



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2242 of 2022
Date of filing:	23.08.2022
First date of hearing:	18.10.2022
Date of decision:	28.04.2025

Parveen Kumar, through SPA Holder of Deepak Doda,

H.No. 3549 P, Phase 3, Behind Gurdwara, Sector-15, Sonipat-131001(Haryana)

.....COMPLAINANT

Versus

1. M/s Parker VRC Infrastrucyute Pvt. Ltd.

Regd. Office: UG, Parker Office, Parker Mall,
Near Rasoi Dhaba, Kundli, Sonipat-131028, Haryana.

2. Ms Jai Krishna Artec

JV, 4th floor, Near ABN AMRO Bank, Barakhamba Road,
Hausalaya Building, New Delhi-110001.

.....RESPONDENTS

CORAM: Nadim Akhtar

Chander Shekhar

Member

Member

Present: - Mr. H.K Sharma, proxy counsel for Adv. Virender Singh,
Counsel for the complainant.
Adv. Sukesh Kumar Jindal, Counsel for the respondents through
VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 23.08.2022 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	White Lily Residency, Sector-27, Sonipat, Haryana.
2.	Name of the promoter	M/s Parker VRC Infrastructure Pvt. Ltd.
3.	Unit No. allotted	B-808, 8 th floor
4.	Unit area (Carpet area)	1215 sq.ft
5.	Date of execution of Builder Buyer Agreement	24.06.2016
6.	Due date of offer of possession	24.06.2020
7.	Possession clause in BBA	<p><i>"Clause 9(i): Completion and Possession of Unit</i></p> <p><i>The Company based on its present plans and estimates and subject to all exceptions, expert to complete construction of the said project and offer to make possession of the said Unit(s) to the Allottee(s) within a period of 48 months from the date of signing of this agreement subject to delays due to non-availability of construction materials and labours, or delay in payment of installments by the Allottee or Allottee(s) of the other Units and/or delay due to force majeure conditions</i></p>



		<i>elaborated herein below and reasons beyond control of the Company in which case time for completion shall be deemed to reasonably extended...."</i>
8.	Total sale consideration	₹38,49,200/- as per pleadings of the complainant
9.	Amount paid by complainant	₹16,20,916/-
10.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

- i. Case of the complainant is that the respondents had launched their project namely; "White Lily Residency" in Sector 27 , Sonipat, Haryana. Being interested in the said project, complainant had applied for unit in the project of the respondents and thereafter, builder buyer agreement was executed between the complainant and respondents on 24.06.2014 for unit no. B-808, 8th floor, against basic sale consideration amount of ₹38,49,200/-, having an approximate carpet area of 1215 sq ft. said project of respondents which is annexed at page no.13 of complaint file. Complainant had paid an amount of ₹16,20,916/- against the basic sale price as per the payment schedule.
- ii. As per clause 9(i) of the agreement, respondents promised to handover the possession of unit within 48 months from date of



signing of agreement, i.e, possession of unit was to offered by 24.06.2020. However, respondents failed to fulfil their promise of handing over of the unit to the complainant.

- iii. Respondents have miserably failed to deliver the possession of fully constructed and developed unit as per the specifications shown in the brochure and as promised in BBA. Thus there is an inordinate delay in handing over the possession of the unit.
- iv. As the promoter fails to comply with the terms and conditions of the agreement and unable to give possession of the unit, therefore, complainant is entitled to claim refund of the paid amount alongwith interest. That legal notice dated 12.07.2022 was served upon the respondents for withdrawing from the project and for refund of amount deposited by the complainant but no initiative have been taken by the respondents to resolve the dispute and refund of the said amount.

C. RELIEFS SOUGHT

3. Complainant has sought following reliefs :

- (i) Refund of ₹27,71,481/- being the principal amount paid by the company plus interest thereon calculated @10% per annum.
- (ii) Interest @10% per annum has been taken on as reciprocal basis.
- (iii) Compensation and damages: ₹1,45,800/- has been calculated @₹5/- per sq. ft on super area of flat of 1215 sq. ft for a period of 24 months.



(iv) Litigation charges: ₹30,000/- as legal notice was sent to promoter for offering possession of flat or refunding amount paid by complainant alongwith interest and compensation but the company failed inspite of legal notice either to give possession of flat or refund of the amount paid by the allottee to the company.

(v) Any other relief which this Hon'ble Authority consider just and fair any also be granted in favour of the complainant.

