



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2095 of 2023
Date of filing:	21.09.2023
Date of first hearing:	10.10.2023
Date of decision:	11.02.2025

Sh. Sanjeev Goel, S/o Late K. P. Goel,
Resident of Flat no. A-404, Sukh Sagar Apartments,
Plot no.52, I.P. Extention, Patparganj, Delhi- 110092

....COMPLAINANT

VERSUS

1. M/s Senior Builders Ltd,
Having registered office at- 1/1, Shanti Niketan,
New Delhi, South Delhi, Delhi-110021
2. Vijay Dixit
Director of M/s Senior Builders Ltd.
R/o B-109, Defense Colony
New Delhi-110024

...RESPONDENTS

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Chander Shekhar **Member**

Present: Adv. Chaitanya Singhal, proxy for Adv. Pankaj Chandola, I.d. counsel for complainant, through VC.
Adv. Dhruv Mittal, I.d. counsel for respondents.

ORDER

1. Present complaint has been filed on 21.09.2023 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 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 unit booked by complainant, details of sale consideration, amount paid by the complainant and details of project as provided in the complaint are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	SBL City, Sonipat, Haryana.
2.	Name of the Promoter/Builder	M/s Senior Builders Ltd.
3.	Nature of Project	Present and Future Project
4.	Area of the plot	260 sq. yds.



6.	RERA registered/ not registered	Not Registered
7.	Licensed/ not	Not licensed
8.	Date of booking	13.06.2006
9.	Date of allotment	Not allotted
10.	Date of Flat/ Builder Buyer Agreement	Not executed
11.	Deemed date of possession	Not available
12.	Basic sale price	Not available
13.	Amount paid by complainant	Rs.3,54,250/-
14.	Offer of possession	Not offered

B. FACTS OF THE CASE AS STATED IN COMPLAINT FILED BY COMPLAINANT:

3. In this case, Sh. Sanjeev Goel booked a residential plot measuring 260 sq. yds. in the project of respondent namely, "SBI CITY" at Sonipat, Haryana by payment of booking amount of Rs.3,54,250/- on 13.06.2006. Receipt is annexed as annexure P-1 at page no.10.
4. That complainant submits that respondent failed to give allotment of plot to the complainant in spite of receiving a sum of Rs.3,54,250/- as

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advance. Further no builder buyer agreement is executed between the complainant and the respondent till date. And till date respondents had neither refunded the money paid neither by complainant nor given allotment of plot to complainant and has been arbitrarily withholding the money since the year 2006.

5. That till date several attempts have been made on part of complainant to reach the respondents, but all failed and till date there has been no update given to the complainant and neither possession is provided.
6. That there were numerous attempts made by complainant to contact the respondent builder via phone calls, however the numbers were either not reachable or out of service. Complainant submits that he is protected under Section 406 of IPC against such false promises as made by respondents.

C. RELIEF SOUGHT:

7. In view of the facts mentioned above, complainant prays to receive the plot that was allotted or else would like the initial provisional booking deposit refunded with an additional interest of 24% p.a.

D. REPLY:

8. Learned counsel for respondents filed a short reply on 30.05.2024 objecting to the maintainability of the captioned complaint in the following manner:

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

a. That that the instant complaint filed before the Hon'ble Authority is not maintainable and is liable to be dismissed as the project that was being carried out by respondents was scrapped and thereby the project was never "ongoing" in terms of the proviso of Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred to as "the Act"). It is imperative to bring to the notice of this Hon'ble Authority that the land on which the alleged project was to be carried out, never came into the possession of the Respondents as the same was acquired by the Government of Haryana for the purposes of development of Sector 2, HUDA, Sonapat. A case regarding the same is currently pending before the Id. Additional District Judge, Sonipat being *Rajesh Kumar vs. State of Haryana and ors. bearing LAC No. 28/2021* which is now fixed for hearing on 07.03.2024. In the petition itself, it is categorically stated that the alleged chunk of land could never come in the possession of respondents as during the time of sale of such land, the state of Haryana started proceedings to acquire the same under the Land Acquisition Act, 1894. It is the stand of respondents that as the land was never in their possession, the construction of the alleged housing project could not have been carried out and thus the same could not be considered to be "ongoing" in terms of the Act.



- b. That it is also a settled principle of law that the Act shall not be taken to retroactive in terms of its operation as has been decided by the Hon'ble Apex Court in the judgement of *M/s Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. etc. 2022 (1) RCR (Civil) 357*. Relevant portion of the same is being reproduced here for the kind perusal of the Hon'ble Authority:

"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act."

- c. That the Act came into force on 25.03.2016, whereas the RERA Rules came into force even later, thereby applying the ratio of the aforementioned judgement, this Hon'ble Authority has no jurisdiction to try the present complaint and the same needs to be dismissed without carrying out any further proceedings.




