



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1735 of 2023
Date of filing:	22.08.2023
First date of hearing:	26.09.2023
Date of decision:	20.01.2025

Rohit Kumar Jain
S/o Sh. Raj Kumar Jain
R/o E-15A, Neb Valley, Sainik Farm,
Neb Sarai, Ignou, South Delhi,
Delhi-110068

.....COMPLAINANT

Versus

1. M/s Pivotal Infrastructure Pvt. Ltd.

Registered office- Plot no. 12,
Sector 4, Faridabad, Haryana-121004
Corporate office- 704-705, Two Pacific Square,
Sector-15, Part-II, Gurugram

2. Ansal Buildwell Ltd.

Registered Office- 118, UFF,
Prakash Deep Building, 7 Tolstoy Marg,
Connaught Place, New Delhi-110001

.....RESPONDENTS

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Bhrigu Dhama, Advocate, Counsel for the complainant through VC
None for the respondent.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 22.08.2023 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 there under, 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 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 & location of project	"ROYAL HERITAGE" at Sector-70, Mujheri, Ballabgarh, Faridabad, Haryana.



2.	RERA registered/not registered	Lapsed Project (Registration No. HRERA-PKI.-FBD-47-2018)
3	Unit no.	901, 17 th Floor, Tower- Ridhi
4.	Super built up area	2525 sq. Ft.
5.	Date of Application form	28.09.2012
6.	Builder buyer agreement	Not executed
7.	Deemed date of possession	28.09.2015(3 years from the date of booking of flat as per clause 13 of application form)
8.	Total sale consideration	₹91,30,400/- @3616 per sq. yds.)
9.	Amount paid by complainant	₹73,09,957/- (receipts attached)
10.	Offer of possession	Not given till date

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

- i. That the complainant booked Unit No. 901, 17th Floor, Type "Duplex" in Tower "RIDHI" of the project *ROYAL HERITAGE* located at Sector-70, Mujheri, Ballabgarh, Faridabad, Haryana. On 28/09/2012, an application form was executed, and an initial deposit of ₹7,50,000/- was made via cheque no. "046026" dated 28.09.2012 drawn on Corporation Bank under the Construction Linked Payment Plan (Annexure A).
- ii. As per Clause 13 of the Application Form, the Respondents were required to hand over the possession of the unit along with obtaining the requisite



Occupation Certificate (OC) by 28/09/2015. Despite multiple reminders, respondents failed to execute the Builder-Buyer Agreement while raising illegal payment demands disproportionate to the construction progress. The Complainant, under the threat of cancellation, made payments totaling ₹73,09,957/- along with ₹50,055/- as TDS and ₹2,65,788/- as interest, against the basic sale price (BSP) of ₹91,30,400 /-(Annexure B).

- iii. The Respondents have failed to deliver the possession despite receiving a substantial portion of the sale consideration. The project was registered under HRERA (Registration No. HRERA-PKL-FBD-47-2018) on 14/09/2018, with an extension granted until 31/12/2019. However, the registration has since been lapsed. On 01/05/2023, the Respondents issued an Offer of Possession without providing proof of obtaining the OC, which is a violation of legal requirements. Additionally, they demanded an unjustified amount of ₹50,81,596.91 without proper explanation (Annexure C).
- iv. The Complainant has paid an amount of ₹76,25,800/- to date to the respondents who have failed to execute Builder-Buyer Agreement, thus violating the provisions of Section 13(1) of the RERA Act, 2016. Despite regular refund requests, the Respondents have repeatedly provided false assurances without taking any action.



C. RELIEF SOUGHT

3. In view of the facts mentioned in complaint book, the complainant prays for following:

- i. To give necessary directions to the Respondent(s) for refund of the amounts paid by the Complainant in lieu of unit/flat till date along with the prescribed rate of interest as per the provisions of the Real Estate (Regulation & Development) Act, 2016 and the applicable rules and regulations;
- ii. To impose penalty upon the respondent as per the provisions of Section 60 of Real Estate (Regulation & Development) Act, 2016 for wilful defaults committed by them;
- iii. To impose penalty upon the respondent as per the provisions of Section 61 of Real Estate (Regulation & Development) Act, 2016 for contravention of Sec. 12, 13, Sec. 14 and Sec. 16 of the Real Estate (Regulation & Development) Act, 2016;
- iv. To direct the Respondents) to provide detailed account statement against the amounts collected from the Complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.



