



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2794 of 2023
Date of filing:	19.01.2024
First date of hearing:	26.02.2024
Date of decision:	27.01.2025

Rohit Mehla, S/o Sh. Gian Chand Mehla,

H.no.305, Sector-20 HUDA,

Kaithal, Haryana 136027.

.....COMPLAINANT

Versus

M/s Green Space Infraheights Pvt. Ltd,

Head Office: 306, 3rd Floor, Indraprakash Building,

21- Barakhamba Road, New Delhi-110001

.....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Vikas Goyat, ld. counsel for the complainant through VC.

Dharmveer Singh, ld counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 19.01.2024 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 RERA, 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, sale consideration, 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	Shree Vardhman Green Space (Affordable Group Housing Colony)
2.	Name of the promoter	Green Space Infraheights Pvt. Ltd
3.	RERA registered/not registered	Registered (lapsed project)
4.	Flat No. allotted	0206, Tower G, 2 nd floor
5.	Flat area (Carpet area)	511 sq.ft



6.	Date of allotment	26.08.2015
7.	Date of execution Builder Buyer Agreement	15.02.2016
8.	Due date of offer of possession	15.03.2020
9.	Possession clause in BBA	<i>"Clause 8 (a) "Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalment of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four years) from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")"</i>
10.	Basic Sale Price	₹20,94,000/-
11.	Amount paid by the complainant	₹21,86,183/-
12.	Offer of possession	Not given till date.



B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant had applied for a residential flat in an affordable group housing project namely; "Shree Vardhman Green Space" being developed by respondent Green Space Infraheights Pvt. Ltd at Village Billah, Sector-14, Panchkula Extension-II, District, Panchkula, Haryana by paying booking amount vide application no. 6016 dated 27.05.2015
4. Thereafter, respondent allotted flat no. 0206, Tower G, 2nd floor having carpet area of 511 sq. ft vide allotment letter dated 26.08.2015 which is annexed at page no. 43 of the complaint file. Thereafter flat buyer agreement was entered into between the parties on 15.02.2016 for basic sale consideration of ₹20,94,000/-. A copy of flat buyer agreement is annexed as Annexure C-1.
5. That on 10.02.2017, respondent had sent a demand letter regarding the upcoming installemnt of the above mentioned unit which was duly paid on time. All the payments receipts are attached with the complaint file. Copy of letter dated 10.02.2017 sent by respondent is annexed as Annexure C-3, page 55 of the complaint file.
6. That as per clause 8(a) of the agreement, the date of possession was 4 years from the date of approval of building plans or grant of environment clearance whichever is later, so the date of possession was in March 2019. That despite several request on calls since 2018,



the respondent is not responding and project is not ready for handing over of the possession of the unit even after 4-5 years delay. That on 30.10.2023, complainant visited the construction site and it was shocking to see that construction of tower G is not started yet even after delay of so many years. Copy of photographs are annexed as Annexure C-4, page-59 of the complaint file.

7. That on 28.11.2023, complainant sent a legal notice to the respondent for refund of the paid amount along with interest. However, no reply was received from respondent side. Copy of legal letter is annexed as Annexure C-5, page 60-63 of the complaint file.
8. That in the present case, it is the failure on the part of the respondent to fulfil its obligations, responsibilities in handing over the possession within the stipulated period. Accordingly, non-compliance of the mandate contained in section 11(4)(a), 11(4)(f) read with section 18(1) of the RERA Act of 2016 on the part of the respondent is established. Therefore, complainant being aggrieved by the conduct of the respondent is filing the present complaint before the Authority.



C. RELIEFS SOUGHT

9. Complainants sought following reliefs :

- (i) Direct the respondent to pay an amount of ₹5,00,000/- as compensation for the mental torture and physical trauma suffered by the complainant.
- (ii) Direct the respondent to pay an amount of ₹1,00,000/- as cost of litigation.
- (iii) That respondent be directed to return the entire paid amount by the complainant ,i.e, ₹21,86,183/- along with 24% interest from the date of payment made by the complainant till the actual realization.
- (iv) Any other relief which is deemed fit by this Hon'be Authority.

