



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	335 of 2023
Date of filing:	08.02.2023
First date of hearing:	13.04.2023
Date of decision:	18.11.2024

Smt. Sangeeta Garg W/o Sh. Parveen Garg,
R/O A-749, 2nd Floor, block-A, Shastri Nagar,
New Delhi-110052

....COMPLAINANT

VERSUS

CMD Pardesi Developers Pvt. Ltd.,
(Through its Managing Director)
Corporate Office: 801, Jaksons Crown Heights,
Plot No. 3B1, Twin District Centre,
Sector-10, Rohini, Delhi-110085

...RESPONDENT

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: - Mr. Vikas deep, Id. Counsel for the complainant.

 Mr. Shubhnit Hans, Id. counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 08.02.2023 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	Ushay Towers Project Location: Kundli, G.T. Road, NH-1, Sonipat, Haryana.
2.	Name of promoter	CMD Pardesi Developers Pvt. Ltd.
3.	Date of booking	24.09.2012
4.	Unit area	1212 sq. ft. in Tower Honda Bay
5.	Date of allotment	21.11.2012
6.	Date of builder buyer agreement	No BBA executed
7.	Basic Sale Price	₹35,29,960/-
8.	Amount paid by the complainants	₹ 29,49,116/- Receipts total is ₹24,49,116/- and ₹5,00,000/- paid through cheque as confirmed from bank statement of account amount annexed as Annexure- A.

9.	Due date of possession	9 months as per complainant and 60 months as per respondent.
10.	Offer of possession	On 02.02.2018, no. 403 possession of another flat in Tower Cheery was offered.

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant booked 2BHK flat, having super area measuring 1212sq.ft. by depositing an amount of ₹3,00,000/- against receipt dated 24.09.2012 in Ushay Towers Project with total sale consideration of ₹35,29,960. The allotment letter of flat no. 403, Tower Honda Bay was issued on 21.11.2012 to the complainant. A copy of which is annexed as Annexure C/1.
4. That the complainant paid a total amount of ₹29,49,116/-. Copies of all receipts are annexed as Annexure C/2. Despite the lapse of such long period, the respondent failed to develop the said project and even did not executed agreement.
5. That the respondent informed the complainant vide letter dated 02.02.2018 that the booked flat is changed and another flat is being allotted in some different tower . A copy of said letter is annexed as Annexure C/3. However, the alternative flat offered by respondent was not accepted by the complainant and she immediately refused that offer, by a legal notice dated 01.05.2018, annexed as Annexure C/4.



6. That the complainant had filed a Civil Suit No. 528 of 2018 which was rejected on the basis of jurisdiction issue.

C. RELIEFS SOUGHT:-

7. Complainant in her complaint has sought following relief:
- i) Respondent be directed to refund the amount deposited by complainant, alongwith statutory interest, with cost of the present complaint, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed replies on 25.04.2023 and 04.07.2023. However, contents of both the replies are same but the first one is unstamped and second one is signed and stamped, pleading therein as under :-

8. That the present complaint is not maintainable as the present complaint is grossly barred by time. Complainant was offered possession of the flat and such offer was duly communicated in the review petition bearing no. 120 of 2019.
9. That, the complainant has not come to the court with clean hands and suppressed the material facts regarding offer of possession and the fact, that the flat was ready.
10. That as per builder buyer agreement, the flat was to be handed over the complainant within 60 months. There is no such delay because the offer



of possession was communicated to the complainant well within 60 months. Hence the complaint is liable to be dismissed.

11. That the Hon'ble forum has no jurisdiction to try and decide the present complaint as there is an arbitration clause in the builder buyer agreement. The complaint is thus liable to be dismissed on this ground alone.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

12. During oral arguments complainant and respondent counsels reiterated the facts of the complaint. Learned counsel for complainant stated that he has complied with the Authority's order dated 15.11.2023 by placing on record all the receipts of amount claimed from the respondent. Further learned counsel for complainant is seeking the relief of refund from the respondent. Learned counsel for respondent has not complied the Authority's earlier order dated 15.11.2023, 27.05.2024 and 04.11.2024 but till date no documents have been filed by the respondent which substantiate his claims.

