

ORDER

1. Present complaint was filed on 12.08.2022 by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '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 DETIALS

2. The particulars of the unit booked by the complainant, the details of the sale consideration, the amount paid by the complainant and the details of the project are detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	Green Escape Apartments, Phase-2, Sonipat
2.	RERA Registered/not registered	Registered- HRERA-PKL-SNP-173-2019 dated 30.10.2019.
3.	Flat No.	0102-21-0402
4.	Area	1690 sq. ft.
5.	Date of booking	26.07.2012

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6.	Date of allotment	26.07.2012
7.	Date of flat buyer agreement (BBA)	Undated FBA placed on record. (November, 2012 as alleged by complainant and 15.09.2012 as admitted by respondent in its affidavit filed in the Authority.)
8.	Deemed date of possession	As per clause 5.1 of FBA as follow:- <i>5.1 Subject to Clause 5.2 and further subject to all the buyers/allottees of the flats in the said residential project, making timely payment, the company shall endeavor to complete the development said residential project and the said flat as far as possible within 42 (forty two) months, with an extended period of 6 (six) months, from the date of execution of this agreement or from the date of commencement of construction of the particular tower/block in which the said unit is situated subject to sanction of the building plan whichever is later.</i>
9.	Basic sale consideration	Rs. 32,18,400/- as per Flat Buyer Agreement.
10.	Amount paid by the complainants	Rs. 13,36,203.99/-
11.	Offer of possession	Not made

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B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the case of the complainant is that she booked a flat in respondent's residential project "Green Escape, Apartments- Phase 2, Sonipat on 24.07.2012 by paying a booking amount of Rs. 180,000/-.
4. That the respondent issued an allotment letter on 26.07.2012 whereby complainant was allotted Flat no. 0102-21- 0402 i.e. Flat No. 02 on 4th floor in Tower No. 21 of Project No. 0102, of the respondent.
5. That the flat buyer Agreement was executed between the respondent and the complainant in November, 2012 towards purchase of the said residential flat no. 0102-21-0402 measuring a super area of 1690 square feet at the basic sale price of Rs.32,18,400/- in the project 'Green Escape Apartments, Sonipat'.
6. As per clause 5.1 of the flat buyer agreement, respondents were to deliver possession of the allotted flat within a period of 42 months from the date of execution of flat buyer agreement with a grace period of 6 months. Therefore, the date of possession of the flat comes out to be in November, 2016 as per the agreement.
7. That the total consideration for the allotted flat was Rs.41,13,400/- inclusive EDC amounting Rs.4,64,750/-, Composite Charge amounting Rs.2,53,500/- , Preferential Location Charges (PLC) amounting Rs.1,26,750/- and Club



Fee amounting Rs.50,000/-. The complainant paid all payable amounts, as and when demanded by the respondent, thereby paid a total amount of Rs.13,36,203.99/- till date for the flat.

8. Despite a delay of more than five years and eight months, the respondent has failed complete the construction of the flat and failed to offer the legal and rightful possession of the flat to the complainant till date.
9. The complainant, being aggrieved, enquired about the status of the project and found that the respondent has hardly completed 10% of construction works of the tower in which the flat of the complainant is located i.e. Tower No. 21.
10. That the respondent even though, got the RERA Registration, No. HRERA-PKL-SNP-173-2019 dated 30.10.2019 but it got only selective towers of the project registered under RERA, which does not include the tower in which the said flat of the complainant is located i.e. tower no. 21. Respondent got registration for towers-18, 19, 26, 27, 28, 31, 32, 36, 37, 38, 39 and partial EWS - 224 units. Therefore, it is clear that tower in which the flat of the complainant is located i.e. tower No. 21 is not registered under RERA and now the respondent has also abandoned the construction of the said tower. Moreover, the respondent has not renewed its DTCP license. Therefore, the complainant now seeks refund of her deposited amount along with interest



from various dates of payments from the respondent for his failure to deliver the possession of the flat till November, 2016, as per the terms and conditions of the agreement. Hence, this complaint.

C. RELIEF SOUGHT

11. In view of the facts mentioned above, the complainant prays for the following reliefs:

1. Direct the Respondent to return/refund full amount deposited by the complainant amounting Rs.13,36,203.99/- 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
2. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.
3. 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.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

12. Learned counsel for the respondent has not filed any detailed reply in the present case. On the last date of hearing i.e., 05.10.2023, Id. counsel for



the respondent stated that respondent does not wish to file reply in this case as it is not in a position to give possession due to financial crunches. Therefore, respondent was directed to submit an affidavit in this regard. In compliance, learned counsel for the respondent has submitted an affidavit dated 20.01.2024 stating that *“That the unit no-0102-21-0402, Green Escape, Sonipat was allotted to Divya and a flat buyer agreement was executed on 15-09-2012. That the respondent company was **unable to construct the unit due to financial crunch** and reasons beyond the control of the respondent. Under these circumstances the respondent company may allot an alternative unit to customer in Green Escape project itself subjected to approval of competent authority.”*

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments, learned counsel for the complainant and respondent reiterated the arguments as were submitted in writing. Ld. counsel for complainants stated that since the construction of project had been stalled for a long time, now complainant has lost faith in respondent project and wants to withdraw from said project and thus insisted only for refund of paid-up amount of Rs. 13,36,203.99/- along with interest.