D. REPLY ON BEHALF OF RESPONDENT

10. Notice was served to the respondent on 25.01.2024 which got successfully delivered on 27.01.2024. Despite availing four opportunities, respondent failed to file reply, though in all four hearings, ld counsel represented the respondent. Therefore, Authority deems it fit to struck off the defence of the respondent and decide the present complaint ex-parte.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

11. Ld. counsel for complainant reiterated the facts of the complaint and stated that vide order dated 21.10.2024, complainant was directed to



file receipt or affidavit of the amount of ₹21,86,183/- paid to the respondent. In compliance of the said order, ld counsel for the complainant submitted that bank statement of complainant's sister is filed vide application dated 16.12.2024 through which an amount of ₹1,08,935/- is paid to the respondent on 27.05.2015 through net banking. For rest of the maount paid receipts of payments are already attached in complaint file. Further, he stated that numerous opportunities have been given to the respondent, but no reply has been filed by the respondent till date. Thus, Ld counsel for complainant requested that case may be decided ex-parte on the basis of the records available, as complainant is seeking refund of the paid amount from the respondent. Ld counsel for the respondent requested for some more time to file reply, as a copy of application filed by the complainant is received recently.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

13. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the submissions made by the complainant's counsel, Authority observes



that the complainant booked a flat in the real estate project, "Shree Vardhman Green Space" being developed by the promoter namely; Green Space Infraheights Pvt. Ltd and complainant was allotted flat no.0206, Tower G, 2nd floor admeasuring 511 sq.ft. in said project at sector-14, Panchkula Extension-II, District Panchkula, Haryana. Complainant had paid a total of ₹21,86,183/- against the total sale price of ₹20,94,000/-.

14. As per clause 8 (a) of the agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. It came to knowledge of the Authority while dealing with complaints against the same builder, i.e., Green Space Infraheights Pvt. Ltd received approval of building plans on 09.12.2014 and got the environment clearance on 15.03.2016. That means, as per possession clause, a period of 4 years is to be taken from 15.03.2016 and therefore, deemed date of handing over of possession comes to 15.03.2020.

15. Period of 4 years is a reasonable time to complete development works in the project and handover the possession of the units to the allottees. The project of the respondent is an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying their hard earned



money, legitimate expectations of the complainants would be that possession of the flat will be delivered within a reasonable period of time. However, respondent has failed to fulfil its obligations as promised to the complainant. Thus, complainant is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

16. 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.

17.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;

18. 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".

19. Complainant in his complaint has sought refund of paid amount with interest @24%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform



practice in all the cases. 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., 27.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

20. 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 interest from the dates the amounts were paid till the actual realization of the amount to the complainant. Authority directs respondent to refund the amount of ₹21,86,183/- along with interest to the complainant 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 along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to ₹41,34,419/- as per detail given in the table below:



Sr.no	Principal amount in ₹	Date of payments	Interest accrued till 27.01.2025 in ₹
1.	53458/-	12.09.2015	55697/-
2.	190000/-	12.09.2015	197957/-
3.	190000/-	12.09.2015	197957/-
4.	108935/-	27.05.2015	117075/-
5.	271238/-	15.03.2016	267337/-
6.	252262/-	09.09.2016	234979/-
7.	261750/-	04.04.2017	227340/-
8.	293160/-	16.09.2017	239910/-
9.	282690/-	14.03.2018	215953/-
10.	282690/-	24.11.2018	194031/-
	Total=₹21,86,183/-		₹1948236/-
Total amount to be refunded by respondent to complainant = ₹21,86,183/-+ ₹19,48,236/- = ₹41,34,419/-			

21. Further, the complainant is seeking damages for mental trauma, physical trauma and litigation 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 complainant is advised to approach the Adjudicating Officer for seeking the relief for mental torture, agony, discomfort and undue hardship of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

22. The Authority hereby passes this order and issue the following directions under Section 37 of the RERA 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 ₹21,86,183/- with interest of ₹1948236/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the date of actual realization of the amount.

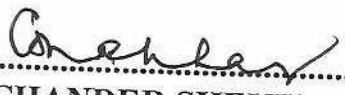
(ii) Respondent is also directed to pay total cost of ₹5,000/- payable to the Authority and ₹2000/- payable to the complainant imposed by the Authority vide its order dated 20.05.2024.

(iii) 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]