



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2178 of 2023
Date of filing:	28.09.2023
First date of hearing:	02.11.2023
Date of decision:	10.02.2025

Pankaj Chanana
S/o Ragbir Lal
R/o House no. 14, Sector-4,
HUDA Colony, Naraingarh,
Ambala 134203

....COMPLAINANT

VERSUS

Haryana Shehri Vikas Pradhikaran, Panchkula
Plot No. C-3, HUDA Complex,
Sector-6, Panchkula, Haryana
(through its Estate Officer)

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Adv. Gaurav Gupta, Counsel for the complainant through VC.

Adv. Arvind Seth, Counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 28.09.2023 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.
2. The complainant in his complaint has pleaded that the respondent advertised an auction for residential plots in Panchkula held on 03.10.2022, and the complainant participated by bidding for Plot No. 1495, Sector-11, Urban Estate, Panchkula measuring 308.78 Sq. Meter. The complainant paid an initial amount of ₹35,94,920/- and later made full payment of ₹3,59,49,200/- as per the Letter of Intent dated 12.11.2022. After timely payment, the respondent issued an allotment letter dated 28.02.2023, confirming full payment and offering possession of the plot to the complainant. At the time of the auction, the respondent had advertised on its website that maximum permissible Floor Area Ratio (FAR) for the said plot was 2.4, and the price of the plot was calculated based on this FAR value. Relying on this



representation, the complainant participated in the auction, remained successful and paid the full amount. However, after taking possession, when the complainant applied for site plan approval, the respondent informed them that the maximum permissible FAR has been reduced to 1.98, which came as a shock to the complainant. Feeling cheated, the complainant approached the respondent multiple times, requesting that construction be allowed as per the originally advertised maximum permissible FAR of 2.4. However, the respondent ignored these grievances and did not provide any explanation. The complainant also served a legal notice on 12.07.2023, but the respondent failed to reply. Due to the respondent's misrepresentation and deficiency in service, the complainant has prayed for an order directing the respondent to allow the complainant to raise construction on plot no. 1495, Sector-11, Panchkula as per the originally advertised FAR of 2.4. Additionally, the complainant seeks ₹85,000/- as litigation expenses for the harassment caused by the respondent's actions.

3. Respondent filed a short reply on 10.04.2024 pleading therein, that Sector-11, Urban Estate, Panchkula was developed and allotted before the enactment of RERA Act, 2016, making the jurisdiction of the Haryana Real Estate Regulatory Authority (HRERA) inapplicable. The plots in Sector 11, Panchkula were initially advertised in the year 1981, plots were allotted after



development of the sector and houses were constructed in the said sector much prior to the enactment of RERA, Act 2016. The auction for the complainant's plot took place on 03.10.2022, and the total amount of ₹3,59,49,200/- was deposited by the complainant. The Letter of Intent (12.11.2022), Allotment Letter (28.02.2023), and possession (22.03.2023) were given as per auction policy dated 20.07.2022. The reserve price of the plot was calculated considering maximum permissible FAR of 2.4, but the complainant's grievance relates to the ability to construct Stilt+4 floors. The Haryana Government suspended the approval of Stilt+4 building plans on 23.02.2023, pending review by an expert committee. As a result, maximum permissible FAR 2.4 is not permitted anymore, and only Stilt+3 floors can be approved. The complainant has not yet applied for building plan approval, and their plan will be sanctioned as per the existing policy when they apply. The HUDA (HSVP) Act, 1977 was enacted for urban development and is distinct from the RERA Act, 2016, which primarily regulates private developers. The judgment of Newtech Promoters & Developers Pvt. Ltd. v. State of UP (2021) states that RERA does not apply to land developed under government acquisition laws. Article 254 of the Indian Constitution ensures that state laws prevail unless repealed by Parliament, and the HUDA Act has not been repealed. The Haryana Urban Development (Disposal of Land &



Buildings) Regulations, 1978 govern land disposal under the HSVP Act, and RERA does not apply to HSVP projects.

4. The Authority acknowledges that the respondent has presented detailed arguments in their reply, specifically in paragraphs 15 to 24, addressing various aspects of the case. However, the Authority deems it appropriate not to examine or comment on the merits or demerits of these arguments at this stage. The primary focus of the Authority is to determine whether the complaint is maintainable under the jurisdiction of HRERA.
5. As per the e-auction policy dated 20.07.2022, the conditions for construction on the auctioned property are governed by the Architectural Control or Zoning Plan of the property, which is prepared in accordance with the Haryana Building Code, 2017, as amended from time to time. The policy explicitly states that:

"The building shall be constructed after getting the building plans sanctioned from the Estate Office concerned, HSVP. The successful bidder/allottee shall not make any alteration/addition to the structure constructed on the property without prior/explicit written permission of the Estate Officer concerned. Any violation of the provisions of Haryana Building Code-2017 and the Architectural Control shall attract action as per provisions of HSVP Act-1977."

Based on this policy, it is evident that construction of any building shall be governed by the Haryana Shehri Vikas Pradhikaran (HSVP) Act 1977 and the provisions of Haryana Building Code, 2017. HSVP has full authority for



approving or rejecting any building plans in accordance with the prescribed code.

