

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 1547 of 2024
Order pronounced on : 14.05.2025

Gopi Chand
R/o:- V.P.O Bawwa, Block-Nahar,
Tehsil Kosli, District-Rewari,
Haryana-123303.

Complainant

Versus

Housing Board Haryana
Address:- Plot No. C-15, Awas Bhawan,
Sector-6, Panchkula, Haryana-134109.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Dhruv Lamba (Advocate)

Jagroop Singh (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

- The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of project	Flat for serving/Ex-Defence and Para Military personnel upto rank of JCO's and equivalent and their widows or orphans on hire purchase basis
2.	Location of project	Kherki Majra, Dhankot, Sector-102, Gurugram.
3.	Nature	Flat for serving/Ex-Defence and Para Military personnel upto rank of JCO's and equivalent and their widows or orphans on hire purchase basis
4.	RERA registered	Not registered
5.	Date of booking	31.12.2014
6.	Allotment letter	10.02.2015 (As on page no. 20 of complaint)

7.	Sale Consideration	Rs. 24,60,000/-
8.	Amount paid	Rs.6,15,000/-
9.	Letter by respondent stating the project has been scrapped along with a cheque of Rs.7,59,060/-	07.03.2024 (As on page no. 24 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the respondent Housing Board Haryana came into existence in pursuance of the Haryana Housing Board Act, 1971 and has its registered office at Plot no. C-15, Awas Bhawan, Sector 6, Panchkula, Haryana-134109.
- II. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the Act of 2016 and is well within the territorial jurisdiction of this Authority.
- III. That in the year 2014, the respondent issued an advertisement with respect to launching of "*Flats for Serving/ Ex-Defence and Para- Military Personnel of Haryana upto the rank of JCOs and equivalent and their widows or orphan*" on Hire Purchase basis at Sector - 102A, Village Kherki Majra Dhankot in District Gurugram and thereby invited applications from prospective buyers for the purchase of units in the said project.
- IV. Accordingly, relying on the assurances and promises of the respondent, the complainant made an application for Registration of a flat in the above-mentioned project and paid Rs.2,46,000/- i.e., 10% amount which was payable with the application. The total sale consideration of the subject flat

was promised to be Rs.24,60,000/-.

- V. That subsequently, a draw of lots was held on 31.12.2014 w.r.t allotment of flat in the subject project and, the complainant was declared to be successful in the aforementioned draw of lots for allotment of a flat in the project.
- VI. That on 27.01.2015, the complainant vide Application no.42887 made a payment of Rs.2,46,000/- along with Rs.2,200/- interest to the Punjab National Bank which was earlier credited into the account of the respondent by the Bank towards the sale consideration of the subject unit. The NOC regarding the same was issued by the Senior Manager of the aforementioned bank.
- VII. That on 10.02.2015, an allotment letter was issued by the respondent in the name of the complainant vide which, the complainant was informed to have been declared successful allottee in the draw of lots held on 31.12.2014 for allotment of flat in the subject project.
- VIII. That the allotment letter also mentioned the provisional regn no. to be 2059/GGN/102A/T-A/PNB and final regn. no. to be 74. Furthermore, the complainant was requested to deposit an amount of Rs.3,69,000/- within 30 days of issuance of this letter, failing which the registration of the flat shall be cancelled without notice by forfeiting 10% of the registration amount. Also, the complainant was asked to submit certain documentary proofs from the appropriate competent authority in support of the information given in the application form to determine the eligibility.
- IX. That on 02.03.2015, in compliance of the requests made in the allotment letter, the complainant submitted an affidavit dated 02.03.2015 attested by the Executive Magistrate, Nahar.
- X. That an amount of Rs.3,69,000/- was paid by the complainant in lieu of the

Allotment Letter the same was deposited within 30 days of issuance of the letter. The complainant on 04.03.2015, made a payment of Rs. 3,69,000/- to the respondent towards the total sale consideration of the subject flat vide cheque bearing no. 856852 drawn on Punjab National Bank.