D. REPLY ON BEHALF OF RESPONDENTS

4. Submissions made in the reply dated 28.04.2023 are as under:

- (i) That the complainant has approached the respondents in the year 2013 seeking booking of unit in the residential project of the defendant at White Lily Residency, Sonipat, Haryana, for investment and profit purposes.
- (ii) That the complainant, after verifying and satisfying all the facts and circumstances relating to the viability and usefulness of the project, booked residential unit B-808, 8th Floor having 1215 sq.ft. in the said project of the respondents, i.e. White Lily Residency and agreed to pay Rs.30,25,350/- as basic cost for the said unit calculated on super area basis and further agreed to pay other charges as per policy of the Respondents as applicable to the building like EDC, IDC, Sinking Fund, Labour Cess, firefighting, external electrification, Allied Charges and other dues and taxes. The complainant signed



and agreed to abide by the builder buyer agreement dated 24.06.2016. The complainant has opted for construction link plan and had not made any further payment after 25.04.2017.

(iii) That as per builder buyer agreement dated 24.06.2016, the time period for construction and handing over of possession was 48 months from the date of agreement, which completed on 24.06.2020. However, from March, 2020, the lockdown was imposed nationwide by the Central Government and State Government due to COVID-19 Pandemic. Further, the lockdown continued till the year 2022 and during the said period in November, 2020, Kissan agitation also started which further aggravated and affected the construction work at the site of the project as Delhi-Kundli border at Sonipat was the epicenter of the said agitation, where the project of the respondents is situated.

(iv) That the respondents had clearly informed the complainant that the timely payment of installments is the essence of the agreement and also subject to sanction by the govt. authorities and also subject to other factors and market forces, etc.

(v) That delay, if any, in delivering the said unit of the complainant within the agreed period cannot be attributable to the respondents for multiple reasons which were beyond the control and power of the respondents. The same are pertaining to Jat Stir in the year 2016,



enforcement of GST in year 2017, Ram Rahim Agitation in 2018, impact of demonetization on Real Estate Sector, stay on construction by NGT on various occasions every year due to pollution, COVID-19 Pandemic in 2020 till 2022, farmers agitation, etc. That order passed by Hon'ble NGT regarding banning and uplifting the ban on construction activities have massive adverse effect on the availability of the labour and work. That the commission of Air Quality Management in National Capital Region and Adjoining Areas under action had banned the construction activities time to time from 05.10.2022 till 04.01.2023. Therefore, there was no ill-will or other ulterior motive in not completing the same within the time frame and the delay is solely for the reason mentioned above. Even the Haryana Real Estate Regulatory Authority have exempted the time lapsed during COVID-19 pandemic. That despite all odds, the respondents has put all its efforts to complete the construction work on project site of "White Lily Residency" situated at sector-27, Sonapat, Haryana. That the respondents has updated the complainant regarding the progress of the project construction vide its letters dated 07.10.2021 and 10.11.2021.

(vi) That on resumption of the construction work, the respondents have sent demand letter dated 12.04.2022 through speed post dated 16.04.2022 seeking payment as per construction link plan amount of



Rs.3,86,268/-. The complainant instead of making payment of the same has sent legal notice dated 12.07.2022 seeking refund. The respondents has replied to the legal notice vide its reply dated 12.08.2022. The construction of the project is in advance stage and the possession of the said unit shall be delivered to the complainant in near future.

(vii) It is vehemently denied that the company started the process of grabbing money vide letter dated 27.05.2014 regarding the project of White Lily Residency, Sector-27, Sonapat.

(viii) That the interest calculated by the complainant upto 31.07.2022 is wrong. That no interest was demanded from the complainant, therefore, the question of complainant paying interest to the respondents do not arise.

(ix) That construction of "White Lily Residency Project" is in advance stage. The photographs of the ongoing project are annexed herewith.

(x) Complainant is not entitled for any refund of ₹27,71,481/- alongwith interest @10% per annum. Further, complainant is not entitled for any compensation and damages to the tune of ₹1,45,800/- as alleged and litigation charges to the tune of ₹30,000/- as alleged.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

5. Proxy counsel for the complainant reiterated the facts of the complaint. Ld counsel for respondents stated that respondent has



received the occupation certificate on 16.12.2024 and construction was delayed due to force majeure conditions like Covid 19, Kissan agitation, etc. Further, despite reminders were sent to the complainant but complainant failed to make timely payments.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

7. Authority has gone through the facts of the complaint and reply as submitted by the both the parties. In light of the background of the matter, Authority observes that complainant booked a unit in the project "White Lily Residency" which being developed by the promoter namely; M/s Parker VRC Infrastructure Pvt. Ltd. and complainant was allotted unit no.808, 8th floor in said project at sector-27, Sonipat, Haryana. As per complainant version the builder buyer agreement was signed on 24.06.2014 and executed between the parties on 24.06.2016. Respondents also agreed that date of execution of agreement is 24.06.2016. Therefore, as a matter of record, date of execution of agreement is 24.06.2016. Complainant had paid a total of ₹16,20,916/- against the basic sale price of ₹30,25,350/- as per the builder buyer agreement.



