



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|-------------------------------|---------------------|
| Complaint no.: | 2333 of 2023 |
| Date of filing: | 12.10.2023 |
| First date of hearing: | 16.11.2023 |
| Date of decision: | 03.02.2025 |

Anil Kumar S/o Late Sh. Satya Narayan,
D-19, CC Colony, Opposite Rana Pratap Singh Bagh,
New Delhi-110007.

.....COMPLAINANT

Versus

Ansal Properties and Infrastructure Limited
115, Ansal Bhawan, 16, K.G Marg,
New Delhi-110001.

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Munish Kumar Gupta, Counsel for complainant through VC.
None present for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 12.10.2023 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 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, 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 | The Europa Residency, Sushant City at Kundli, Sonipat, Haryana |
| 2. | Name of the promoter | Ansal Properties and Infrastructure Ltd. |
| 3. | Unit No. allotted | D-0408, 4 th floor later on changed to D-0702 |
| 4. | Unit area (Carpet | 1265.825 sq.ft |



| | | |
|-----|---------------------------------|--|
| | area) | |
| 5. | Date of Builder Buyer Agreement | 17.02.2010 |
| 7. | Due date of offer of possession | 17.02.2013 |
| 8. | Possession clause in BBA | <p><i>Clause 10.1.a.</i></p> <p><i>Subject to terms of this clause and subject to the ALLOTTEE(S) having complied with all terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation, etc, as prescribed by the COMPANY, the COMPANY proposes to hand over the possession of the 'APARTMENT' within a period of thirty six(36) months from the date of signing of this Agreement. The ALLOTTEE(S) agrees and understands that the COMPANY shall be entitled to a grace period of 90 days after expiry of thirty six months, for applying and obtaining the Occupation Certificate and completing any other formalities, if any, in respect of the 'APARTMENT'</i></p> |
| 9. | Basic sale consideration | ₹16,81,875/- |
| 10. | Amount paid by the complainant | ₹18,06,050/- Vide order dated 27.05.2024, |



| | | |
|-----|---------------------|--|
| | | complainant was directed to clarify the paid amount as amount claimed by the complainant is less than the total receipts on record. In compliance of said order, complainant had filed an application dated 16.10.2024, mentioning that due to typographical error amount claimed is mentioned as 17,06,050/-. However, correct amount is ₹18,06,050/- including page no.8,20,26 to 28. Perusal of said application and as per receipts on record, total paid amount comes to ₹18,06,050/-. Therefore, Authority deems it fit to adjudicate on amount of ₹18,06,050/- as per receipts on record. |
| 11. | Offer of possession | Not given till date. |

B. FACTS OF THE COMPLAINT

- i. Brief facts of the complainant case are that the respondent had launched a project namely; "The Europa Residency" in Sushant City at Kundli, Sonipat, Haryana. Being interested in the said project, complainant applied for a unit in the project of the respondent vide application form dated 01.10.2009 by paying an amount of ₹84,100/-. Pursuant to booking of said unit, flat buyer agreement



was executed between the parties on 17.02.2010 and complainant was allotted flat no.D-408, 4th floor admeasuring 975 sq.ft with basic sale consideration amount of ₹16,81,875/-. Copy of application form and flat buyer agreement are annexed as Annexure C-2 and C-3 respectively.

- ii. That respondent raised demands of amounts as per the different stages of construction and each demand was duly paid by the complainant. Till date complainant had paid an amount of ₹17,06,050/-.Copies of payments receipts are annexed as Annexure C-4. (Colly).
- iii. That respondent issued letter dated 26.12.2012, exercising its right under clause 9.2 of the flat buyer agreement changing the previously allotted flat no. D-408 to D-702 having an area of 1265 sq.ft but the said flat allotment was not challenged by the complainant and complainant made all payments to increased demands. Copy of letter dated 26.12.2012 is annexed as Annexure C-6.
- iv. That said project is no where near completion despite being more han 9-10 years since the said project was started and flat buyer agreement was executed. Even after timely payments against each demand letters, the complainant was hoping that he will soon get the possession of the said new unit but unfortunately on regularly



visiting the site, it was realized by the complainant that construction has been halted and only bare structure constructed upto 7th floor is standing at site.

- v. Complainant then issued a letter dated 14.09.2019 to the respondent inquiring about the status and the date of delivery of the said new unit, if at all and refund the money on inability to handover possession. However, despite receipt, no response was given by the respondent. Copy of letter dated 14.09.2019 is annexed as Annexure C-7.
- vi. That aggrieved with the non-responsive behaviour of the respondent, the complainant through its counsel issued a legal notice dated 05.04.2023 by requesting the respondent company to refund the money deposited by the complainant. The above legal notice was also served through email on 14.04.2023 but no correspondence is being made from respondent side. Copy of legal notice along with delivery report is annexed as Annexure C-8 and copy of email dated 14.04.2023 is annexed as Annexure C-9.
- vii. There is a prima facie case in favor of the complainant and against the respondent for not meeting its obligations under the Buyers Agreement and the Real Estate (Regulation and Development) Act, 2016, which makes respondent liable to answer to this Hon'ble Authority. That the respondent has neither handed over the



possession of the flat nor refunded the amount deposited along with interest to the complainant which is against the law, equity and fair play. Therefore, complainant being an aggrieved person, filing the present complaint before this Hon'ble Authority.

