



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3380 of 2022
Date of filing:	28.12.2022
First date of hearing:	28.02.2023
Date of decision:	28.10.2024

Geetu Sharma, W/o Jayant Sharma,
R/o H.No.8, Aakarsh Enclave, Mandala Road,
Tilhari Distt, Jabalpur, (M.P)- 482020

.....COMPLAINANT

Versus

M/s Green Space Infraheights Pvt. Ltd,
Regd. Office:306, 3rd Floor, Indraprakash Building,
21- Barakhamba Road, New Delhi-110001.
2nd address: SCO No.10 (1st floor), Sector-26, Madhya Marg, Chandigarh

.....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Mr.Pulkit Jain, counsel for complainant.

Ms.Priya Gola, proxy counsel for Mr. Dharamveer Singh,
Counsel for respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 28.12.2022 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	0802, Tower -C, 8 th floor
5.	Flat area (Carpet area)	511 sq.ft



6.	Date of allotment	02.08.2017
7.	Date of execution Builder Buyer Agreement	16.10.2017
8.	Due date of offer of possession	Not available
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to Force Majeure Circumstances, intervention of Statutory 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 instalment 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 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	₹19,99,770/-
12.	Offer of possession	Not given



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 and complainant was allotted flat No.0802, Tower no. C, 8th floor in the project, namely; "Shree Vardhman Green Space". A copy of allotment letter dated 02.08.2017 is annexed as Annexure-C-1.
4. That on 16.10.2017, 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-2. Complainant made the payment of ₹19,99,770/- against the basic sale price. Copies of receipts are attached with complaint book.
5. 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.
6. As per records submitted to this Authority, environmental clearance of the project was obtained by the respondent on 15.03.2016 and building plan was 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 complainant on 15.06.2020, but the respondent company has failed to deliver the possession on time. Thus respondent has violated Section 19(4) of the RERA, Act 2016.

7. 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, complainant contacted the respondent on many occasions to inquire about the status of the project but respondent failed to give any satisfactorily reply to the complainant. Further, complainant herself visited the project site and to her surprise no construction was taking place at the site.
8. Complainant is now no more interested to take possession of the flat and is now seeking refund of the paid amounts alongwith interest as per Section 18 of the RERA Act of 2016.

C. RELIEFS SOUGHT

9. Complainant sought following relief :
 - A. Direct the respondent to refund a sum of ₹19,99,770/- paid by the complainant to the respondent in lieu of allotment of above said residential bearing Flat No.802, (Tower C) 8th floor of the project "Shree Vardhaman Green Space" admeasuring 511 sq.ft and balcony area admeasuring 100 sq.ft. at Sector-14, Panchkula (Extn-II), Haryana.



- B. Direct respondent to grant interest in favour of the complainant at the rate prescribed as per Real Estate (Regulation & Development) Act, 2016 and rules framed thereunder;
- C. Direct the Respondent to maintain status quo in respect of residential unit bearing Flat No.802, (Tower C) 8th floor of the project "Shree Vardhaman Green Space" admeasuring 511 sq.ft and balcony area admeasuring 100 sq.ft. at Sector-14, Panchkula (Extn-II), Haryana.
- D. Direct the respondent to pay damages and compensation in favour of the complainant and against the respondent.
- E. Direct the respondent to compensate the complainant for mental trauma and agony in favour of the complainant and against the respondent.
- F. Award cost and legal expenses of the present proceedings in favour of the complainant and against the respondent.
- G. Pass any other order in the interest of the justice.

D. REPLY ON BEHALF OF RESPONDENT No.1

10. Notice was served to the respondent on 30.12.2022 which got successfully delivered on 02.01.2023. Despite availing seven opportunities, respondent failed to file reply, though in all seven 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**

11. Counsel for complainant 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 complainant is seeking simple refund of the amount paid to the respondent for which receipts are already on record. Counsel for the respondent stated that in this case respondent did not want to file any reply.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. The Authority has gone through 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 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.0802, Tower C, 3rd 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 16.10.2017. Complainant had paid a total of ₹19,99,770/- against the basic sale price of ₹20,94,000/- .

14. 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. Relevant clause is reproduced as under :

“Clause 8 (a) “Subject to Force Majeure Circumstances, intervention of Statutory 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 instalment 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 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")”

As per the pleadings of the complaint, respondent/ developer 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.



15. Period of 4 years is a reasonable time to complete development works in the project and handover possession to the allottee. 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 complainant 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 complainant. 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.

16. 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.

17.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;

18. 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".

19. 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., 28.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

20. 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 to the complainant the paid amount of ₹19,99,770/- 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 total amount works out to ₹34,38,543/- as per detail given in the table below:

Sr.no	Principal amount	Date of payments	Interest accrued till 28.10.2024
1.	₹1,17,264/-	19.07.2017	₹94823/-
2.	₹4,69,056/-	19.08.2017	₹3,74,870/-
3.	₹5,86,320/-	09.03.2018	₹4,32,569/-
4.	₹5,44,440/-	04.10.2018	₹3,67,067/-
5.	₹2,82,690/-	07.06.2019	₹1,69,444/-
	Total=₹19,99,770/-		₹14,38,773/-
Total amount to be refunded by respondent to complainant= ₹19,99,770/- + ₹14,38,773/- = ₹34,38,543/-			

21.Further, the complainant is seeking damages for mental torture, agony, 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

22. 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 ₹19,99,770/- with interest of ₹14,38,773/-. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.



(ii) Also, respondent is directed to pay total cost of ₹30,000/- payable to the Authority and ₹2000/- payable to the complainant imposed by the Authority vide its orders dated 18.05.2023 and 07.12.2023.

(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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]