



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1058 of 2022
Date of filing:	24.05.2022
First date of hearing:	02.08.2022
Date of decision:	17.03.2025

Mr. Umesh Kumar Srivastava S/o Late Shri L.P. Srivastava
R/o H.No. 652, Sector 31, opposite green belt,
Near Shiv Mandir, Faridabad,
Haryana-121003

....COMPLAINANT

VERSUS

M/s ORS Infrastructure Pvt. Ltd
through its Managing Director/Director/Authorised Representative.

Registered Office:

1731/1, Gurudwara Road,
Kotla Mubarakpur,
New Delhi-110033

...RESPONDENT

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: Mr. Kunal Thapa, Id. counsel for the complainant through VC.

None for the respondent.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 24.05.2022 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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	Royal Residency Location: Faridabad, Haryana.
2.	Name of promoter	ORS Infrastructure Pvt. Ltd.
3.	Date of booking	28.05.2008(Application Form)
4.	Unit area	1200 sq. ft. as per Flat Buyer Agreement
5.	Date of allotment	Allotment not made
6.	Date of Flat buyer agreement	Flat Buyer Agreement on 22.10.2008



7.	Basic Sale Price	₹27,19,500/-
8.	Amount paid by the complainants	₹23,55,755/- as per receipts.
9.	Due date of possession	Within 36 months As per clause 28 of Flat Buyer Agreement dated 22.10.2008
10.	Offer of possession	Not given till date.

3. Brief facts as averred by the complainant are that he had booked a flat in 28.05.2008 in the respondent project 'Royal Residency Faridabad' located at Sector -89, Faridabad. A copy of application form along with provisional registration application is annexed as Annexure C-2. The complainant had entered into an agreement between respondent and LIC Housing Finance Ltd. in the year 2008 for financing the booked unit. A Tri-paritite Agreement was executed for sanction of ₹22,50,000/- out of 23,36,643 @ 11% which was payable by the complainant to the respondent after advance payment to the respondent. Copy of Tri-partite agreement is annexed as Annexure C-3.
4. Respondent had issued a letter dated 07.09.2008 wherein the respondent assured the complainant that the project shall be completed on time and the construction activity in the project had already been started. Copy of letter dated 07.09.2008 is annexed as Annexure C-4. Respondent had invited the complainant to sign the Flat Buyer's Agreement on 22.10.2008 for the Flat No. 102, Ist floor in Tower B-1,



having super area of 1200 sq ft. in the said project. As per Clause 28 of the Flat Buyer's Agreement, opposite party was legally obligated to hand over the possession of the said flat within 36 months from the date of signing of the agreement i.e. upto 22.10.2008. A copy of the Flat Buyer's Agreement dated 22.10.2008 is annexed as Annexure C-5.

5. That the complainant has already made a total payment of ₹23,46,740/- to the respondent against total sale consideration. That respondent neither started any construction nor took care to inform about the reasons behind the such extraordinary delay. Such conduct of the respondent indicates inadequacy and imperfection in nature and manner of the performance of the service. A copy of demand notice for due amount and payable by the complainant as issued by respondent is annexed as Annexure C-6. A copy of disbursement details of LIC Housing Finance to the opposite party is annexed as Annexure C-7. Copies of all receipts issued by the respondent to the complainant for payment of dues and installments are annexed as Annexure C-8.
6. That even after lapse of almost 9 years, neither any construction was seen at the site nor any satisfactory response was given by the respondent, then complainant had sent a letter dated 08.07.2017, requesting for cancellation of the said booking and sought refund of paid amount along with damages. In the said letter, it was further elucidated that the complainant was paying interest at the rate of 11% to the LIC



Housing Finance on pay the installments of the loan. Copy of letter dated 08.07.2017 is annexed as Annexure C-9.