- v. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with HRERA Rules, 2017.
- vi. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- vii. To issue direction to pay the cost of litigation and other incidental charges;
- viii. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

4. As per office records, notices were issued to the respondents on 23.08.2023 which were successfully delivered on 25.08.2023. The matter was first listed before the Authority on 26.09.2023 but could not be taken up as the local bar association had suspended work, leading to an adjournment to 19.10.2023. During the hearing on 19.10.2023, the respondents were given four weeks time to file reply and the case was adjourned to 27.05.2024. On 27.05.2024, Advocate Karan Kaushal appeared on behalf of the respondents and sought



additional time to file a reply. The Authority granted another opportunity, imposing a cost of ₹5000/- payable to the Authority and ₹2000/- payable to the complainant. However, the counsel failed to file a vakalatnama or power of attorney on the said date. The matter was then adjourned to 14.10.2024. A detailed order was passed on 14.10.2024 and relevant part of it is reproduced below:

5. *On the other hand, ld. counsel for respondent apprised the Authority that occupancy certificate for the project in question has been received by the respondent from the competent authority. Resultantly, respondent wants to explore an opportunity for settlement. For the same purpose, respondent tried to contact complainant. However, he was unable to reach the complainant. He further sought some time for settlement from the Authority.*
6. *After hearing averments of ld. counsel for respondent, Authority is of the view that respondent was obligated to handover possession of the unit to the complainant in the year 2015. Now after lapse of 9 years respondent is trying to settle the matter on the pretext that occupancy certificate has been now received by the respondent. In addition, Authority observed that today is 4th hearing and respondent has neither filed any reply nor paid the cot imposed on him by the Authority.*
7. *In given circumstances, Authority grants one last opportunity to both the parties to settle the matter. In case, settlement arrives at between the parties, both the parties are directed to place on record the settlement deed at least two weeks before the next date of hearing. Further, Authority deems appropriate to impose a penalty of ₹25000/- on respondent for wasting the precious time of the Authority.*
8. *In case, no settlement is arrived at, respondent is directed to file reply and supply its advance copy to the complainant. Further, respondent is also directed to pay the earlier imposed cost of ₹5000/- payable to the Authority and ₹2000/- payable to the complainant. If respondent fails to file reply before the next date*



of hearing, then defence of respondent will be struck off. After receiving of reply, complainant is at liberty to file rejoinder, if any, with an advance copy to be supplied to the opposite party.

9. *Ld. counsel for complainant was directed to give contact details of complainant and himself in the chat box during the course of hearing. Respondent was directed to take details of complainant from the chatbox to communicate with the opposite party for the purpose of settlement.*

Thereafter the case was adjourned for today. Even today, i.e., on 20.01.2025, respondent neither appeared nor filed their reply. Till date, the Authority has not received a vakalatnama for the respondent's counsel or any written submissions on behalf of respondent. Authority is of the view that proceedings before this Authority are summary proceedings and sufficient opportunities have already been granted to the respondent to file reply, any further delay shall defeat the ends of justice for an allottee who has been waiting for his unit since 2012. Thus, matter is proceeded and decided ex-parte, based on the documents available on file.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT

5. Mr. Bhrigu Dhami, Advocate counsel appeared on behalf of complainant and stated that today is fifth hearing after service of notice to the respondents. Respondents have miserably failed to file written submissions before the Authority. He further reiterated the basic facts of the case as already stated under Para 'B' of this order.



F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

- i. The Authority has gone through the documents placed on record. As stated in the complaint, complainant on 28.09.2012 booked a unit bearing no. 901, 17th floor, Type duplex, Tower "Ridhi", admeasuring 2525 sq. Ft. in the real estate project "Royal Heritage" located at Sector-70, Mujheri, Ballabgarh, Faridabad, Haryana, being developed by promoter, "Pivotal Infrastructure Pvt. Ltd.", for total sale consideration of ₹91,30,400/-. No builder buyer agreement was executed between the parties. Further, as per clause 13 of Application form, the developer had committed to complete the construction and development of the said building/apartment within a period of 3 years from the date of booking and on receipt of complete payment of the basic sale price and other additional charges due and payable upto the date of possession according to the payment plan applicable to him/her. Accordingly, deemed date of possession comes after 3 years from the date of booking/application form, i.e., 28.09.2015.
- ii. The complainant has further asserted in his pleadings that the respondent issued an Offer of Possession letter dated 01.05.2023 for the unit in question. However, this offer was not accompanied by the requisite Occupation



Certificate (OC). As per clause 9.10 of RERA Act, 2016 *“Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.”* Therefore, an Offer of Possession is deemed valid and lawful only when it is accompanied by an Occupation Certificate given by the competent Authority, certifying that the unit is fit for occupation and has met all statutory requirements. An offer issued without the OC is considered unlawful and lacks legal standing. In light of these circumstances, the Authority finds it appropriate to declare the Offer of Possession letter dated 01.05.2023 as null and void, as it does not comply with the mandatory provisions of the law. Also, complainant had made respondent no. 2 as party. However, no specific relief has been claimed from respondent no.2. Therefore no specific directions are passed against the respondent no. 2 by the Authority.

