



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	290 of 2023
Date of filing:	06.02.2023
First date of hearing:	14.03.2023
Date of decision:	05.05.2025

Sheikh Mohd. Shakeel, S/o Mr. Gulam Mohammad,
R/o R269, Ground floor, Gali No.2,
Sir Sayeed Road, Joga Bai Extension, New Delhi-110025

.....COMPLAINANT

Versus

- 1. SRS Real Estate Ltd.**
SRS Mutiplex, Mezzanine Floor City Centre,
Sector-12, Faridabad, Haryana.
- 2. SRS Real Infrastructure Ltd.**
SRS Multiplex, Top Floor City Centre,
Sector-12, Faridabad.

.....RESPONDENTS

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

Present: - Adv. Azad Bansal, proxy counsel for Mr. Rishi Kapoor,
Counsel for the complainant through VC.
None for the respondents.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 06.02.2023 under Sections 31, 35, 36 and 37 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 RERA, 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, sale consideration, 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	SRS Palm Homes, Sector-7, Palwal, Haryana
2.	Name of the promoter	SRS Real Estate Limited
3.	Flat No. allotted	506, 5 th floor, Tower A6, Type B
4.	Date of allotment	25.04.2015
6.	Date of execution Builder Buyer Agreement	Not executed



8.	Due date of offer of possession	25.04.2019
9.	Possession clause in BBA	Not available
10.	Total sale consideration	₹16,58,507/- (as per allotment letter)
11.	Amount paid by the complainant	₹4,14,627/-
12.	Offer of possession	Not given till date.

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that complainant had applied for a unit in an Affordable Group Housing project namely; “SRS Palm Homes” being developed by respondents SRS Real Estate Ltd. at Sector-7, Palwal, Haryana by paying a sum of ₹1,00,000/- as booking amount. An acknowledgment receipt dated 22.01.2015 was issued by the respondent no.1, which is attached as Annexure C1.
4. In pursuance to the draw of lots, respondents allotted unit no. A6/B/506, Tower A6, Type B, 5th floor in “SRS Palm Homes” and issued allotment letter dated 25.04.2015 to the complainant. It was also informed that total cost of the unit is ₹16,58,507/- including E.D.C/I.D.C. Allotment letter dated 25.04.2015 is annexed as Annexure C2.
5. Respondents raised several demands letters for payment of the part of the consideration amount and in a bonafide belief, complainant made payment of ₹4,14,627/- towards the basic cost of unit on various dates



and as per the demands raised by the respondents. A copy of demand letter dated 20.11.2015 raised by the respondents is annexed as Annexure C-3. Copies of payment receipts are annexed as Annexure C-4.

6. That despite monetary payment against the said unit, respondents neither executed any the Builder Buyer Agreement (BBA) nor any other type of agreement. Also respondents have not developed the amenities against which the payment has already been received. That repeated requests have already been made to the respondents to inform and update the complainant as to when the possession of the unit would be handed over. However, respondents failed to provide any meaningful respond to the queries of the complainant.
7. Complainant being aggrieved by the conduct of the respondents, has filed the present complaint before the Authority for seeking certain reliefs as prayed in the present complaint.

C. RELIEFS SOUGHT

8. Complainant has sought following reliefs :
 - (i) Direct the respondents to refund the entire amount collected from the complainant towards the consideration of the residential unit along with interest @18% p.a on the amount paid by them from the date of each deposit of the amount till it actually returned to the complainant.



(ii) Direct the respondent company to provide mental agony of ₹1,00,000/-.

(iii) Grant a sum of ₹1,00,000/- as costs for this complaint to the complainant.

D. REPLY ON BEHALF OF RESPONDENT NO. 1 AND 2

9. Notices were served to the respondent No.1 and 2 on 09.09.2023.

However, same were received back with report “ office closed or door locked”. Vide order dated 14.03.2023, complainant was directed to collect dasti notice from the Authority and served it to upon respondent no.1 and 2. Further, by the directions of the Authority notice was issued to the Jail Superintendent, Neemka Jail, Faridabad which got successfully delivered on 26.04.2023 as recorded in the order dated 17.05.2023. Despite giving many opportunities, the respondent failed to submit the reply till date. The Real Estate (Regulation and Development) Act, 2016, is a beneficial legislation aimed at providing speedy and efficacious redressal to grievances of allottees and other stakeholders. In furtherance of this objective, proceedings before the Authority have been made summary in nature. Such expeditious adjudication is achievable only if the parties involved, both the complainant and the respondent, submit their pleadings in a time-bound manner.



In light of the respondent's repeated non-compliance despite availing numerous opportunities and keeping in consideration the summary procedure, the Authority deems it appropriate to strike off the respondent's defence and proceed to decide the present complaint ex-parte, as per record available on the file.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

10. Vide order dated 02.12.2024, complainant was directed to provide complete receipts or affidavit of the paid amount alongwith bank statement. To this, ld counsel has referred to the Annexures attached with the complaint file to substantiate the claim of ₹4,14,627/- paid by the complainant to the respondent and requested the Authority to grant refund of ₹4,14,627/- alongwith interest paid to the respondents.

