



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision	17.03.2025
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Sr. no.	Complaint no.	Title of the complaint	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	1540/2022	<p>Mrs. Monika W/o Sh.Deepak Kajla R/o Vill. Soldha, Bahadurgarh, Distt. Jhajjar, Haryana-124507.</p> <p>Vs.</p> <p>M/s. Essel Housing and Infrastructure Development Pvt. Ltd. (Through its Mangaing Director) R/o 135, Continental Building, Dr. A. B. Road, Worli, Mumbai, Maharashtra-400018.</p> <p>2nd Address:- Asha City, Sector 36, By Pass Road, Tehsil- Bahadurgarh, Distt. Jhajjar, Haryana.</p>	Mr. Ashok proxy for Adv. Drupad Sangwan, Counsel for complainant.	Mr. Satyam Sharda, Counsel for respondent through VC.
2.	1544/2022	<p>Mr. Deepak Kalija S/o Sh. Ram Kumar Kalija R/o Vill. Soldha, Bahadurgarh, Distt. Jhajjar, Haryana-124507</p> <p>Vs.</p> <p>M/s. Essel Housing and</p>	Mr. Ashok proxy for Adv. Drupad Sangwan, Counsel for complainant	Mr. Satyam Sharda, Counsel for respondent through VC.

	Infrastructure Development Pvt. Ltd. (Through its Mangaing Director) R/o 135, Continental Building, Dr. A. B. Road, Worli, Mumbai, Maharashtra-400018. 2nd Address:- Asha City, Sector 36, By Pass Road, Tehsil- Bahadurgarh, Distt. Jhajjar, Haryana.		
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CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

ORDER (NADIM AKHTAR-MEMBER)

1. This order shall dispose off the above captioned two complaints filed by the complainants before this Authority 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.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainants in complaint No. 1540 of 2022 and



complaint no. 1544 of 2022 are allottees of the project namely; "Asha City" being developed by the same respondent/ promoter, i.e., Essel Housing and Infrastructure Development Pvt. Ltd. As such, the issue involved in both the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question despite receipt of part completion certificate for the plots in question and both the complainants are now seeking refund of paid amount with delay interest. This order is being passed by this Authority passed by taking the Complaint No. 1540/2022 titled as "Monika Vs. Essel Housing and Infrastructure Development Pvt. Ltd." as a lead case.

3. The details of the captioned complaints i.e. unit no., date of allotment letter, date of builder buyer agreement, total sale consideration and amount paid by the complainant and offer of possession are given in the table below:



Project- ASHA CITY, SECTOR-35, BAHADURGARH, JHAJJAR, Haryana RERA Registered/not registered-Not registered							
Sr no	Complaint no. /Date of filing	Reply Status	Unit no.	Date of BBA executed/ DDOP	Total sale consideration (TSC) and Paid amount	Offer of possession given or not given	
1.	1540-2022 04.07.2022	Filed on 01.02.2023	Initially Plot no. -74, phase-6 (143.5 sq. yards) Later on transferred to Plot No. D042, Phase-2	Not executed DDOP- 30.09.2019	TSC: Not mentioned Paid amount: ₹1,50,000/-	Not given	
2.	1544-2022 04.07.2022	Filed on 01.02.2023	Initially Plot no. -54, phase-6 (143.5 sq. yards) Later on transferred to Plot No. D041, Phase-D	Not executed DDOP- 30.09.2019	TSC: Not mentioned Paid amount: ₹1,50,000/-	Not given	

A. FACTS OF THE LEAD COMPLAINT

4. Facts of the present complaint as pleaded in complaint are that complainant had booked a residential Plot No. 74, measuring 143.5 sq. yard in the project namely; "ASHA CITY" in Bahadurgarh vide



Application for Expression of Interest dated 02.03.2017 and paid a booking amount of Rs. 1,50,000/- for the same vide Cheque No. 000002 dated 10.03.2017 of HDFC Bank. The deemed date of delivery for the said project was 30.09.2019, as per the payment schedule shown at the time of booking of the said plot. Respondent also issued an allotment letter but failed to provide the copy of the same to the complainant. The copy of the application for expression of interest dated 02.03.2017 is annexed as "Annexure C-1". A copy of the cheque dated 10.03.2017 is annexed as "Annexure C-2."

5. That in 2019, Mr. Pardeep, an authorized representative of the opposite party/respondent transferred the said plot of complainant from "Plot No. 79 phase 6 (143.5 Sq. Yards.)" to "Plot No. D042 phase-2" in new project of the respondent on the pretext that Phase 6 lacked certain compliance. Furthermore, Mr. Pardeep promised timely possession. A note qua the transfer was noted on the Application for Expression of Interest and the opposite party promised an updated allotment letter qua the same. That the deemed date of possession as per the schedule laid down by the opposite party was 30.09.2019.

6. That complainant received an email dated 24.02.2021 from the opposite party/respondent regarding project update report till



20.08.2021, whereby, requesting the complainant to clear dues. A copy of the email dated 24.08.2021 is annexed as Annexure C-3.