C. RELIEFS SOUGHT

3. Complainant has sought following reliefs :

- (i) Restrain the respondent from raising any fresh demand with respect to the said project, and/or
- (ii) Restrain the respondent from creating any third party rights in the said new unit till the time the entire amount with interest is refunded, and/or
- (iii) Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded with interest,
- (iv) To order the respondent to refund the entire amount of ₹17,06,050/- paid by the complainant alongwith interest, and/or
- (v) To order the respondent to pay interest on the entire amount paid by the complainant at the rate as specified under the Real Estate (Regulation and Development) Act, 2016 and as per the Haryana Real Estate (Regulation and Development)Rules, 2017, and/or
- (vi) To pass any other interim relief(s) which this Hon'ble Authority may think fit and proper in the interest of justice after considering the



peculiar facts and circumstances roaming in the instant complaint in favour of the complainant.

D. REPLY ON BEHALF OF RESPONDENT

4. Reply dated 11.03.2024 was filed by the respondent through earlier counsel, Sh. Sunny Tyagi. Subsequently vide an application dated 23.10.2024, M.K Associates, Advocates and Law Consultants filed vakalatnama through advocates Indeeep Singh, Jaspinder Kaur and Mannat Arora. However, no additional facts/documents have been filed by the new counsels. Authority deems it fit to consider the reply dated 11.03.2024 available on record for adjudication of present complaint. Following submissions have been made in reply dated 11.03.2024:

1. That complaint filed by the complainant is not maintainable and this Hon'ble Authority has no jurisdiction whatsoever to entertain the present complaint.
2. That the statement of objects and reasons of the said Act clearly state that the RERA is enacted for effective consumer protection. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, adjudication 1986 has to be referred for adjudication of present complaint. Complainant is an investor and not a consumer.



3. That this Hon'ble Authority is deprive of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the Buyers agreement signed by the complainant/ allotment offered to them. It is a matter of record that no such Agreement, as referred to under the provisions of said Act or said Rules, has been executed between the complainant and respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the Buyer Agreement, executed much prior to coming into force of said Act or said Rules.

4. That the Real Estate (Regulation and Development) has been made fully operational with effect from 1st of May 2017. In the State of Haryana, Haryana Real Estate (Regulation and Development) Rules, 2017 came into force with effect from 28.07.2017. That any new enactment of Laws are to be applied prospectively as held by the Hon'ble Supreme Court in umpteen no of cases, in particular, in the matter of '*CIT vs. Vatika Township (P) Ltd*', it has been held that the new legislation ought not to change the character of any past transactions carried out upon the faith of the then existing law. In fact it is well settled law that the retrospective operation of statute may introduce such element of unreasonableness as was held in State of WB vs. SC Bose [1954SCR 5787] and Express Newspapers P Ltd vs.



UOI (1959 SCR 12]. Therefore, the Act being a substantial new legislation ought to operate prospectively and not retrospectively.

5. That recently in the matter of *Neel Kamal Realtor Suburban (P) Ltd. Vs. UOI &Ors.* the Hon'ble High Court of Judicature at Bombay, held that the provisions of RERA are prospective in nature and not retrospective.

6. That complainant has not filed the present complaint in proper form and the same is not as per the provisions of the Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of Complaints), Regulations, 2018.

7. That the respondent started the construction of the tower which reached up to 7th floor but thereafter the construction has been stopped at the site for the last 4- 5 years due to financial crunch and reasons beyond the control of the respondent and the respondents can offer the possession of the unit in 36 months from the date of resumption of construction work.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

5. Ld. counsel for the complainant reiterated the facts of the complaint and requested for relief of refund alongwith interest.



F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

7. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order, Authority observes as follows:

- (i) With respect to the objection raised by the respondent that complainant herein is an investor, it is observed that the complainant herein is the allottee/homebuyer who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit in terms of buyer's agreement dated 17.02.2010 but his bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At that stage, complainant has approached this Authority for seeking refund of paid amount with interest in terms of provisions of RERA Act, 2016 being allottee of respondent-promoter. As per definition of 'allottee' provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking



the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

“Allottee-in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter and includes the person who subsequently acquires the said allotment through sale, transfer, or otherwise but does not include a person to whom such plot, apartment or building as the case may be , is given on rent”.

Complainant has been allotted unit in the project of respondent by the respondent/promoter itself and said fact is duly revealed in builder buyer agreement dated 17.02.2010. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is investor does not hold merit and same is rejected.

(ii) Respondent in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters &



Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of



Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.”

“53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”



The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(iii) Respondent has raised objection in its reply that complainant has not filed the present complaint in proper form and the same is not as per the provisions of the Haryana Real Estate Regulatory Authority, Panchkula (Adjudication of Complaints), Regulations, 2018. Said plea of the respondent is not substantiated with any documentary proof that how complaint is not filed in proper form therefore, said plea is rejected.