7. Complainant has regularly enquired about the status of project but nothing has been done by the respondent. Complainant had sent emails dated 08.07.2017, 27.07.2017, 05.08.2017 and 05.04.2018 to the respondent for seeking enquires and status of refund of the money but no reply has been received from the respondent. Copies of the said emails are annexed as Annexure C-10.
8. Grouse of the complainant is that despite lapse of about eleven years from the date of booking, respondent has failed to deliver the possession of flat to the complainant and the purpose of booking the flat has been totally frustrated. Now, complainant no longer needs the booked flat and is seeking refund along with interest as per RERA Act 2016R/w HRERA Rules, 2017 from the respondent.
9. Persual of file revealed that complainant is seeking refund of an amount of ₹23,55,755 as per page no. 1 of the complaint file but as per page no. 7 of complaint book total amount paid to the respondent is ₹ 23,46,740/-. In pursuance of which vide order dated 02.08.2022, Authority directed the complainants to clarify the amount paid but no response was received from the complainant. As per receipts annexed as to the complaint, total amount paid is ₹5,52,792/- only. Vide order dated 29.07.2024, again an opportunity has been granted to file all receipts or affidavit if no receipts were available. On 13.03.2025, an application for placing on



record copies of payment made by complainant to the respondent along with affidavit in support of the amount deposited has been filed by the complainant. From the perusal of said application, it is clear that amount paid by the complainant to respondent works out to ₹23,55,755/-. Hence, for the purpose of refund sought by the complainant from the respondent an amount of ₹23,55,755/- is taken as the paid amount.

10. Notice issued remained undelivered to the respondent till last three hearings. However, on 4th hearing held on 28.03.2023, Mr. Sourabh Goel, Counsel for respondent appeared and accepted the notice. He further sought time to file reply and the case was adjourned to 01.06.2023, but none appeared on that day on behalf respondent. On 5th hearing, Authority granted last opportunity to respondent to file reply and case was adjourned to 14.09.2023. On 14.09.2023, hearing could not be conducted due to technical snag and matter was adjourned to 22.11.2023. On 22.11.2023, neither anyone appeared on behalf of the respondent nor any reply was filed. Authority imposed a cost on respondent for not filing reply and granted last opportunity to the respondent for filing reply. Case was adjourned to 05.03.2024. On next date of hearing, again no one appeared on behalf of respondent. Therefore, Authority decided to struck off the defence of the respondent. Till 10th hearing, except during 4th hearing, neither anyone appeared on behalf of respondent nor any



reply has been filed even the cost imposed on the respondent has not been paid by the respondent.

11. Authority observes that this is 10th hearing of the case, but none is present on behalf of respondent. Therefore, there seems no valid reason to grant any further opportunity to the respondent for appearing and filing reply and Authority decided to proceed ex-parte. Case is being heard and disposed off on merits on the basis of facts available on record.
12. On the basis of submissions of complainant and perusal of record, Authority observes that despite lapse of about 16 years from the date of booking, no offer has been made by the respondent for handing over the possession of the booked flat.
13. In such circumstances, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs respondent to refund amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.
14. 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 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".

15. 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.

16. 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., 17.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(vii) 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;

17. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the date of actual realization of the amount. Hence, the Authority directs respondent to refund the paid amount of ₹23,55,755/- 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 along with interest calculated at the rate of 11.10% till the date of this order and said amount works out to ₹65,30,472/- as per detail given in the table below:

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Sr.no.	Principal Amount	Date of payment	Interest Accrued till 03.03.2025
1.	3,00,000/-	27.05.2008	5,60,079/-
2.	1,11,957/-	04.10.2008	2,45,471/-
3.	2,40,723/-	06.12.2008	4,35,284/-
4.	2,50,000/-	06.12.2008	4,52,059/-
5.	2,65,170/-	06.12.2008	4,79,490/-
6.	4,80,000/-	06.12.2008	8,67,953/-
7.	2,49,510/-	06.12.2008	4,51,173/-
8.	1,08,780/-	06.12.2008	1,96,700/-
9.	1,08,780/-	06.12.2008	1,96,700/-
10.	15,170/-	02.02.2009	27,163/-/-

11.	1,75,665/-	18.08.2012	2,45,471/-
12.	50,000/-	14.10.2014	58,055/-/-
TOTAL	₹23,55,755/-		₹41,74,717₹/-
Total amount to be refunded to the complainant = ₹23,55,755/- + ₹41,14,717/- = ₹65,30,472/-			

DIRECTIONS OF THE AUTHORITY

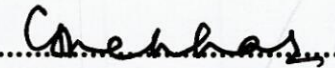
18. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹23,55,755/- with interest as calculated in table in para -17. It is further clarified that respondent will remain liable to pay the interest to the complainants till the actual realization of the above said amounts.
- (ii) Respondent is directed to pay the cost amount of ₹5,000/- payable to the Authority and ₹2,000/- payable to the complainant within 90 days from uploading of this order. In case said penalty is not deposited within specified period, then office is directed to initiate a suo-moto proceedings against the respondent.



(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.

The present complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]