



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	3355 of 2022
Date of filing:	22.12.2022
First date of hearing:	13.04.2023
Date of decision:	13.05.2025

**Sita Rani Dhawan,**

R/o House no. 128, Gali no. 2

Rai Singh Ki Dhani, Sarai Chopta

Bhiwani, Haryana.

.....COMPLAINANT

Versus

**Housing Board Haryana, through its Managing Director**

C-15, Awas Bhawan,

Sector-6, Panchkula, Haryana

.....RESPONDENT

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

**Member**  
**Member**

**Present:** -None for Complainant

Adv. Rajesh Kaul, I.d. Counsel for the respondent.

**ORDER**

1. Present complaint is filed by the complainant 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 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, 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 of the project	2165, Three storied EWS Flats for BPL families on Hire Purchase Basis
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	Not provided
5.	Date of allotment	09.12.2016
6.	Due date of possession	16.09.2021



7.	Possession clause in BBA	Not available
7.	Total sale consideration	₹4,60,000/-
8.	Amount paid by complainant	₹92,000/-
10.	Offer of possession	Not given

## **B. FACTS OF THE PRESENT COMPLAINT**

3. That the complainant has given her hard earned money to the respondent for buying a flat in Housing Board Haryana at Dharuhera, Sector 23 and 4, Rewari, Haryana.
4. That complainant had deposited cash amount of Rs. 46,000/- for the registration of BPL flats at Dharuhera, Sector 23 and 4, Rewari on 21.01.2015 for application form no. 01104. Another payment of Rs. 46,000/- was also made through demand draft on 06.12.2017 to the respondent.
5. That an allotment letter was issued to the complainants for the allotment of EWS flat for BPL family at Dharuhera, Sector 23 and 4, Rewari, Haryana.
6. That as per terms and conditions mentioned in letter no. HBH/CRD(P.M)/2016/DHA-23,24/SPL-131 the said flat was likely to be completed within 30 months but respondent failed to handover the possession even after lapse of four and a half years.



7. That complainant through registered post has sent letter for cancellation of her plot to the chief revenue officer Housing Board Haryana, Panchkula but till date there is no response from the respondent. Complainant has also sent reminder letters dated 29.10.2021 and 23.02.2022 regarding cancellation and refund of her paid amount but respondent has not responded to said letters of the complainant.
8. That a period of more than 5 years has lapsed but respondent has failed to handover the unit to the complainant. Since the Respondent could not develop the project in time and handover physical possession of the flat, thus the petitioner is entitled for the refund of the deposited amount along with interest and the respondent be directed to pay the entire amount deposited by the petitioner with the respondent along with interest in terms of rule 15 of HREERA Rules, 2017 i.e. SBI MCLR + 2%.

**C. RELIEF SOUGHT**

9. Complainant sought following relief:
  - (i) To direct the respondent to handover entire money deposited by the complainant with interest on the complete amount which has been deposited with the respondent by the complainant from the date amount deposited till date of realization of

 Rathee



amount as per the Real Estate (Regulation and Development) Act, 2016 r/w Haryana Real Estate (Regulation and Development) Rules, 2017 at the rate prescribed under the Act.

- (ii) Award litigation cost to the tune of Rs. 50,000/- to the complainant on account of being BPL person and senior citizen.
- (iii) Any other relief as this Hon'ble Authority may deem fit appropriate.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

10. That it is submitted that the present complaint is not maintainable against the answering respondent and the instant complaint is liable to be dismissed as no cause of action has accrued in favour of the complainant to file the present complaint. The complainant has filed the present complaint without exhausting the proper remedies available to him and without approaching the Housing Board authorities for redressal of his grievance, hence the present complaint is premature and thus liable to be dismissed.

11. That the complainant has not approached this Hon'ble Authority with clean hands and has suppressed real and material facts relating to this case hence the present complaint is liable to be dismissed on this ground also.



12. That the complainant has portrayed the answering respondent as a Developer of Real Estate whereas Housing Board Haryana (hereinafter the Board is an establishment of Government of Haryana under the Haryana Housing Act 1971 (Haryana Act No. 20 of 1971). Hence the answering respondent is a statutory body and not a mere real estate developer.