(iv) Factual matrix of the case is that complainant booked a flat in the project "The Europa Residency" which is an being developed by the promoter namely; Ansal Properties and Infrastructure Ltd. and complainant was allotted flat no.0408, 4th



floor, Tower D admeasuring 975 sq. ft in the said project at Kundli, Sonipat, Haryana. It is not the disputed by either of the parties that a flat buyer agreement dated 17.02.2010 was executed between the parties for flat no.D-0408 and thereafter, flat was changed from D-0408 to D-0702 having area 1265.825 Sq.ft. As per record, no new flat buyer agreement is executed between the parties for new flat no.D-0702. Moreover, complainant did not objected for change of flat and accordingly made the payments w.r.t flat no. D-0702. In total, complainant had paid a total sum of ₹18,06,050/- (as per receipts attached) against the basic sale price of ₹16,81,875/-. Therefore, it can be concluded that both the parties are bound by terms and conditions of the only executed agreement, i.e, 17.02.2010.

(v) As per clause 10.1(a) of the agreement dated 17.02.2010, respondent/developer was under an obligation to hand over possession to the complainant within 36 months from the date of signing of the agreement. That means, as per possession clause, a period of 36 months is to be taken from 17.02.2010 and therefore, date of handing over of possession comes to 17.02.2013.

(vi) Period of 3 years is a reasonable time to complete development works in the project and handover the possession to the allottee,



however, respondent failed to hand over possession to the complainant. Moreover, in its reply respondent had admitted that construction has been stopped at the site for the last 4-5 years due to financial crunch and reasons beyond the control of respondent. Further, it has been submitted that Respondent can offer the possession of the flat in 36 months from the date of resumption of construction. Complainant had invested a huge amount of about ₹18 Lakh with the respondent by the year 2014 to gain possession of a flat. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for almost fifteen years does not wish to wait for a further uncertain amount of time for a valid possession. Complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount along with interest as per section 18 of RERA Act, 2016.

(vii) 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.



(viii) 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;

(ix) 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”.

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., 03.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

- (x) 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 complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹18,06,050/- 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 dates 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 as per detail given in the table below:

| Sr.no | Principal amount | Date of payment | Interest accrued till 03.02.2025 |
|---|--------------------|-----------------|----------------------------------|
| 1. | ₹84100/- | 06.10.2009 | ₹143223/- |
| 2. | ₹84094/- | 20.11.2009 | ₹142062/- |
| 3. | ₹84094/- | 02.02.2010 | ₹140170/- |
| 4. | ₹84095/- | 23.02.2010 | ₹139635/- |
| 5. | ₹84094/- | 08.04.2010 | ₹138508/- |
| 6. | ₹84094/- | 17.05.2010 | ₹137510/- |
| 7. | ₹155156/- | 15.05.2013 | ₹202091/- |
| 8. | ₹112553/- | 14.06.2013 | ₹145574/- |
| 9. | ₹53015/- | 16.07.2013 | ₹68053/- |
| 10. | ₹53660/- | 20.09.2013 | ₹67803/- |
| 11. | ₹168900/- | 25.10.2013 | ₹211620/- |
| 12. | ₹53015/- | 15.11.2013 | ₹66086/- |
| 13. | ₹53015/- | 17.01.2014 | ₹65070/- |
| 14. | ₹53015/- | 21.03.2014 | ₹64054/- |
| 15. | ₹168830/- | 29.04.2014 | ₹201983/- |
| 16. | ₹53015/- | 21.05.2014 | ₹63071/- |
| 17. | ₹52290/- | 24.07.2014 | ₹61190/- |
| 18. | ₹53015/- | 17.09.2014 | ₹61152/- |
| 19. | ₹272000/- | 26.12.2014 | ₹305477/- |
| | Total=₹18,06,050/- | | ₹2424332/- |
| Total amount to be refunded by respondent to complainant= ₹18,06,050/- + ₹24,24,332/- = ₹42,30,382/- | | | |



It is pertinent to mention that vide order dated 27.05.2024, complainant was directed to clarify the paid amount as amount claimed by the complainant is less than the total receipts on record. In compliance of said order, complainant had filed an application dated 16.10.2024, mentioning that due to typographical error amount claimed is mentioned as 17,06,050/-. However, correct amount is ₹18,06,050/- including page no.8,20,26 to 28. Perusal of said application and as per receipts on record total paid amount comes to ₹18,06,050/-, therefore, Authority deems it fit to adjudicate on said amount.

(xi) Reliefs under clause (i), (ii) and (iii) are neither argued nor pressed upon by the complainant. Therefore, no observation is made in this regards.

H. DIRECTIONS OF THE AUTHORITY

8. Hence, 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 ₹18,06,050/- with interest of ₹24,24,332/-. It is further clarified that respondent will remain liable to pay interest



to the complainant till the actual realization of the amount.

- (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.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]