- XI. That the complainant had made all the payments well on time as and when demanded by the respondent. It is a matter of fact that the complainant had made a payment of Rs.6,15,000/- towards the total sale consideration of the subject unit. The complainant for innumerable times visited the offices of the respondent to know the status of possession of the subject flat but no heed was paid to his requests and no satisfactory answer has been given to him.
- XII. That on 07.03.2024, the complainant has received a letter bearing no. HBH/Acctts/2024/1354 wherein it was specifically mentioned that the subject project has been scrapped by the respondent and a cheque of Rs.7,59,060/- bearing no.370401 dated 19.02.2024 was also attached with the said letter.
- XIII. That however, as per Section 18 of the Act of 2016 is very clear and it clearly states that if the promoter fails to complete or is unable to give the possession of the subject unit to the allottee in accordance with the terms of the agreement for sale then he shall be liable on demand of the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the subject unit along with interest at prescribed rate and the present matter is very well covered under section 18 (1) of the Act of 2016 which is reproduced below for the ready reference of this Hon'ble Authority:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or **is unable to give possession of an apartment, plot, or building.-**

(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, 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 in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

XIV. That due to the acts of the respondent and the deceitful intent as evident from the facts outlined above, the complainant has been unnecessarily harassed mentally as well as financially, and therefore the respondent is liable to compensate the complainant on various accounts. Without prejudice to the above, the complainant reserves the right to file a complaint before the Hon'ble Adjudicating Officer for compensation.

XV. That the respondent is liable to refund the amount paid by the complainant towards the sale consideration of the subject unit along with interest at prescribed rate as per Section 18 of the Act of 2016. However, the interest at prescribed rate as prescribed under Rule 15 of the Rules of 2017 has not been paid by the respondent in the present matter and accordingly, it is most humbly prayed before the Authority that the

respondent shall be directed to pay the interest at prescribed rate as prescribed under Rule 15 of the Rules of 2017 in the best interest of justice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- a) Direct the respondent to refund the interest amount at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the date of payment till the date of refund as per the provisions of the Act of 2016.

D. Reply by respondent:

5. The respondent has made following submissions in its reply:

- I. That the complainant has no locus standi to file the complaint. That the complaint is not maintainable in the present form. The respondent does not fall under the definition of "Promotor" as alleged in this case.
- II. That the respondent is a government owned public welfare body, who provides home to the public on "no profit no loss basis" and is governed by the provision of Housing Board Haryana Act 1971 and Housing Board Haryana (Allotment Management and Sale of Tenements) Regulations 1972.
- III. That the Rule 5(2) of Regulations 1972, provided that ...
"In other cases, where the Board fails to allot houses within a period of Two years from the closing date of registration, interest on amount paid with the application at the time of registration shall be payable for the period after the expiry of two years from the closing date of registration, to the date of allotment or date of refund, whichever is earlier, at the rate applicable in the case of saving bank accounts of the nationalized bank."
- IV. The draw of lots of the applications registered, has taken place on 31.12.2014 in which the complainant was found successful vide allotment letter dated 10.02.2015, without mentioning the Flat no. That

two years has been elapsed on 09.02.2017, much prior to implementation of Act 2016 in Haryana.

- V. That the policy under which the complainant has applied for, has been scraped on 06.02.2023 vide letter no. *HBH/CRO (PM)/2023* Dated 06/02/2023/13/02/2023 by the Head office HBH Panchkula, well within the notice and knowledge of the complainant.
- VI. That the complainant deposited Rs.6,15,000/- while an amount of Rs.7,59,060/-by way of cheque no. 370401 dated 19.02.2024 has been paid including interest has been admittedly paid to the complainant on 07.03.2024.
- VII. That no cause of action arose against the respondent and the complaint is liable to be dismissed throughout. That the complainant has not disclosed the true and material facts and has not come with clean hand before the Authority. That the complainant is estopped from filing the present complaint by his own act and conduct, omissions and commissions, latches. That the Authority has no jurisdiction to try the present complaint.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the complainant.