13. That Smt. Sita Rani Dhawan W/o Sh. Satpal has applied for registration of EWS flat for BPL families at Sec 23-24 Dharuhara in the year 2015. The complainant was declared successful against final registration No. 131. The complainant has surrendered his registration vide application dated 06.12.2021 and requested for refund of deposit amount as per policy of Board. The complainant is entitled for refund of deposited amount as per Haryana Housing Board Act (Allotment Management and Sale of Tenements Regulation 1972 Clause 12 is reproduced as under

*" the applicant withdraws his application till the date of offer of house by the Board, 10% of the amount deposited with application at the time of registration shall be forfeited to the board and balance refunded to him without any interest "*

A handwritten signature in blue ink, appearing to read 'Satpal', with a horizontal line underneath it.

14. An amount of Rs. 87,400/- has already been refunded by the respondent vide cheque on 11.04.2023 after deducting 10% earnest money amounting to Rs. 4600/-.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

15. Ld. counsel for the complainant submitted that complainant had booked an EWS flat in the respondent's project 2165, three storied EWS flats for BPL families, in Sector 23 and 24 Dharuhera after paying an amount of Rs. 46,000/- on 21.01.2015. An allotment letter dated 09.12.2016 was sent to the complainant by the respondent thereby informing her that she had been declared successful allottee in the draw of lots dated 29.11.2016. Thereafter an amount of Rs. 46,000/- was paid by the complainant on 06.12.2017. In total complainant had paid an amount of Rs. 92,000/- to the complainant till 06.12.2007. Complainant has alleged that the construction of the flat was likely to be completed in 30 months as per letter no. IIBII/CRD(P.M)/2016/DHA-23,24/SPL-131, however even after lapse of 4 and a half years flat is not completed. Complainant sent a cancellation letter dated 16.09.2021 thereby withdrawing from the allotment for non-completion of the flat. Complainant also sent reminder letters dated 29.10.2021 and 23.02.2022 to the respondent for withdrawal of his allotment but no response was received from the respondent's side.



16. Id. counsel for the complainant drew the attention of the Authority towards the fact that it is only after filing of this complaint that respondent has refunded an amount of Rs. 87,400/- to the complainant. Complainant presses for relief of refund of entire money along with interest on the complete amount.

17. Id. Counsel for the respondent submitted that it is the complainant who has surrendered her allotment and respondent has not itself cancelled her allotment. Further an amount of Rs. 87,400/- has already been refunded to the complainant after deducting earnest money of 10% as per policy of Housing Board Haryana vide cheque dated 11.04.2023. With respect to the averment of Id. counsel for the complainant regarding the completion of the flat within 30 months, Id. counsel for the respondent submitted that in the said letter the sentence used is that "the flats are likely to be made available for allotment within 30 months". He argued that the flats were "likely" to be completed in 30 months and this condition was not definite.

**F. ISSUE FOR ADJUDICATION**

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





**G. OBSERVATIONS OF THE AUTHORITY**

19. On perusal of the complaint file and after hearing arguments of counsel of complainant and respondent, it is noted that the first objection taken by the respondent is that the complainant has portrayed the answering respondent as a "Promoter" of Real Estate whereas Housing Board Haryana is an establishment of Government of Haryana under the Haryana Housing Act 1971 (Haryana Act No. 20 of 1971) and therefore the respondent is not a real estate developer/Promoter. In this regard Authority observes, it needs to be examined whether respondent (Housing Board Haryana) falls under the definition of "Promoter" as provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of "promoter" under section 2(zk) needs to be perused. Definition is provided below:

*(zk) "promoter" means,—*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the*



*purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of—*

*(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

*(b) plots owned by such authority or body or placed at their disposal by the Government,*

*for the purpose of selling all or some of the apartments or plots; or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person who constructs any building or apartment for sale to the general public.*

Plain reading of the definition given under section 2(zk) makes it clear that any development authority in respect of allottee of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments.



Here, Housing Board Haryana is a Development Authority, that issued an allotment letter to complainant on 09.12.2016 at allotting a unit at Dharuhera, Sector 23 and 24. Hence, Housing Board is covered under the definition of promoter under Section 2(zk).

20. Another objection which has been taken by the respondent is that complainant has not approached this Hon'ble Authority with clean hands and has suppressed real and material facts relating to this case. In this regard it is observed that it is mere averment of the respondent which does not find mention in the pleadings nor any document has been placed on record to prove the fact that complainant has approached the Authority with unclean hands hence, this objection is unsustainable.

21. Further respondent has averred that no cause of action accrues in favour of the complainant. In this regard, it is observed that respondent has taken an amount of Rs. 92,000/- from the complainant with respect to allotment of her flat and has not delivered possession of her booked flat within time. As per Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 cause of action to demand refund accrued in favour of complainant on the lapse of due date for handing over possession and such cause of action is a continuing one.