F. ISSUES FOR ADJUDICATION

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



G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

14. 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 parties, Authority observes as follows:

(i) That the respondent has raised the objections regarding the maintainability of this complaint as the complainant has not come before the Authority with the clean hands. But on perusal of file, it is found that complainant had substantiated facts which proofs of her claims and maintainability of this complaint.

ii) Respondent has taken an objection that complaint is grossly barred by limitation. In this regard, Authority places reliance upon the judgment of Hon'ble Apex Court passed in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfill its obligations because of which the cause of action is re-occurring.



iii) Another objection raised by the respondent is that Authority does not have jurisdiction to decide the complaint. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;



Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainant at a later stage.

(iv) Factual matrix of the case is that admittedly, the complainant booked a flat of 2 BHK by depositing ₹3,00,000/- on 24.09.2012 in Ushay Tower Projects with a sale consideration of ₹35,29,960/-. After that an allotment letter was allotted on 21.11.2012 to the complainant by the respondent. The complainant contented that she has paid total amount of ₹29,49,116. However, on perusal of receipts submitted by the complainant, proof of an amount of ₹24,49,116/- out of ₹29,46,116/- could be found. Authority vide order dated 15.11.2023 directed complainant to place on record all receipts which substantiate her claim. In compliance, on 20.12.2023, complainant placed on record an application for clarification regarding payments made to the respondent as per which total amount paid is ₹29,49,116/- as confirmed from receipts placed on record. Further a payment of ₹5,00,000/- was made through cheque bearing no. 423525 dated 19.08.2014 as reflected in statement of



bank account annexed as Annexure- A with application filed on 20.12.2023.

(v) That the respondent in his reply has stated that he had offered possession to the complainant but of another flat in the course of civil suit before the Hon'ble Delhi High Court, filed by the complainant in which he refused to accept it. After that respondent filed a Review Petition for setting aside the judgment and decree for refund of ₹29,49,116/- granted to the complainant and decide the matter on the merits. However, this Review Petition was dismissed by the Hon'ble Delhi High Court. It implies that relief of refund always subsists in favour of complainant.

(vi) That the Authority vide orders dated 15.11.2023, 27.05.2024 and 04.11.2024 had granted various opportunities to the respondent to prove their claim by placing on record the documents which substantiates their claims but no such documents were placed on record. Further, no documents like copy of builder buyer agreement referred in reply, copy of Occupation Certificate, photographs of the project etc., to prove that the project is complete, have been attached with the reply filed by the respondent which prove their contention. Authority concludes that project of the respondent, particularly the unit booked by the complainant, is incomplete and hence, complainant is entitled for refund of paid amount with interest.



(iv) 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”.

(v) 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.

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

(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;

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, the Authority directs respondent to refund the paid amount of ₹29,49,116/- 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 11.10%(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 said amount works out to ₹29,49,116/- as per detail given in the table below:



Complaint no. 335/2023

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 18.11.2024
1.	50,000	23.01.2013	65,657
2.	11,94,116	27.04.2017	10,03,362
3.	55,000	14.04.2013	70,868
4.	5,00,000	19.08.2014	5,69,445
5.	3,00,000	24.09.2012	4,04,983
6.	4,50,000	29.12.2012	5,94,337
7.	4,00,000	23.12.2013	4,84,629
TOTAL	₹29,49,116/-		₹31,93,281/-
Total amount to be refunded to the complainant = ₹29,49,116/- + ₹31,93,281/- = ₹61,42,397/-			

H. DIRECTIONS OF THE AUTHORITY

15. Hence, the Authority hereby passes this order 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 refund the entire amount ₹29,49,116/- with interest ₹31,93,281/- to the complainant of the present complaint No. 335/2023. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said amounts.


(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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

