



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	893 of 2023
Date of filing:	10.04.2023
Date of first hearing:	04.05.2023
Date of decision:	23.01.2024

Rajni Sharma

R/o House No. H-306, Karam Pura, West Delhi,
New Delhi-110015.

...COMPLAINANT

VERSUS

M/s Ansal Properties & Infrastructure Ltd.,

Office Address 115, Ansal Bhawan, 16, Kasturba Gandhi Marg,

New Delhi- 110001

...RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Present: Mr. Vivek Sethi, Ld. Counsel for Complainant through VC.
Mr. Sunny Tyagi, Ld. Counsel for Respondent through VC.

ORDER

1. Present complaint was filed on 10.04.2023 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, Sonipat
2.	Name of the promoter	M/s Ansal Properties & Infrastructure Ltd.
3.	RERA Registered/not registered	Registered- HRERA-PKL-SNP-173-2019 dated 30.10.2019.
4.	Flat No.	0102-27-0502
5.	Area	1610 sq. ft.
6.	Date of allotment	08.09.2011
7.	Date of flat buyer agreement (BBA)	08.09.2011
8.	Deemed date of possession	08.09.2015 as per clause 5.1 of flat buyer

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		<p>agreement as follow:-</p> <p><i>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></p>
9.	Total sale consideration	Rs.29,78,500/- as per flat buyer agreement .
10.	Amount paid by the complainant	Rs.32,60,086/-
11.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the case of the complainant is that the complainant was allotted flat no. 0102-27-0502 admeasuring super area 1610 sq. ft in the respondent's project "Green Escape Apartments" Sector-35, Sonipat on 08.09.2011. Copy of allotment letter is annexed as Annexure-C-3 wherein construction linked plan of payment was opted by the complainant.

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4. That a flat buyer agreement was executed between the parties on 08.09.2011, annexed as Annexure-C-4 with complaint file. As per clause 5.1 of the said agreement possession of the flat was to be offered within 42+6 months from the date of execution of agreement or from the date of commencement of particular block, meaning thereby that the respondent had to offer possession of the said apartment by September 2015, which the respondent failed to do.
5. That an amount of Rs. 32,60,086/- stands already paid by the complainant which is more than the total sales consideration of Rs.29,78,500/-. Copies of receipts and the statement of accounts issued by respondent as proof of said payments has been annexed as Annexure C-5 (colly) and Annexure C-6 respectively of complaint file.
6. Even after more than 11 years of booking of the unit the respondent has failed to complete the construction of the project and has failed to deliver the possession of the unit and has violated the terms of their own contract.
7. That the complainant, being aggrieved, filed a present complaint seeking the refund of her deposited amount along with interest from various dates of payments from the respondent for its failure to deliver the possession of the flat, as per the terms and conditions of the agreement. Hence, this complaint.



C. RELIEFS SOUGHT

8. In view of the facts mentioned above, the complainant pray for the following reliefs:

- (a) To direct the respondent to refund amount of Rs. 32,60,086/-paid towards allotted residential Flat/ Unit No.: 0102-27-0502, (super area: 1610 sq. ft.) in Green Escape Apartments, Sector 35, Sonipat. Haryana.
- (b) To direct the respondent to pay interest on delayed possession for more than 11 years as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 to the complainant;
- (c) To direct the respondent to Pay Rs.5,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment;
- (d) To direct the respondent to pay Rs.5,00,000/- as compensation to the complainant as part of deficiency of service on your part;
- (e) To direct the respondent to refund of all legal cost of Rs. 50,000/- incurred by the complainant.
- (f) Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent has not filed any reply in the present case. Today, Id. counsel for the respondent stated that reply need not be filed in this case as respondent is not in a position to construct the unit and give possession due to financial crunches.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