- ii. However, it is a matter of fact that the respondents have till date not handed over the possession of the unit to the complainant, meaning thereby, that the respondents have failed to handover the possession to the complainant within a stipulated time frame. The innocent allottee who had invested his hard earned money in the project from the year 2012 with the hope to get a floor, cannot be forced/ compelled to wait endlessly for the unit, and specifically when there is



no bonafide effort shown on part of the promoter to complete the project. Thus, in the given circumstances where respondent had failed to complete the project and handover apartment as per agreed time and where complainant wishes to withdraw from the project, he cannot be forced to continue with it specially when there is nothing on record to show that there is any likelihood completion of project.

- iii. Further, Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.*" 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 judgment 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.

- iv. In view of above findings and after considering above mentioned judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6745-6749 of 2021 titled as "***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P &Ors.***", Authority finds it to be fit case for allowing refund along with interest in favour of complainant. As per Section 18 of Act, interest is defined 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-

(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 HIRERA Rules, 2017 which is reproduced below for ready references:

“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”.”

- v. 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., 20.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.
- vi. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount 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 to be refunded along with interest calculated at the rate of 11.10% from the date of payment till the date of this order, which comes to ₹1,58,37,843/- (₹73,60,012/- (principal amount) + ₹84,77,831/- (interest accrued till 20.01.2025)). According to the receipts/statement of accounts provided by the complainant, details of which are given in the table below –

S.No.	Principal Amount (in ₹)	Date of payment/ transfer	Interest Accrued till 20.01.2025 (in ₹)
1.	750000	2012-09-28	1025914
2.	780317	2012-11-23	1054095
3.	824378	2013-02-05	1095063
4.	821027	2014-08-02	955034
5.	829234	2015-04-25	897502
6.	867093	2015-02-01	960364
7.	2437908	2016-01-21	2437694
8.	8759	2015-11-05	8963
9.	8294	2014-08-05	9640
10.	8377	2015-05-04	9044
11.	24625	2016-02-04	24518
Total	7360012		8477831

vii. Perusal of file reveals that payment of ₹ 52,165/- has been made by the complainant to the respondent under the head-TDS. Same has been proved by the complainant by annexing the receipt annexed as Annexure-2 in the

complaint book. In general, TDS is a mechanism under the Income Tax Act, 1961, wherein tax is deducted at the origin of income generation. When certain payments are made (such as salaries, rent, commission, or property transactions), a specified percentage is deducted by the payer before the payment is credited to the payee. This ensures that the government collects taxes in advance rather than waiting for the taxpayer to declare income later. The deducted amount is then deposited with the government and is reflected in the recipient's tax account. Further, in real estate transactions, as per **Section 194-IA of the Income Tax Act, 1961**, if the consideration for the property exceeds ₹50 lakh, the buyer (complainant in this case) is required to deduct TDS at 1% of the payment made to the seller (respondent). The deducted amount must then be deposited with the government under the seller's PAN. Complainant herein has already fulfilled his part of obligation by paying TDS. Moreover, the TDS deducted and deposited in a way benefits the respondent by enhancing their tax compliance record and credit score, improving financial credibility. Additionally, it serves as an advance tax payment, reducing their year-end tax liability and easing financial obligations. On the other hand, the deduction of TDS from the complainant's account imposes a financial burden on him, as he bears the cost to ensure the respondent's tax compliance without any direct financial benefit. Therefore, Authority deems appropriate to refund



the amount paid by the complainant in form of TDS (Tax deducted at Source) as shown in table in para vi of the order.

- viii. Complainant is also seeking reliefs mentioned in para 3 (ii to vi). However, with regard to the same, complainant neither argued nor pressed upon the same during hearing. Therefore, Authority cannot adjudicate the said reliefs.
- ix. Lastly, the complainant is also seeking cost of litigation and other incidental charges. 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 of litigation expenses.



H. DIRECTIONS OF THE AUTHORITY

7. 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 amounts of along with interest of @ 11.10 % to the complainant as specified in the table provided above in para no vi.
- 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.

The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading order in each case on the website of the Authority.



CHANDER SHEKHAR
[MEMBER]



NADIM AKHTAR
[MEMBER]