(xi) As per clause 9(i) of agreement respondent/developer was under an obligation to hand over possession to the complainant within 48 months from the date of signing of builder buyer agreement. That means as per possession clause, a period of 48 months is to be taken from 24.06.2016 and therefore, date of handing over of possession comes to 24.06.2020. In this regard, respondents have taken plea that said possession clause was subject to force majeure conditions which includes Covid-19 Pandemic. Further, the lockdown continued till the year 2022 and during the said period in November, 2020, Kissan agitation also started which further aggravated and affected the construction work at the site of the project as Delhi-Kundli border at Sonipat was the epicenter of the said agitation, where the project of the respondents is situated. Authority observes that Covid-19 Pandemic, nation-wide lockdown imposed by the Central Government caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Further, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority, Panchkula



granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic. As per HRERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months was granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is allotted to the complainant is 24.06.2020, i.e, after 25.03.2020. Therefore an extension of 9 months is to be given over and above the due date of handing over possession in view of above said notifications, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such a case the due date of handing over of possession comes out to 24.03.2021. Till that date respondents did not hand over the possession of the unit to the complainant.

- (xii) Respondents have taken the plea that timely payment was the essence of the agreement and complainant failed to make timely payments despite sending reminders by the respondents. Authority observes that respondents have not specifically mentioned which demands were raised by the respondents that were not paid by the complainant. Respondents have only mentioned about demand letter dated 12.04.2022. It is pertinent to mention that said demand letter was issued to the complainant after complainant shows his intention



to withdraw from the project and request for refund alongwith interest was made by the complainant via email dated 22.10.2020. Therefore, plea of respondents that complainant did not make timely payments is rejected.

8. When an allottee becomes a part of the project it is with hopes that he will be able to enjoy the fruits of his hard earned money in terms of safety and security of his own home. However, in this case due to peculiar circumstances complainant has not been able to enjoy the fruits of his investment capital as the possession of the unit in question is shrouded by a veil of uncertainty. During the course of arguments respondents stated that occupation certificate has been received from the competent authority on 16.12.2024, however, same is not placed on record. The fact remains that complainant did not want possession of the unit and requested for refund as implied from the facts of complaint and email dated 22.10.2020, as complainant had already waited for more than eight years from the execution of the agreement and does not wish to wait for a further uncertain amount of time for a valid possession. Therefore, complainant is at liberty to exercise his rights to withdraw from the project on account of default on the part of respondents to deliver possession and seek refund of the paid amount.



9. 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 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 respondent, therefore, Authority



finds it to be fit case for allowing refund in favour of complainant.

10. The definition of term 'interest' is defined under Section 2(z) 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;

11. Complainant is claiming interest of 10% on the paid amount. In this regard Authority observes that 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. 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".

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., 28.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

12. From above discussion, it is amply proved on record that the respondents have not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondents will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondents to refund to the complainant the paid amount of ₹16,20,916/- 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 dates 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 total amount works out as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 28.04.2025
1.	₹4,00,000/-	13.10.2013	₹512850/-
2.	₹327000/-	17.06.2014	₹394693/-
3.	₹52717/-	17.06.2014	₹63630/-
4.	₹538707/-	03.06.2016	₹532762/-
5.	₹302492/-	25.04.2017	₹269165/-
	Total=₹16,20,916/-		₹17,73,100/-
Total amount to be refunded by respondents to complainant= ₹16,20,916/- + ₹17,73,100/- = ₹33,94,016/-			


H. DIRECTIONS OF THE AUTHORITY

13.Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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) Respondents are directed to refund the entire paid amount of ₹16,20,916/- with interest of ₹17,73,100/-. It is further clarified that respondents will remain liable to pay interest to the complainant till the actual realization of the amount.
- (ii) A period of 90 days is given to the respondents 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.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]