6. While examining the issue, the Authority vide its order dated 31.10.2024 directed as follows:

“Complainant was directed to prove that captioned complaint is maintainable before the Authority as complainant is seeking relief to “direct respondent to allow the complainant to raise construction at plot no. 1495, Sector 11, Panchkula as per FAR area value 2.4” and Authority's mandate does not include granting permissions to construct on a specific plot or determining the permissible FAR for construction. These matters are governed by Haryana Building Code, 2017 and zoning regulations. Therefore, relief sought under the complaint is not maintainable as per HRERA rules.”

During arguments held today, with respect to the ibid orders of the Authority, ld. counsel for complainant replied that under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act, 2016), any aggrieved person has the right to file a complaint before the Authority or the Adjudicating Officer for violations or contraventions of the Act, Rules and Regulations.

7. Considering the circumstances, the Authority observes that the complainant seeks relief requiring the respondent to permit construction at Plot No. 1495, Sector 11, Panchkula, based on a Floor Area Ratio (FAR) of 2.4. For adjudication of this issue, the Authority has carefully examined the policies



and regulations governing such constructions, which states that construction on the plot shall be governed by the Haryana Building Code, 2017 and Zoning plan of the site as amended from time to time. The relevant condition of auction policy dated 20.07.2022 with regard to the construction over plot was Condition F(40) which clearly states that

F. CONSTRUCTION

"40. The conditions for construction of building on the auctioned property shall be governed by the Architectural control or zoning plan of the property prepared in accordance with the Haryana Building Code, 2017 as amended from time to time. The building shall be constructed after getting the building plans sanctioned from the Estate Office concerned, HSVP. The successful bidder/ allottee shall not make any alteration/ addition to the structure constructed on the property without prior/ explicit written permission of the Estate Officer concerned. Any violation of the provisions of Haryana Building Code-2017 and the Architectural control shall attract action as per provisions of HSVP Act-1977."

8. The Authority also observed that the complainant has alleged restrictions on the construction of Stilt+4 floors in his complaint. However, upon perusal of the Government Order dated 23.02.2023, issued by the Town and Country Planning Department, Haryana, it is clear that:

"The construction of Stilt+4 floors has been suspended, and only Stilt+3 floors are permissible as per the revised regulations."



This decision has been taken by the Government of Haryana and applies to all departments across the State, including HSVP, responsible for enforcing Haryana Building Code, 2017. It nowhere mentions that maximum permissible FAR has been reduced from 2.4 to 1.98.

9. Furthermore, as per Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act, 2016), the Authority has jurisdiction to grant relief in specific circumstances. Firstly, if the **promoter fails to complete the project or hand over possession** to the allottee within the agreed timeline as per the builder-buyer agreement or the project's RERA registration. In such cases, the allottee can either claim a refund of the amount paid, along with interest and compensation, or opt to accept delayed possession with interest for the period of delay. Secondly, if there is a **defect in the title of the land** on which the project is developed, the allottee has the right to claim compensation from the promoter under Section 18(2), and there is no time limit for filing such claims, meaning the promoter remains liable even after project completion. Lastly, if the **promoter fails to comply with obligations** under the RERA Act, its rules, or the terms of the sale agreement, the allottee can seek relief under this section. These provisions ensure that allottees are protected from delays, land title defects, and violations of



commitments made by promoters. Section 18 of RERA Act, 2016 is reproduced below:

18. Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,--

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.



10. In the present complaint, the grievance of the complainant does not fall under any of these categories. The complainant is not alleging delay in possession, as the plot was duly allotted, full payment was made, and possession was offered as per the terms of the Letter of Intent (LOI) dated 12.11.2022 and Allotment Letter dated 28.02.2023. There is also no claim of a defective land title that would entitle the complainant to compensation under Section 18(2). Furthermore, the dispute does not pertain to any violations of obligations under RERA by a promoter, allottee, or real estate agent, as required under the Act. Instead, the complainant's grievance primarily concerns Floor Area Ratio (FAR) reductions and the restriction on Stilt+4 floor construction, which are matters governed by the Department of Town & Country Planning (DTCP) and Haryana Shehri Vikas Pradhikaran (HSVP), under the provisions of Haryana Building Code, 2017. Also, the Authority is in knowledge that the Government of Haryana in Town and Country Planning Department vide policy dated 02.07.2024 has issued detailed instructions/procedure regarding stilt + four floor construction on residential plots and the complainant can raise stilt + four floor construction as per the parameters prescribed under the said policy. Since construction of stilt + 4 floors within 2.4 FAR is permissible, the complainant has no case of violation of terms and conditions of allotment/ auction by the respondent.



11. Further, the complainants are seeking compensation of ₹85,000/- on account of cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd.V/s State of U.P. & ors.", 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 complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainants and litigation cost.
12. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the




allottees who have suffered due to the dominant position of the promoter.

Therefore, the relief sought is not maintainable under HRERA.

13. Thus, Authority decides to dispose of the captioned **complaint as dismissed**.

Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]