



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1569 of 2022
Date of filing:	19.07.2022
Date of first hearing:	23.08.2022
Date of decision:	04.03.2025

Mr Chaman Lal Nalwa, son of Late Shri Om Prakash Nalwa, resident of Flat No. 405, Sanskriti Apartments, Sector - 10 A, Gurugram, Haryana.

Through its Legal Heirs:

1. Mrs Prem Nalwa, wife of Late Shri Chaman Lal Nalwa,
Resident of Flat No. 405, Sanskriti Apartments, Sector - 10 A, Gurugram, Haryana.
2. Mrs Dimple Jain, daughter of Late Shri Chaman Lal Nalwa,
Resident of A2 / 73b, Lawrence Road, Near Jain Mandir, Onkar Nagar, Saraswati Vihar, North West Delhi - 110035.
3. Mr Lokesh Nalwa, son of Late Shri Chaman Lal Nalwa,
Resident of Flat No. 405, Sanskriti Apartments, Sector - 10 A, Gurugram, Haryana.
4. Mrs Vanshita Nalwa, daughter of Late Shri Chaman Lal Nalwa,
Resident of 42 / 73b, Lawrence Road, Near Jain Mandir, Onkar Nagar, Saraswati Vihar, North West Delhi - 110035.

...COMPLAINANTS

VERSUS

Page 1 of 18

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Piyush Infrastructure India Private Limited,
through its Chairman-cum-Managing Director,
Having its office at A-16/B-1, Mohan Co-operative Industrial
Estate, Main Mathura Road, New Delhi – 110044.

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Chander Shekhar **Member**

Present: Adv. Stuti Jain, Ld. counsel for complainant, through VC.
 None for respondent.

ORDER

1. Present complaint has been filed on 19.07.2022 by the complainant 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 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 unit booked by complainant, details of sale consideration, amount paid by the complainant and details of project as provided in the complaint are detailed in following table:



S.No.	Particulars	Details
1.	Name of the project	Piyush Mahendera Metropolitan Mall, N.I.T, Faridabad, Haryana.
2.	Unit no.	Food court/ 214.
3.	Area	455.750 sq. ft.
4.	RERA registered/ not registered	Un-Registered
5.	Date of allotment	17.03.2012
6.	Date of Agreement to Sell	20.04.2012
7.	Deemed date of possession	20.10.2014 Clause 4(a): Possession Time <i>"That the First Party shall complete the development/construction of the 'Said property' within 30 months from the date of the signing of this Agreement or within an extended period of six months, subject to force majeure conditions, as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of the First Party..."</i>
8.	Basic sale price	Rs.30,30,518/-
9.	Amount paid by complainant	Rs.29,47,165.93/-
10.	Offer of possession	Not offered



A. FACTS OF THE CASE AS STATED IN COMPLAINT FILED BY COMPLAINANT:

3. In this case, complainant booked a unit in food Court in the project of respondent namely, "Piyush Mahendera Metropolitan Mall" situated at N.I.T., Faridabad, Haryana by payment of booking amount of Rs.4,49,250/- vide cheque dated 04.09.2008. Respondent issued an allotment letter on 17.03.2012 bearing shop no. Food Court/ 214 measuring an area of 455.750 sq. ft. to the complainant. Agreement to sell was executed between the parties on 20.04.2012 at total agreed sale consideration of Rs.30,30,518/-.
4. Complainant submits that as per clause 4(a) of the agreement to sell, respondent was obliged to deliver possession of the unit within 30 months from the date of signing of the agreement to sell which comes out to be 20.10.2014. It is submitted that the complainant paid all the amounts as and when demanded the respondent amounting to a total of Rs.29,47,166/- for the shop. However till date respondent has failed to offer a legal and valid possession of the shop to the complainant till date.
5. That it is worthwhile to mention that the complainant has made the payments in time as per the demand raised by respondent and they have made the total payment as follows:



Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	296	12.09.2008	4,49,250/-	631798	04.09.2008
2.	308	18.08.2009	1,50,000/-	267390	09.08.2009
3.	384	18.05.2010	2,00,000/-	683092	11.05.2010
4.	391	08.06.2010	39,350/-	cash	05.06.2010
5.	400	24.06.2010	30,000/-	cash	23.06.2010
6.	401	24.06.2010	29,900/-	cash	23.06.2010
7.	435	01.11.2010	2,00,000/-	048975	26.10.2010
8.	436	01.11.2010	99,500/-	223105	26.10.2010
9.	437	01.11.2010	7,712/-	223106	26.10.2010
10.	628	10.04.2012	4,312/-	048979	30.03.2012
11.	630	10.04.2012	10,977.58/-	048978	30.03.2012
12.	632	10.04.2012	6,56,314.13/-	048977	30.03.2012
13.	669	28.05.2012	1,77,446/-	048980	17.05.2012
14.	670	28.05.2012	5,483.08/-	048982	17.05.2012
15.	705	06.07.2012	1,77,448/-	048983	30.06.2012
16.	706	06.07.2012	5,483.08/-	048984	30.06.2012
17.	754	21.09.2012	1,82,929/-	048985	14.09.2012
18.	840	30.01.2013	1,82,929.08/-	376041	21.01.2013
19.	925	29.07.2013	1,84,015/-	376046	22.07.2013
20.	1016	17.10.2015	1,54,118.89/-	008036	12.10.2015
	Total		29,47,165.93/		

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6. Complainant submits that he has approached respondent and pleaded for delivery of possession of his shop as per the agreement on various occasions, however the respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his shop, thereby the respondent violated Section 19 of the RERA Act, 2016.
7. Further complainant submits that the respondent has acted in unfair manner and utilized funds collected from complainant and other buyers for its own good in other projects being developed by respondent. Thus, cheated the complainant due to which complainant submits that he has lost faith in the respondent. Further as per knowledge of complainant, respondent has failed to get the renewal of licenses in its favor from District Town and Country Planner, Chandigarh for its present project "Piyush Mahendera Metropolitan Mall". Further it has failed to register its project under Section 3 of the RERA Act, 2016.
8. Complainant submits that he does not want to continue with the project on the ground that respondent has not completed the project and it is not likely to be completed in near future due to mismanagement.


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B. RELIEF SOUGHT:

9. In view of the facts mentioned above, the complainants pray for the following relief(s):-

- a) Direct respondent to complete the construction and development of the shop along with all facilities and amenities like water, electricity, roads, etc. immediately.
- b) Direct respondent to handover the legal and rightful possession of the shop to the complainant, after receiving the occupation certificate (OC) and other required approvals and permissions from the competent authorities.
- c) Direct respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the shop, with liberty to the complainant to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Panchkula.
- d) Direct respondent to pay interest for every month of delay in handing over the possession of the shop since 20th October, 2014 to the complainant, on the amount taken from the complainant towards sale consideration and other charges for the aforesaid shop, with interest at the prescribed rate as per the Act, 2016, till



respondent hands over the legal and rightful possession of the shop to the complainant.

OR

- e) Direct respondent to return/refund full amount deposited by the complainant amounting Rs.29,47,166/- with the interest, from the various dates on which the amount was taken from the complainant till the amount is returned at the rate prescribed by the Act, 2016.
- f) Direct respondent to pay legal expenses of Rs. 1,00,000/- (rupees one lakh) incurred by the complainant for filing and pursuing the instant case.
- g) Any other damages, interest and relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainant and against the respondent.

C. REPLY:

- 10. Initially notice was issued to respondent company on 20.07.2022, however same was returned undelivered. Vide order dated 23.08.2022, Authority allowed complainant to serve dasti upon respondent. Same was collected on 14.09.2022, however during hearing dated 31.01.2023, it was submitted by Ld. counsel for complainant that dasti could not be served because office premises of the respondent were close. Thereafter, ld. counsel for complainant requested for issuance of new dasti on new



address of respondent and same was accepted. Dasti was again collected on 14.02.2023 for service on new address, however same was also not served due to the fact that office was closed. However, on the same date of hearing i.e. on 27.04.2023, Director of Piyush Buildwell India Ltd. had appeared in its another case and provided new address of respondent company. Thus, orders were issued for service on fresh address and notice was successfully served on respondent company on 07.07.2023 which fact was recorded in hearing dated 02.08.2023.

11. Despite service of notice to the respondent on 07.07.2023, respondent has not filed its reply. Authority observes that despite granting several opportunities to respondent company to file reply and represent itself, respondent remains unrepresented and no replies are filed on his behalf. Therefore, vide hearing dated 15.10.2024, right of defense of respondent was struck off.
12. It is pertinent to note that the proceedings before the Authority are summary in nature. Sufficient opportunity has been offered to the respondent to file a reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of the respondent, the Authority decides to proceed with this matter *ex-parte*.



D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

13. During oral arguments learned counsel for the complainant has reiterated arguments as mentioned in their written submissions. Further on hearing dated 15.10.2024, it was submitted by Ld. Counsel for complainant that the complainant wish to withdraw from the project and seeks refund of the paid amount along-with interest.