10. During oral arguments, learned counsel for the complainant reiterated the arguments as were submitted in writing. Id. counsel for the respondent submitted that his statement may be recorded that respondent is not in a position to construct the unit and give possession due to financial crunches in the project. In response, Ld. counsel for complainant stated that complainant has lost faith in respondent project and wants to withdraw from said project and thus insisted only for refund of paid-up amount along with interest. He further stated that complainant has sought refund of Rs. 32,60,086 /- in her complaint, however, due to absence of proof of payment of Rs. 80,419/- which was also directed by Authority to place on record in its order dated 22.11.2023, complainant is waiving off her claim with respect to amount of Rs. Rs. 80,419/- and insisted for relief of refund of remaining amount along



with interest as per the proofs annexed at Annexure-C-5 Colly and Annexure-C-6 of complaint file

F. ISSUES FOR ADJUDICATION

11. 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

12. 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 that there is no dispute with respect to fact that complainant in the present case has executed flat buyer agreement for unit/flat no. 0102-27-0502, admeasuring super area 1610 sq. ft. on 08.09.2011. 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 i.e., by 08.09.2015. However, the promoter failed to deliver the possession of the unit within time stipulated in the flat buyer agreement. Therefore, the complainant filed the present complaint on 10.04.2023 expressing her intention to not to continue with the project the respondent. However, the

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respondent has taken a defence that delay in construction has been due to financial constraints and reasons beyond the control of the promoter.

13. Authority observes that the complainant had paid an amount of Rs.32,60,086/- out of the total cost of Rs.29,78,500/-. 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 allottee was misappropriated by the respondent/promoter instead of using it towards construction of the project. 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 reasons beyond control of promoter, it is very general statement with no support, therefore, not tenable

14. In these circumstances where the flat buyer agreement was signed way back in the year 2011 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., handing over of possession 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.

15. Factual position reveals that respondent company is not in a position to deliver possession of booked unit. As per agreement for sale, possession of the unit was to be handed over in 42 months plus 6 months grace period from the date of executing flat buyer agreement i.e., 08.09.2015. In the relief clause of the complaint, complainant had claimed refund of Rs.32,60,086/-. However, out of said amount, proof of Rs. 80,419/- is not available on record. Therefore amount of Rs.31,79,667/- whose proof is available on record is liable to be refunded. 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.

16. 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.

17. This project 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

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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,".

18. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e., 23.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR 2% i.e., 10.85%.

19. The definition of term "interest" is defined under Section 2(z) 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;

20. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount.

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Complainant has sought refund of Rs. 32,60,086/- , however, the proof of payment of Rs.31,79,667/- has been annexed at Annexure-C-5 Colly and Annexure-C-6 of complaint file. Hence, Authority directs respondents to refund to the complainant the paid amount of Rs.31,79,667/- 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 on to 10.85% (8.85%+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 10.85% till the date of this order and said amount works out to **Rs. 66,80,046/-** as per detail given in the table below:

Principal Amount	Interest Accrued till the date of order i.e., 23.01.2024	Total Amount Payable To Complainant (Principal amount +interest)
Rs.31,79,667/-	Rs.35,00,379 /-	Rs. 66,80,046/-

22. The complainant is seeking compensation in clause c, d, e and f of reliefs on account of mental agony, torture, and harassment, deficiency in service and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*", has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14,

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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 of compensations.

I. DIRECTIONS OF THE AUTHORITY

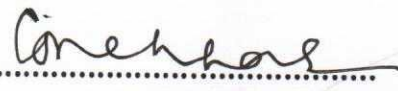
23. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

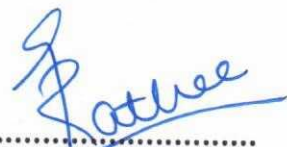
- (i) Respondent is directed to refund the entire amount of **Rs. 66,80,046/-** to the complainant. Interest shall be paid uptill the time period provided under Section 2(za) of the RERA Act, 2016.
- (ii) Further, Respondent is directed to pay the cost of Rs. 5000/- payable to Authority and Rs. 2,000/- payable to complainant imposed vide order dated 08.08.2023 for non-filing of reply.
- (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.

24. **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]

