2,75,000/- vide cheque no. 678537 dated 24.03.2008. A copy of said cheque is annexed as Annexure C-2 to the complaint.
4. That the complainant had signed an agreement which was never delivered to the complainant till date. Complainant visited the office of the respondents many a times but neither the allotment has been made to him nor any construction started in the said project. During the visits, respondent no. 2 and 3 assured the complainant that soon he will get allotment and possession of villa and directed him to deposit the payments. On these assurances of the respondents, complainant had made total



- payments of a sum of ₹22,50,000/- till 06.06.2022. Copies of details of payments/bank statement of account are annexed as Annexure C-4.
5. That the complainant had booked this villa as per the assurance of respondents that he would get the possession within 2 years. More than 11 years have passed from the due date of possession but complainant still has not got the possession of the villa.
6. That the respondents miserably failed to provide the possession of the villa to the complainant in their project development but never stopped taking payments from the complainant. Respondents were never sincere to reply the complainant's letters and emails which he has sent to the respondents since 2012. Copies of letters and emails sent to the respondents are annexed as Annexure C-5.

C. RELIEFS SOUGHT:-

7. That the complainant filed an amendment application for amendment of relief dated 11.01.2021 seeks following reliefs and directions to the respondents:-
- (i) The Respondents-Promoters be directed to handover the physical possession of the residential unit in the Divine City, Ganaur, Sonipat, Haryana in favour of the complainant-petitioner by making all the construction and furnishing works, as promised by



them in the agreement, as early as possible and the residential unit be also transferred in the name of the complainant-petitioner.

- (ii) The Respondents-Promoters be directed to pay the complainant the appropriate compensation as find suitable by this Id. Forum.
- (iii) The Respondents-Promoters be also directed to pay the compensation to the complainant-petitioner on account of delay in delivery of possession of the residential unit to the complainant-petitioner because as per the agreement the Respondents-Promoters was liable to handover the possession within 2 years.
- (iv) The Respondents-Promoters be also directed to pay the interest @12% on the total amount paid by the complainant- petitioner on account of delay in possession by the Respondents-Promoters.
- (v) The Respondents-Promoters be also directed to pay amount of Rs.5 lac on account of mental agony and physical harassment, caused to the complainant- petitioner.
- (vi) The Respondents-Promoters be also directed to pay the litigation expenses amounting of Rs.1,00,000/- to the complainant-petitioner.
- (vii) The Respondents-Promoters be also directed to pay the compensation to the complainant-petitioner as this Hon'ble Commission may award on account of unfair trade practice of the Respondents-Promoters.



(viii) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF ALL RESPONDENTS

Learned counsel for the respondents filed a detailed reply on 02.02.2022 pleading therein as under :-

8. That the developer has sent the last notice to make the payment due, way back on 11.08.2010. Vide speed post the complainant was informed that despite several telecom reminders and correspondence, the respondent had not received the outstanding due amount of ₹20,01,152/- as on 11.08.2010. The allottee was informed that the developer had no choice left but to cancel the booking of the villa and forfeit the amount. A copy of letter dated 11.08.2010 is annexed as Annexure R-1.
9. That another communication was sent on 15.11.2010, via speed post, to the complainant, in which he was informed that the tentative allotment of the villa had been cancelled on account of non-payment. But if the allottee/complainant wants to retain the allotment of the villa, then he would have to pay 15% of the extra basic price due to delay of payments and as the cost of construction has gone up. A copy of letter dated 15.11.2010 is annexed as Annexure R-2.



10. That the aforesaid letter was followed by another communication dated 21.12.2011 titled as "Final Reminder for Re allotment" in which the complainant was informed that against the allotment of Villa, payment of ₹24,86,690/- was overdue, in addition to the Liquid Damages Charges. A copy of letter dated 21.12.2011 is annexed as Annexure R-3.
11. That the complainant on 03.10.2012, communicated to the developer, after a span of 2 years that he had changed his address as he had sold his earlier house in January, 2012. A copy of letter dated 03.10.2012 is annexed as Annexure R-4
12. That due to non-payments, Liquid Damages Charges kept increasing which till 10.02.2016 were ₹70,25,208/-

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

13. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for the complainant stated that respondents have not complied the last order dated 02.09.2024 of the Authority till date. Complainant is interested in seeking possession of the said unit or an alternative unit in the project along with delayed interest. Learned counsel for respondents apprised the Authority that the respondent are unable to place on record the requisite documents as per last order of this Authority dated 02.09.2024.



F. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to get the possession of booked flat along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

15. 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 the counsels, Authority observes as follows:

- i) Factual matrix of the case is that admittedly, the complainant had booked a villa by depositing an amount of ₹2,75,000/- to the respondent on 24.03.2008 and till 06.06.2012, he had deposited a total amount of ₹22,50,000/-. However, receipts of an amount of ₹10,00,000/- only are attached. That the complainant is not having any other receipts as proofs of payments. Complainant in pursuance to know the details of payments which he paid and outstanding payments, sent letters dated 10.04.2013, 22.04.2013, 24.03.2015, 25.03.2015, 21.03.2018, 29.05.2018 and 11.04.2019 to the respondent. However no proofs of service of these letters are attached along with the complaint. An email dated 11.04.2019 was duly sent to the respondent in which references of other letters were also mentioned.