E. ISSUES FOR ADJUDICATION:

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

F. OBSERVATIONS 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 parties, Authority observes that complainant booked a unit in respondent's project namely "Piyush Mahendera Metropolitan Mall" situated at N.I.T., Faridabad, Haryana by payment of booking amount of Rs.4,49,250/- on 12.09.2008. Respondent issued an allotment letter on 17.03.2012 for shop no. Food Court/ 214 measuring an area of 455.750 sq. ft. to the complainant. Agreement to sell was executed between the parties on 20.04.2012 against total sale consideration of Rs.30,30,518/- and till date complainant has made the payment of Rs.



29,47,166/- which can be verified from the receipts annexed with the complaint.

16. As per clause 4(a) of the agreement to sell dated 20.04.2012, respondent was obliged to deliver possession of the unit within 30 months from the date of signing of the agreement to sell i.e. by 20.10.2014. However till date respondent has failed to offer a legal and valid possession of the shop to the complainant till date.
17. Further on hearing dated 09.04.2024, it was submitted by Ld. Counsel for complainant that complainant in present complaint has died. And vide application dated 30.05.2024, placed on record death certificate of the complainant along-with his legal heir certificate and amended memo of parties. As per the legal heir certificate dated 27.03.2024, complainant's wife, son and 2 daughters have been appointed as his legal heirs who are legally entitled to pursue the present complaint.
18. Main grouse of the complainant/his legal heirs is that even after a lapse of approx. 8 years from the date of agreement for sale; respondents have not offered possession of their unit and have failed to complete the construction of said unit/ shop. Further, the complainant has also died waiting for the delivery of the possession of the unit, however no offer of possession has been received from side of respondent. Therefore the complainant filed the present complaint in which he sought releief of possession or refund. During hearing dated 15.10.2024, Ld. Counsel for



complainant submitted that they wish to withdraw from the project of respondent and seek relief of refund of amount that lies in custody of respondent in view of right under Section 18 of the RERA Act, 2016 as till date more than 97% of the amount stands paid.

19. Authority observes despite successful delivery of notice on 07.07.2023, none has appeared on behalf of respondent nor has any written statement been filed, thus in view of the order dated 15.10.2024, matter is proceed ex-parte against respondent.
20. Authority observes that due to default on part of respondents to hand over possession of the plot even after 10 years, complainant does not want to continue with the project and wishes to withdraw from the same. As per Section 18(1) of the RERA Act, 2016, complainant is at liberty to exercise his right to withdraw from the project on account of default on part of respondents to deliver possession and seek refund of the paid amount along-with interest. 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*

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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."

21. The aforesaid 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 through its legal heirs wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under: 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-

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(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;

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready reference:

“Rule 15: 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 (NCLR) 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”.

22. Consequently, as per website of State Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 04.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.
23. Accordingly, respondents will be liable to pay the complainants through legal heirs, interest from the date amounts were paid by them till the



actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹ 29,47,165.93/- 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.

24. Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹73,84,272.93/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 04.03.2025 (in Rs.)
1.	4,49,250	2008-09-12	8,22,187
2.	1,50,000	2009-08-18	2,59,010
3.	2,00,000	2010-05-18	3,28,742
4.	39,350	2010-06-08	64,429
5.	59,900	2010-06-24	97,784
6.	3,07,212	2010-11-01	4,89,366
7.	6,71,603.71	2012-04-10	9,62,384
8.	1,82,929.08	2012-05-28	2,59,461
9.	1,82,929.08	2012-07-06	2,57,291
10.	1,82,929.09	2012-09-21	2,53,007

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11.	1,82,929.08	2013-01-30	2,45,720
12.	1,84,015	2013-07-29	2,37,106
13.	1,54,118.89	2015-10-17	1,60,620
Total	29,47,165.9		44,37,107
	3		
Total amount-	73,84,272.93/-		

25. Further, the complainants through legal heirs is seeking sum of Rs.1,00,000/- on account of cost of litigation expenses. 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. Same is reproduced as under:

"86.....

...At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the

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collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

26. Thus, adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of legal expenses. Therefore, the complainant's legal heirs are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.


G. DIRECTIONS OF THE AUTHORITY:


27. Taking into account above facts and circumstances, 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:
- a. Respondent is directed to refund the paid amount along with interest of @ 11.10 % amounting to **Rs. 73,84,272.93/-** to the legal heirs of the complainants as specified in the table provided in para 24 of this order. Interest shall be paid as per the definition of interest provided under Section 2(z) of the Act.
 - b. 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.

28. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority


.....
CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]