F. ISSUES FOR ADJUDICATION

14. 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. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

15. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:-

- i. In the present complaint, as per clause 5.1 of the flat buyer agreement the promoter was obligated to handover the possession of the unit within 42 months along with 6 months grace period from the execution of flat buyer agreement. In its affidavit dated 20.01.2024 respondent has admitted to have executed a flat buyer agreement with the complainant Ms. Divya for flat no.0102-21-0402 on 15.09.2012. Upon conjoint reading of Clause 5.1 of the flat buyer agreement and the affidavit dated 20.01.2024 it transpires that respondent had committed to handover the flat/unit in question to the complainant within 42 months plus 6 months grace period starting from 15.09.2012 onwards i.e. by 14.09.2016. However, the respondent promoter failed to deliver the possession of the unit within time stipulated in the flat

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buyer agreement. Therefore, the complainant filed the present complaint on 12.08.2022 in exercise of her rights under expressing her intention to not to continue with the project the respondent.

- ii. Respondent too in its affidavit dated 20.01.2024 has admitted the fact that there has been delay in construction due to financial constraints and reasons beyond the control of the promoter. Respondent in its affidavit has proposed to offer alternate unit to complainant, how the offer is not acceptable to complainant.
- iii. Authority observes that the complainant had paid an amount of Rs. 13,36,203.99/- out of the basic sale price of Rs. 32,18,400/- and has been waiting for its unit for more than 6 years. Authority has no hesitation in stating that in view of the facts of the case financial crunches could have occurred if the money paid by the allottees was misappropriated by the respondent/promoter. Therefore, the plea of the respondent that project could not be completed due to financial crunch is not tenable. With respect to the plea of reason beyond control of promoter, it is very general statement with no support, therefore, not tenable
- iv. In these circumstances where the flat buyer agreement was signed way back in the year 2012 and the project is not complete nor likely to be



completed within reasonable time and extraordinary delay has already been caused from the due date of offer of possession, the complainant would be entitled to relief of refund as she cannot be forced to wait for completion of project. As on date, the complainant is an aggrieved person who has not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., obligation to hand over possession of flat still persists even after the RERA Act, 2016 coming into force. This is a case of breach of contract by the respondent, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract.

- v. Complainant/allottee, in exercise of her right under the provisions of this Act has demanded refund of the amount paid by her. In this regard section 18(1) provides that in case the promoter fails to hand over the possession of the apartment, plot or building, he shall be liable on demand 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 the relief clause at page 13 of the complaint, complainant had claimed refund of Rs. 13,36,203.99/- and the proof of payment of said amount is available on record.

A handwritten signature in blue ink, appearing to read 'Rathee', is written over a horizontal line.

- vi. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" 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.

- vii. This project i.e. "Green Space Apartment" is already delayed by several years. It is still not complete and admittedly respondents are not in a position



to complete the project within reasonable time, therefore, Authority finds it to be fit case for allowing refund in favor of complainant. 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"

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,".

- viii. Consequently, as per website of the state Bank of India i.e. [85https://sbi.co.in](https://sbi.co.in), the marginal cost of lending rate (in short MCLR) as on date i.e., 28.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR 2% i.e., 11.1%.
- ix. The definition of term "interest" is defined under Section 2(za) of the Act which is as under:



"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;

- x. Accordingly, respondents will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Complainant has sought refund of Rs.13,36,203.99/- and the proof of payment of said amount has been annexed at page 70 to 73 of complaint file. Hence, Authority directs respondents to refund to the complainant the paid amount of Rs.13,36,203.99/- 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 (MC1R)-2% which as on date works on to 11.1% (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

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I. DIRECTIONS OF THE AUTHORITY

17. 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 of Rs. 31,34,809/-to the complainant. Interest shall be payable as per definition provided U/S 2(za) of the HRERA Act,2016.

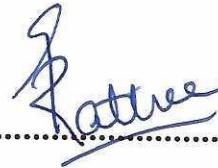
(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

18. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



CHANDER SHEKHAR

[MEMBER]



Dr. GEETA RATHEE SINGH

[MEMBER]