- ii) That the respondents have also mentioned letters which they have sent to the complainant as reminders of final payments but these letters dated 11.10.2010, 15.11.2010 and 21.12.2011 are not duly supported by any evidence of their service. Respondents counsel also stated that they cancelled the allotment of the complainant by issuing cancellation letter but no proof of such cancellation letter has been on placed on record.
- iii) That Respondent vide an application 29.08.2024, has placed on record a copy of Conveyance Deed dated 13.04.2015 and contended that the villa in question had already been transferred to the other allottees namely, Mr. Suresh Arora and Mrs. Anita Rani on 13.04.2015, i.e., much prior to filing of the present complaint by the complainant before the Hon'ble Authority. Further a copy of Sale Deed dated 28.10.2020 has been placed on record vide which the said villa has been transferred by Sh. Suresh Kumar Arora to Sh. Amit Kumar. Since the respondents have not placed on record a copy of cancellation letter issued to the complainant and proof of it service, the said transfer of villa to Sh. Suresh Arora and Mrs. Anita Arora is itself questionable.
- iv) That the complainant through an application dated 31.10.2023, has placed on record a copy of whatsapp communication containing



details of plots available in the project of respondents. However, during arguments respondent counsel denied that these plots are available with the respondent. Despite specific directions of the Authority, respondent failed to place on record details of available alternatives which are similarly situated alternative units in the respondent's project. In the summary proceedings mere verbal submissions cannot be relied upon by the Authority.

- v) Further the respondent has failed to comply with the orders of the Authority to place on record the proof of service of termination letter, copy of occupation certificate and statement of account payables and receivables as per RERA Act. Respondents also failed to resolve the matter amicably with the complainant, to arrive at out of court settlement despite availing number of opportunities.
- vi) In view of details as captured above, Authority concludes that the respondents have failed in performing their statutory duties as envisaged in RERA Act and have failed to offer legally valid offer of possession of the unit booked by the complainant. Hence, the complainant is entitled for offer of legally valid possession and payment of delayed interest till such time the same is offered by the respondents.



Vii) Authority observes that the villa in question was booked by complainant on 24.03.2008. No builder buyer agreement has been executed between the parties as well as no allotment letter issued by the respondent to the complainant. No proof of deemed date of possession has been placed on record by the complainant and the respondents/builders till date. In absence of Builder Buyer Agreement and allotment letter, it cannot rightly be ascertained as to when the possession of said villa was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the plot was booked by the complainant on 24.03.2008, Accordingly, taking a period of 3 years from the date of plot booked, as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to **24.03.2011**. In present situation, respondent



failed to honour its contractual obligations without any reasonable justification.

- viii) Further the complainant has claimed a total amount of ₹22,50,000/- However, as per Annexure C-7, a table containing details of payments made by the complainant to respondent has been submitted in which payments recorded at serial no. 1 to 6 are proved by the receipts issued by the respondents to the complainant and copies of bank statement as annexed as Annexure C-2, C-3, C-4, page no.33, page no. 34 and 36 of the complaint. No proof of the payments recorded at serial no. 7 and 8 are attached. Further, complainant claims to have made cash payments of ₹9,00,000/- as mentioned at serial no. 9 & 10 in the table, placed as Annexure C-7, but no proof of its payments to the respondent in the form of receipts etc. has been placed on record. Hence, this cash payment cannot be treated as payment made to the respondent for the purposes of paid amount and for calculations of interest. Thus, the receipts attached with the complaint is justifying payment of an amount of ₹10,00,000/- only. An opportunity was granted to the complainant to clarify these payments and place on record the proof of payments but no clarification/proof of payments of balance amount been placed on record by the complainant. In such



a situation, Authority is constrained to consider 10,00,000/- only as the paid amount for the purpose of calculation of delayed possession charges,.

- ix) 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 (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”.

- x) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, 2017, 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.

- xi) 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. 04.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.



- (xii) The definition of term 'interest' is defined under Section 2(z) 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;

- (xiii) Authority has got calculations of the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till and said amount works out as per detail given in the table below:

Complaint no. 2880/2019

Sr.no.	Principal Amount	Deemed date of possession ie. 24.03.2011 or date of payment whichever is later	Interest Accrued till 04.11.2024
1.	2,75,000	24.03.2011	4,16,060
2.	1,00,000	24.11.2011	1,43,844
3.	1,00,000	24.10.2011	1,44,787
4.	2,75,000	24.03.2011	4,16,060

5.	1,50,000	05.09.2011	2,19,415
6.	1,00,000	06.09.2011	1,46,246
	TOTAL=₹10,00,000/-		₹14,86,412/-
Total amount to be refunded to the complainant =₹10,00,000/- + ₹14,86,412/- = ₹24,86,412			
	Monthly Interest		₹9,123/-

(xiv) Further, the complainant is seeking compensation, cost of litigation, mental agony and unfair trade practice of respondents-promoters. 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 of litigation expenses.



H. DIRECTIONS OF THE AUTHORITY

16. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA 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 no. 1 is directed to hand over the possession of alternative similar unit and pay upfront delay interest as calculated above in para 15 of this order in the present complainant towards delay already caused in handing over the possession, within 90 days from the date of this order. Further, on the entire paid amount, monthly interest of ₹9,123/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent no.1 at the time when possession is offered to him.

(iii) The rate of interest chargeable from the allottee by the respondents, in case of default shall be charged at the prescribed rate, i.e., 11.10% which is the same rate of interest which the respondents shall be liable to pay to the allottee.



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

Chander Shekhar
CHANDER SHEKHAR
[MEMBER]

Nadim Akhtar
NADIM AKHTAR
[MEMBER]