7. That complainant had never defaulted in any payment as per request raised by the opposite party and had shown an active approach regarding the said booking. On 03.11.2021, complainant received an unverified letter on an unverified letter head without any authorized signature, dated 03.11.2021, on behalf of opposite party, whereby in contradiction to the previously agreed terms and condition respondent with a mala-fide intention informed that "purpose of deposit cannot be fulfilled" and initiated refund process for the booking amount paid by the complainant without his consent and cancelled the said booking made with the opposite party. After receiving the said letter, complainant approached the respondent but their office bearers failed to address the concern of complainant which clearly shows that respondent, after realizing the increase in the value of the said plot in the market, with a malafide intention, wants to illegally acquire back the plot allotted to the complainant to capitalize on the enhanced market value post sale. A copy of the letter dated 03.11.2021 is annexed as "Annexure C-4".



8. That the complainant again received emails dated 28.02.2022 and 20.03.2022 from the opposite party requesting complainant to clear dues, if any. Copies of the same are annexed as Annexure-C 5/6.
9. Further, on 01.04.2022, the complainant wrote a comprehensive email to the opposite party detailing all the grievances of the complainant and highlighting the mala fide practices being followed by the company to oppress innocent allottees and again demanding the opposite party to issue allotment letter so that subsequent payments can be made. The copy of the email dated 01.04.2022 is annexed as "Annexure C-7".
10. That on 02.05.2022, complainant received another letter from the opposite party, ignoring the email of the complainant dated 01.04.2022, stating that the opposite Party will refund the amount as the purpose of the deposit could not be fulfilled. A copy of the letter dated 02.05.2022 is annexed as "Annexure C8". Complainant was willing to perform his part of the agreement and expects timely possession of the plot allotted to her and safeguard her right of getting possession on account of the booking made and allotment issued.

B. RELIEFS SOUGHT:-

11. That the complainant seeks following reliefs and prayed for issuance of directions to the respondent:-



- i. In the event that the registration has been granted to the opposite party for the abovementioned project under RERD Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERD Act, 2016 for violating the provisions of the RERD Act, 2016.
- ii In exercise of powers under section 35 of RERD Act, 2016, direct the opposite party to place on record all statutory approvals and sanctions of the project;
- iii In exercise of powers under Section 35 of RERD Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demand if any;
- iv. To direct the opposite party to withdraw letter dated 03.11.2021 whereby in contradiction to the previously agreed terms and condition, opposite party with a mala-fide intention informed that "purpose of deposit cannot be fulfilled" and initiated refund process for the booking amount paid by the complainant and tried to cancel the said booking made with the opposite party.
- V. To direct the opposite party to hand over the allotment letter for the said booking and enter into proper buyer agreement as



provided under the Real Estate (Regulation and Development),
Act 2016.

- vi. To direct the opposite party to deliver possession of the said plot as soon as possible as the deemed date of possession has already elapsed.
- vii. To provide the complainant interest on deposited amount for the delay in completion of the project from 30.09.2019 till actual delivery of possession by paying interest on the total amount of Rs. 1,50,000/- at the rate of 9.5 % per annum in accordance with Rule 15 of the Real Estate (Regulation and Development), Act 2016.
- viii. To pay the complainant a sum of Rs. 1,10,000/- as legal fees.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 01.02.2023 pleading therein as under:-

- 12. That captioned compliant is not maintainable in law. The present complainant is not "an allottee" according to Real Estate (Regulation and Development) Act, 2016 since no proof of any booking request letter / allotment letter, buyer's agreement is annexed by the complainant.



13. That complainant has got no locus standi or cause of action to file the present complaint.
14. That there exists no entity with the name, "Essel Housing and Infrastructure Development Ltd." No Project is being developed by the said entity, hence no question arises of project office situated at Bahadurgarh.
15. That respondent is not developing any project by the name, 'ASHA CITY'. Further, an amount of Rs 1,50,000/- was paid as an interest-free security amount not as a booking amount to respondent but for finding out a property of the complainant's choice. It was mutually agreed at the time of depositing the amount that if the respondent could not find such a suitable property for the complainant, the said amount would be refunded to the complainant. Further respondent never issued any allotment letter to complainant and there was no promise for estimated time for the delivery of booked plot. In fact, complainant has himself mentioned in para no. 4 of the complaint that the said amount of Rs. 1,50,000/- was an expression of interest. There exists no allotment letter, buyers agreement or any such document hence there arises no question of default in payment.
16. Furthermore, letter dated 03.11.2021 annexed by complainant is an unverified letter on an unverified letterhead without any authorized



signature and the same is in contradiction to the previously agreed terms and conditions. On the other hand, respondent has sent a duly authorized and legit letter dated 03.11.2021 which was very well in furtherance of the agreed terms and conditions to complainant. That the respondent proceeded as per the averments of letter dated 03.11.2021. Moreover, respondent also gave multiple reminders/intimations through email/letters dated 03.11.2021, 02.05.2022, 17.06.2022.

17. Respondent gave ample chances to the complainant to put forward any objection to the refund of amount. There was not even a single instance where any objection was raised by the complainant and so respondent company proceeded with the refund of his paid amount; however the account of the complaint was closed. In furtherance, respondent asked for updated account details complainant, but the complainant never responded. The copies of communications are annexed as "Annexure A-1 (Colly)".