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357** and reiterated in case of **M/s Sana Realtors Private Limited**

& other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding non applicability of the Act, 2016 on the respondent.

11. The respondent has raised an objection that it is governed by the provision of Housing Board Haryana Act 1971 and Housing Board Haryana (Allotment Management and Sale of Tenements) Regulations 1972 and the provisions of the Act, 2016 are not applicable on the respondent. The Authority is of the view that as per Section 89 of the Act

2016, the Act has an overriding effect over any other existing law that is inconsistent with its provisions. The same is reproduced below:

89. Act to have overriding effect.—

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

12. This non obstante clause gives the Act, 2016 primacy over any other law — including State Housing Board Acts — if there is a conflict. Thus, the objection of the respondent of non-applicability of the Act 2016, provisions on it stands rejected.

F.II. Objection regarding respondent not falling under the definition of “Promoter”.

13. The respondent has raised an objection that the compliant is not maintainable as the respondent does not fall under the definition of “Promoter”. The Authority would like to emphasize here on the definition of the “promoter” under the Act, 2016. The definition of “Promoter” is provided under Section-2(zk) of the Act, which is as follows:

2. Definitions-

In this Act, unless the context otherwise requires,-

(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.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

14. As per Clause 2(zk)(iii) of the Act, 2016, the respondent falls under the definition of the "Promoter" under the Act, 2016. Thus, the objection of the respondent stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

15. In the present complaint, the complainant initiated a booking for a flat under the scheme launched by the Housing Board Haryana known as "Flats For Serving/Ex-Defence and para-military Personnel of Haryana upto the rank of JCOs & equivalent and their widows or orphans on Hire purchase basis" located at Kherki Majra Dhankot, Sector-102A, Gurugram. The complainant submitted the application form for the allotment of the flat and paid the booking amount of Rs.2,46,000/- i.e., 10% of the Sale consideration of the subject flat and Rs.2,200/-. The respondent confirmed this booking. Subsequently, on 10.02.2015, the



respondent issued an allotment letter in the name of the complainant and the complainant was thereby informed to have been successful in the draw of lots held on 31.12.2014 for allotment of the flat in the project. Further, vide the same allotment letter, the complainant was requested to pay an amount of Rs.3,69,000/- within 30 days of issuance of the allotment letter otherwise, the allotment of the flat would be cancelled without further notice after deducting 10% of the amount. The complainant was informed to submit certain documentary proofs regarding the eligibility. The same was done by the complainant.

16. That the respondent sent a letter bearing no. HBH/Acctts/2024/1354 wherein it was mentioned that the project has been scrapped by the respondent and a cheque of Rs.7,59,060/- bearing no. 370401 dated 19.02.2024 was attached with the said letter.
17. In the present complaint, the complainant is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, 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 in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

18. Admissibility of refund along with prescribed rate of interest: The complainant is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced 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.

19. The legislature in its wisdom in the subordinate legislation under the provision 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.
20. 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., 14.05.2025 is **9.10 %**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10 %**.
21. Accordingly, the non-compliance of the mandate contained in section Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date



+2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid and in case the cheque issued by the respondent has been encashed by the complainant, then such an amount would be deducted from the total amount payable to the complainant.

H. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
- i. The respondent/promoter is directed to refund the amount paid by the complainant i.e., Rs.6,15,000/- along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realisation.
 - ii. In case, the cheque bearing no. 370401 dated 19.02.2024 amounting to Rs.7,59,060/-, has been encashed by the complainant, then the same amount is liable to be deducted from the total amount payable to the complainants.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.

✓



HARERA
GURUGRAM

Complaint No. 1547 of 2024

24. File be consigned to the registry.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2025



HARERA
GURUGRAM