F. ISSUE FOR ADJUDICATION

11. Whether the complainant is entitled to refund of the amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

12. The Authority has gone through the submissions made by the complainant in complaint and during arguments. In light of the background of the matter, Authority observes that complainant applied for unit vide application no.12868 by paying an amount of



₹1,00,000/- on 22.01.2015 as per the acknowledgment receipts attached as Annexure C-1 in project namely; SRS Palm Homes (Group Housing Colony) being developed by M/s SRS Real Estate Ltd., Sector-7, Palwal, Haryana. Pursuant to the said booking of unit, respondents allotted unit no. A6/B/506 vide allotment letter dated 25.04.2015 and total cost of flat was ₹16,58,507/- including EDC/IDC. Copy of allotment letter is annexed as Annexure C-2 at page no.16. Total amount paid by the complainant towards the unit is ₹4,14,627/- against the total sale consideration of ₹16,58,507/- and same is receipts attached with complaint file by the complainant.

13. Complainant requested several times to the respondents for execution of builder buyer agreement, however, no builder buyer agreement is executed till date. As no builder buyer agreement was executed between the parties, but the fact remains that respondent allotted the unit in favour of complainant and said allotment was governed by "Affordable Housing Policy- 2013" of Govt. of Haryana. As per clause 5 (iii) (b) of said policy, possession is to be offered within 4 years from date of sanction of building plans or receipt of environmental clearance whichever is later. As reply have not been filed by the respondents till date neither complainant provide any dates of building plans or environment clearance in his pleadings, therefore, in absence of date of approval of building plans and



environmental clearance it is appropriate to take period of 4 years from the date of allotment, i.e, 25.04.2015 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 25.04.2019. As per aforesaid observations, possession was supposed to be delivered upto 25.04.2019.

14. On 04.03.2024, Mr. Sham Arora, Interim Resolution Professional (IRP) during the course of hearing stated that as per NCLT order dated 22.12.2022, Corporate Insolvency Resolution Process (CRIP) is against the respondent company and the scope of IRP is limited to project 'SRS Royal Hills, Phase-2, located at village Baselwa, sector-87, Faridabad. It is in the knowledge of the Authority that in other pending complaint cases against the same respondentS, specifically, in complaint no.1575/2023, Mr. Shyam Arora had submitted an application dated 15.12.2023, mentioning the order dated 30.05.2024 passed by Hon'ble NCLT (Chandigarh) titled as "*LIC Housing Finance Limited versus SRS Real Estate Limited* " whereby it is clarified that insolvency proceedings are only limited to the project namely; SRS Royal Hills Phase-II, Sector-87, Faridabad.

15. Facts remains that respondents were duly served notices but no replies have been filed by them till date. Further, no one appeared today as well as in all previous hearings to rebut the claim of



complainant. As on today, complainant is interested in seeking refund alongwith interest and Authority observes that the respondents have severely misused its dominant position. Allotment of the flat was confirmed by respondents vide allotment letter dated 25.04.2014, due date of possession as explained above was 25.04.2019. Now, even after lapse of 6 years respondents have not issued valid offer of possession till date. Respondents have not even specified the valid reason/ground for not offering the possession of the booked flat.

16. Period of 4 years is a reasonable time to complete development works in the project and handover the possession to the allottees. The project of the respondents is of an affordable group housing colony and allottees of such project are supposed to be mainly middle class or lower middle class persons. After paying his hard earned money, legitimate expectations of the complainant would be that possession of the flat will be delivered within a reasonable period of time. However, respondents have failed to fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise her right to withdraw from the project on account of default on the part of respondent to offer legally valid possession and seek refund of the paid amount along with interest as per section 18 of RERA Act.

17. 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.

18.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;

19.Complainant in its complaint has sought refund of paid amount with interest @18%. It is pertinent to mention here 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”.

20. 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., 05.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

21. 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. Therefore, Authority allows refund of paid amount along with interest to the complainant 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 amounts along with interest as per detail given in the table below:

Sr.no	Principal amount in ₹	Date of payments	Interest accrued till 05.05.2025 in ₹
1.	₹1,00,000/-	22.01.2015	₹1,14,254/-
2.	₹64,627/-	23.05.2015	₹71,461/-
3.	₹2,50,000/-	25.05.2015	₹2,76,284/-
	Total= ₹4,14,627/-		₹4,61,999/-
Total amount to be refunded by respondent to complainant = ₹4,14,627/- + ₹4,61,999/- = ₹8,76,626/-			

22. Further, the complainant is seeking compensation towards mental agony and litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 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



complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.


H. DIRECTIONS OF THE AUTHORITY

1. The Authority hereby passes this order and issue 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 paid amount of ₹4,14,627/- with interest of ₹4,61,999/- to the complainant. It is further clarified that respondents will remain liable to pay interest to the complainant till the date of actual realization of the amount.

(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.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]