22. There is no dispute to the facts of this case that complainant booked an EWS flat in the respondent's project after paying an amount of Rs. 46,000/- on 21.01.2015. Thereafter allotment letter was issued on 09.12.2016. Complainant has paid an amount of Rs. 92,000/- against total consideration of Rs. 4,60,000/- to the respondent for his booked flat.

23. The main grouse of complainant is that respondent failed to handover the possession of booked unit to the complainant within time as specified in the allotment letter. Complainant after a lapse of 4 and a half years vide letter dated 06.09.2021 communicated to the respondent that due to non-completion of the unit even after 4 and a half years she is not interested in taking possession of the said flat and wants refund of the amount paid towards the flat. Complainant also sent reminder letters dated 29.10.2021 and 23.02.2022 for the same but no refund was made by the respondent till 22.12.2022 thereafter complainant pursued complaint before this Authority.

24. It is a matter of record that after filing of complaint before the Authority by the complainant, respondent refunded the paid amount of Rs. 87,400/- after deducting 10 % earnest money i.e, Rs. 4600/- to the complainant on 11.04.2023.

25. Authority observes that in the present case as per clause 6(iv) of the application form the date of possession will be taken as 30 months from the





cut-off date (date till which the applications were invited) i.e, 21.01.2015 which works out to be 20.07.2018. Respondent within a reasonable time of booking was expected to complete all necessary steps for delivering possession of the purchased unit. The government provides land for building of houses under such scheme at subsidized rates and also facilitates arrangement of loan on subsidized rate to allottees of such scheme. The whole idea is to squeeze the sale price of flats to a level within the reach of BPL families of Haryana. Respondent cannot be allowed to take 20 % of the amount of flat and not deliver possession even after lapse of approx. 7 years from the deemed date of possession. In these circumstances the interest of the allottee gets affected as the project has not been completed by the respondent within a reasonable time.

26. The respondent in present case has not completed the project within a reasonable time after 10 years of the launching of the project. The respondent has been utilizing an amount of Rs. 92,000/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot legally sustain.

27. 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 Hon'ble 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

Satue

respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

28. In the present case deemed date of possession is 20.07.2018. Complainant has cancelled her allotment on 16.09.2021 after waiting for 3 years after lapse of deemed date of possession. Respondent in its reply has submitted that 10% earnest money is deducted as per condition no. 12 however it has not been specified as to where that condition has been specified. In considered opinion of the Authority, any rule or condition will be applicable only in those cases where there is no default on the part of respondent board in discharging its obligation towards allottees. The respondent Board cannot be allowed to take shelter of any condition for deduction of 10% earnest money in case of an allottee for whom the respondent itself has created circumstances rendering her practically unable to bear the cost of the house. As per section 18 of the RERA Act, 2016 and in light of the Supreme Court judgement in "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" complainant is entitled to interest at prescribed rate from the date of payment till date of refund of amounts.

29. 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;

30. Rule 15 of IIRERA 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".*





31. 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., 13.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e., 11.0%
32. 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 along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund, i.e., 11.04.2023. Further, as respondent had already refunded an amount of ₹87,400/- to the complainant on 11.04.2023, thus, respondent is liable to refund the balance principal amount, i.e., 4600/- and interest w.r.t said amount from date of refund till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no	Principal amount	Date of Payment	Interest from date of Payment till date of refund by the respondent 11.04.2023(in Rs.)
1.	46,000/-	21.01.2015	42,009/-
2.	46,000/-	06.12.2017	27,321/-
	Total-92,000/-		69,330
	(-)87400/-		
	=4600/-		

*Satish*

Sr.no	Balance amount (Principal amount - Refund amount)	Date of Refund	Interest from date of refund till date of order 13.05.2025 (in Rs.)
1.	4600/-	11.04.2023	1069/-

=Total amount to be refunded to the complainant= 69,330  
+4600+1069= 74,999/-

33. Further, the complainant is seeking litigation expenses. 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 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 litigation expenses 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 legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **J.DIRECTIONS OF THE AUTHORITY**

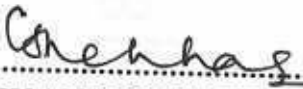
34. Hence, the Authority hereby passes this order in the present complaint and issues following directions under Section 37 of the Act to ensure



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 amount of ₹74,999/-/- alongwith interest from date of refund till the actual realization of the amount.
- (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.

**Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.

  
.....  
**CHANDER SHEKHAR**  
[MEMBER]

  
.....  
**DR. GEETA RATHEE SINGH**  
[MEMBER]