E. REJOINDER TO REPLY FILED BY RESPONDENTS:

9. Learned counsel for complainant filed a rejoinder on 01.07.2024 to reply filed by respondents and submit the following:
- a) That by filing the reply, respondent company has confirmed that they were in the process of developing a township by the name of SBI. City as can be verified from page no.16 and 17 of the reply.
 - b) That upon making the payment towards the plot, complainant time and again approached the respondent company requesting for the possession and further documentation, however, the respondent company never bothered to provide any response to the complainant.
 - c) That respondent after accepting an amount of Rs. 3,54,250/- from complainant has failed to develop the project and handover possession. It is pertinent to note herein that in these 18 years, the respondent company, with malafide intention, never bothered to update the complainant about the status of the project and possession for which huge amount was accepted by them.
 - d) That by filing the present reply, respondent has challenged the maintainability of the present complaint on the ground that the land over which the project was to be developed has been acquired by the Government, however, before filing the present complaint, the respondent never updated the said status to the complainant nor came



forward to provide alternate plot or refund the amount received by them along with interest.

- e) It is to note herein that since the very beginning the respondent company has ill intention to accept money from the allottees for their project and then utilize the same for their own luxuries. Even by filing the present reply, respondent company does not express any intention to resolve the sufferings caused to the complainant by providing the possession of any alternate plot or refund the hard-earned money of the complainant, but they chose to keep silent on the said issues and challenged the maintainability of the present complaint on baseless and absurd grounds.
- f) That even if it is considered that the said land has been acquired or in the process of being acquired by the government, respondent is still liable to repay the amount paid by complainant along with prescribed rate of interest. It is a settled law that a buyer shall not suffer because of the litigation or disputes of the Promoter over the land of the project and the Hon'ble Supreme Court has time and again held that the buyer is entitled for alternate unit/plot or refund in those circumstances. The various precedents of the Hon'ble Supreme Court wherein it was held that the person shall not suffer due to litigations of the Promoter are as under:
- M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc. (Civil Appeal No(s). 6745-6749 of 2021)



- Pioneer Urban Land & Infrastructure Ltd. Versus Govindan Raghavan (Civil Appeal No. 12238 of 2018)
- Fortune Infrastructure & Anr. vs. Trevor D'Lima & Ors., [(2018) 5 SCC 442];
- Abhishek Khanna & Anr. Vs. Ireo Grance Realtech Pvt. Ltd. & Ors. (Civil Appeal No. 7615 of 2019)
- Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 (SC);

g) That the respondent company has further stated in the said reply that the present complaint is barred by limitation. It is submitted herein that by no stretch of imagination it can be concluded that the present complaint is barred by limitation and further, the cause of action of filing the present complaint is continuous since, respondent has failed to provide alternate plot or refund the amount paid along with interest till date and therefore, the cause of action in favour of complainant still subsist and continuous.

h) At the same time, it is not out of the place that the I.d. Authority is discharging its functions under the capacity of a quasi-judicial body and not the "Court" and therefore, the provisions of the Limitation Act do not apply on the present complaint filed before the I.d. Authority. It is to note that the Hon'ble Supreme Court in the matter titled as "*Sukuru Vs. Tanaji (1985 3SCC 590)*" had held that the provisions of



the Limitation Act only apply to the "Courts" and not to the application and appeals before the quasi-judicial Tribunals or Authorities. Similar findings were given by the Hon'ble Supreme Court in the matter titled as "*MP Steel Corporation vs. Commissioner of Central Exercise (Civil Appeal No. 4367 of 2004)*" decided on 23.04.2015.

- i) That respondent has failed to comply with the relevant provisions of the Act of 2016 and thus, liable to be prosecuted accordingly. It is a matter of fact, that respondent is itself responsible for the sufferings caused to the complainant due the delay in project and therefore, complainant is entitled for any similarly located alternate plot or refund of the entire amount paid along with the prescribed rate of interest in terms of section 18 of the Real Estate (Regulation and Development) Act, 2016.
- j) That in the present case respondent has failed to place on record any relevant document or evidence which frustrates the claim of complainant to demand possession or return of the amount paid along with interest.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS:

10. During oral arguments learned counsel for the complainant and respondents have reiterated arguments as mentioned in their written submissions.