D. DOCUMENTS SUBMITTED BY BOTH THE PARTIES:-

18. An application dated 22.08.2023 was filed by the complainant for placing on record additional documents, i.e., RTI application, Information under RTI from DTCP, Information under RTI from HRERA, similarly placed letter, Agreement to sell and allotment



letter. To rebut the same, a reply was filed by the respondent on 01.04.2024. An application for impleading 'Gnex Realtech Pvt. Ltd.' as party was also filed on 23.10.2024 by the complainant.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

19. During oral arguments, Proxy for complainant's counsel requested that main counsel is not well so kindly adjourn the case. His request is rejected as this is the 10th hearing of the case, vide last order of the Authority dated 11.11.2024, complainant was granted last opportunity to comply with the order dated 05.08.2024. However, nothing has been complied by the complainant till date. Learned counsel for the respondent submitted that complainant had not complied with the order of Authority and thus complaint may be dismissed on the grounds of maintainability itself.

E. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to get the possession of booked plot along with delay interest in terms of Section 18 of Act of 2016?

F. OBSERVATIONS AND DECISION OF THE AUTHORITY



21. 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 as under:-
- (i) The respondent has taken a plea that there exists no entity with the name, "Essel Housing and Infrastructure Development Ltd." No Project is being developed by the said entity; hence no question arises of project office situated at Bahadurgarh. Perusal of documents filed by the complainant revealed that a reply was sent by the HRERA Panchkula to the RTI application annexed as Annexure -4 which made it clear that no project is registered under HRERA Panchkula in Sector 36, Bahadurgarh having promoter's name as 'Essel Housing and Infrastructure Development Pvt. Ltd.'. However, projects namely, Asha Bahadurgarh- phase 1, phase 4, phase 3 are being developed by the promoter 'Gnex Realtech Pvt. Ltd.' in sector 36, Bahadurgarh, District-Jhajjar. Further, Authority vide its order dated 05.08.2024 had directed the complainant to implead promoter Gnex Realtech Pvt. Ltd. as party. In compliance, an application for impleading Gnex Realtech Pvt. Ltd. as party was filed by the complainant on 23.10.2024. Perusal of said application revealed that no amended memo of parties has been attached with the application. So the said application is hereby rejected due to incomplete/improper documents.



(ii) Respondent has also taken an objection that the stated amount of ₹1,50,000/- was paid by complainant as an interest free-security amount to the respondent for finding the property of the complainant choice and not as a booking amount of any specific plot. In this regard, Authority vide its order dated 05.08.2024, directed the complainant to remove the deficiencies pointed out by it as the annexed copies of Expression of Interest are not in order to prove allotment. Moreover, signatures on both the registration forms do not tally. Complainant annexed a copy of cheque as proof of payment of ₹1,50,000/- but the same is not accompanied by any statement of account or receipts, in absence of which, it is difficult to ascertain whether payment has been received by the respondent or not? But till date no compliance has been made by the complainant. Authority has given various opportunity to the complainant to remove deficiencies and prove the legality of the documents as annexed in the complaint file but nothing has been complied by the complainant to substantiate her claim.

iii) Further the complainant does not have any locus standi because as per provisions of RERA Act, 2016, there must be relation of promoter/builder and allottee between the parties to claim relief under this Act. In this captioned complaint, complainant is not "an allottee"



as there is no agreement for sale/ allotment letter in favour of complainant which could establish the relationship of an allottee and promoter between the complainant and respondent. In this regard, Authority observes that the main issues involved in this complaint is whether the complainant is within the ambit of the definition of "allottee" and whether there exist any relation of an allottee and promoter between complainant and respondent. Authority is of the view that in order to adjudicate the relief of possession along with delayed interest as sought by complainant, it is important to establish that there existed a relationship of a promoter and allottee between complainant and respondent. To adjudicate upon said issues, it is pivotal to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

"section 2(d): Allottee:

in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

The copy of expression of interest annexed by the complainant is not accompanied by any proof which clarify that the amount actually held




by the respondent. Hence, complainant could not establish any relation between the parties.

iv) Further, expression of interest is a document or letter submitted by potential buyer or investor to express their interest in a particular property. It only provides a formal channel for initiating discussions and exploring the potential of a real estate deal. It is an offer of contract and not a contract. It is pertinent to mention here that complainant has failed to prove by way of placing on record any documents such as issuance of booking receipts, issuance of allotment letter, buyer's agreement etc. of the said plot in the name of complainant that there exists an agreement for sale between complainant and respondent. Further, since there was no relationship of an allottee and promoter between the parties, the respondent had no obligation to execute a builder buyer agreement/allotment letter or raise any demand of the outstanding dues or make any communication with the complainant.

v) In view of above, Authority concludes that both the above mentioned complaints are not maintainable under the RERD, Act 2016 and decides to dispose off the captioned **complaint as dismissed**. This is without prejudice to complainant's rights to claim refund of amounts paid along with interest.



Disposed of. 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]