G. ISSUE FOR ADJUDICATION:

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

H. OBSERVATIONS OF THE AUTHORITY:

12. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that complainant made a booking application on 13.06.2006 by payment of booking amount of Rs.3,54,250/-. A plot measuring 260 sq. yds. was booked in favour of complainant by issue of receipt for the amount accepted by respondents. However no allotment letter or agreement for sale has been executed between the parties.
13. Main grouse of the complainant is that even after a lapse of approx. 18 years from the date of initial booking, respondents have neither allotted him any plot till date nor executed any builder buyer agreement despite partial payment being made by complainant; also respondents have not even refunded the amount paid till date. And since respondents never got possession of the plot on which they were to develop the project, complainant wishes for refund of amount that lies in custody of respondent in view of right under Section 18 of the RERA Act, 2016.
14. On perusal of receipt annexed with the complaint at page no.10 of the complaint book, Authority observes that respondents has accepted total



payment of Rs.3,54,250/- for a plot admeasuring 260 sq. yds. towards its “proposed upcoming project” and issued receipt for the same. Respondents have not denied issuing the receipt for booking of the plot in its reply. Thus, the complainant is an allottee as she is the one in whose favor the receipt was issued.

15. The defence adopted by respondents in their reply is that since the project land on which they had envisaged to develop the real estate project was acquired by the state government and they never got the possession of the same, therefore, the project is not covered within the ambit of definition of “ongoing project” and provisions of RERA Act, 2016 are not applicable to the present matter.
16. Here, it is to be noted that there is an admission on part of the respondent that they could not develop the project, as they did not get the possession of the project land, meaning thereby that the respondent wanted to develop the project, however they could not do so in absence of possession of land. Thus, admission on part of respondents makes it clear that respondents without obtaining requisite approvals to develop the project sold it off to innocent allottees including the complainant. Authority observes that it is due to such malpractice prevalent in the real estate sector, especially during the first decade of 21st century that the RERA Act, 2016 was enacted by the parliament. The preamble of RERA Act, 2016 makes the intent of the legislature crystal clear that was to



bring transparency and accountability in sale and purchase of apartment/ plot or building in a real estate project. The RERA Act, 2016 aims at protecting the rights and interests of consumers and it attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both and establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

17. Respondents in the present matter cannot be allowed to run away from their obligation simply on the pretext that they never even initiated the development of the present and future project for which they had accepted booking amount from the complainant in the year 2006. Further no provision of RERA Act, 2016 provides that the RERA Act, 2016 shall be applicable only to the “ongoing project”. The obligation to get an “ongoing project” registered with the Real Estate Regulatory Authority is only one of the obligations of the promoter as provided under Section 3 of the RERA Act, 2016. Further Section 11(4) (a) of the RERA Act, 2016 provides that the promoter shall be obligated to fulfill all its obligations as per the agreement for sale. In the present matter, respondents had accepted a sum of Rs.3,54,250/- as booking amount from the complainant and issued receipts for the amount collected as booking amount for a plot admeasuring 260 sq. yds. in the present and future project. The receipt



dated 13.06.2006 leaves no room for any ambiguity and establishes that there was an agreement for sale for a plot measuring 260 sq. yds. in the present and future project of the respondent.

18. Further respondents have not placed on record any document to prove that they are not in the business of development of real estate project. In fact respondent admits the fact that they could not carry out the development works as project land got acquired by the state government with respect to which court case is pending before court of I.d. Additional District Judge, Sonipat being *Rajesh Kumar vs. State of Haryana and ors. bearing LAC No. 28/2021*. There is also nothing on record to show that the receipts on record are fraudulent.
19. The obligation to give possession of plot measuring 260 sq. yds. still remains unfulfilled, thus cause of action still continues. It is the matter of fact that even after 18 years from the date of collecting the booking amount, respondents have not developed the project nor there is a hope that they would be able to give possession of the unit to the complainant. after such an inordinate delay, complainant cannot be expected to wait for respondents to sort out that issue with government and then to hand over possession of the unit.
20. Authority observes that due to default on part of respondents to hand over possession of the plot even after 19 years, complainant does not want to



continue with the project and wishes to withdraw from the same. As per Section 18(1) of the RERA Act, 2016, complainant is at liberty to exercise his right to withdraw from the project on account of default on part of respondents to deliver possession and seek refund of the paid amount along-with interest. 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 aforesaid 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. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of IIRERA Rules, 2017 provides for prescribed rate of interest which is 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 IIRERA Rules, 2017 which is reproduced below for ready reference:

“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".

21. Consequently, as per website of State Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 11.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.
22. Accordingly, respondents will be liable to pay the complainant, interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainant the paid amount of ₹3,54,250/- 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.
23. Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹10,88,866/- as per detail given in the table below:



Principal Amount	Date of payment	Interest Accrued till 11.02.2025 (in Rs.)	TOTAL (in Rs.)
3,54,250	13.06.2006	7,34,616/-	10,88,866/-


I. DIRECTIONS OF THE AUTHORITY

24. 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 along with interest of @ 11.10 % i.e. **Rs. 10,88,866/-** to the complainant as specified in the table provided in para 23 of this order.

(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.

25. Captioned complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading orders on the website of the Authority.


 CHANDER SHEKHAR
 [MEMBER]


 DR. GEETA RATHEE SINGH
 [MEMBER]