



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2174 of 2023
Date of filing:	29.09.2023
First date of hearing:	27.05.2024 (after publication)
Date of decision:	19.05.2025

Smt. Savraj Bala, W/o Sh. Om Prakash Popli,
House No. 1649, Sector-13, HUDA, Bhiwani,
Haryana.

.....COMPLAINANT

Versus

M/s Piyush Colonizers Limited
Regd. Office: A-16/B-1, Mohan Cooperative Industrial Estate,
Main Mathura Road, New Delhi-110044.

.....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present : Mr. Om Prakash, husband of complainant through VC.

None present for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 29.09.2023 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	Group Housing Project "Piyush Horizon", Sector-1, NH-8, Dharuhera.
2.	Name of the promoter	Piyush Colonizers Ltd.
3.	Unit No. allotted	A-613, 6 th floor, Block A
4.	Unit area	1603.0 sq. ft



5.	Date of provisional allotment letter	11.10.2011
6.	Date of Builder Buyer Agreement	Not executed
7.	Due date of offer of possession	11.10.2014
8.	Possession clause in BBA	Not available
9.	Total sale consideration	₹29,65,550/-
10.	Amount paid by complainant	₹12,88,323 /-
11.	Offer of possession	Not given

B. BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:

- (i) Case of the complainant is that complainant booked a unit in the group housing project "Piyush Horizon" situated in Sector 1, NH-8, Dharuhera, Haryana by paying booking amount of ₹2,50,000/- and respondent issued provisional allotment letter dated 11.10.2011 and allotted unit no.A-613, 6th floor, in Block A, measuring 1603 sq. ft @₹1850/- per sq. ft in the project of the respondent. Copy of receipt of ₹2,50,000/- and allotment letter is annexed at page no.10 and 11 respectively.
- (ii) That no builder buyer agreement was executed between the parties. Complainant had paid a total amount of ₹12,88,323/- against the basic sale price. That respondent vide letter dated 18.11.2014 sent a demand



notice to deposit the outstanding instalment to the tune of ₹8,33,634.77.

That complainant was not in position to deposit the amount as she suffered paralytic attack and other unavoidable circumstances and requested vide request dated 27.12.2014 to the respondent to extend the time limit to at least three months.

(iii) That instead of considering the genuine request of the complainant to extend the time limit for the deposit of demanded money; respondent sent 2nd demand notice dated 28.11.2014 for ₹8,38,211.77. Thereafter, company sent a letter dated 22.12.2014 informing that the said apartment A-613 allotted to her has been cancelled. This decision of the respondent was unilateral and one sided.

(iv) That complainant submitted application to her Financial Creditors and also made a request dated 09.01.2021 but no action was taken by the respondent. The complainant visited time and again to the registered office of the respondent but no fruit full result has come and amount is still pending with the respondent.

(v) That after unreliable behaviour of the respondent as has been described above it is obvious that respondent is not interested in paying the amount deposited with them even after cancellation of the allotted flat.

(vi) Therefore, the complainant seeks indulgence of the Hon'ble Authority for seeking refund of the paid amount along with interest as being



aggrieved person, complainant is filing the present complaint before this Hon'ble Authority.

C. RELIEFS SOUGHT:

3. Complainant has sought following reliefs :

- i. That the respondent be directed to refund the amount deposited with them which is to the tune of ₹12,88,323/- with interest to the tune of ₹24,09,000/- calculated @18 simple interest yearly.
- ii. That the respondent be directed to pay counsel fee to the tune of ₹32,000/-.
- iii. That the respondent be penalised for their illegal and deceptive unilateral/one sided action by way of cancellation of the said flat and the complainant be compensated with the amount of ₹5 lakh for economic and mental harassment.
- iv. Any other relief, the Authority deemed fit.

D. REPLY ON BEHALF OF RESPONDENT

4. Notice was served to the respondent on 04.10.2023. However, same was received back with report "receiver shifted from the given address". On 02.11.2023, Ld. counsel for complainant apprised the Authority that no one was available at the site of the project to accept the notice for the respondent. Therefore, he requested the Authority to serve the notice to respondent by way of publication. Accordingly, public notices were got



published in newspaper on 24.11.2023 and respondent was directed to appear on 30.01.2024 before the Authority in the above said complaint. However, no one appeared on behalf of respondent. Thereafter, opportunities were given to respondent to appear on 27.05.2024, 28.10.2024, 10.02.2025 and finally on 19.05.2025 but neither anyone appeared on behalf of the respondent nor any reply has been submitted by the respondent till date. As 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, the 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 RESPONDENT**

5. Complainant reiterated the facts of the complaint and requested the Authority to grant the relief of refund of the paid amount along with interest and decide the case ex-parte as no one appeared from last two hearings and respondent has failed to file his reply.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

7. The Authority has gone through the facts of the complaint as submitted by the complainant. In light of the background of the matter, Authority observes that complainant booked unit in the project "Piyush Horizon" which is Affordable Group Housing Project being developed by the respondent/promoter namely; Piyush Colonizers Ltd. and complainant was allotted unit no.A-613, 6th floor, Block A, in the said project at Sector- 1, NH-8, Dharuhera, Haryana vide allotment letter dated 11.10.2011 and complainant had paid a total sum of ₹12,88,323/-. No builder buyer agreement was executed between the parties, but the fact remains that respondent allotted the unit in favour of complainant.



8. In absence of possession clause, it is relevant to refer **Appeal No 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to the observation of Hon'ble Apex Court in **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In present complaint, the unit was allotted vide allotment letter dated 11.10.2011. Accordingly, taking a period of 3 years from the date of allotment, i.e, 11.10.2011 as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 11.10.2014. As per aforesaid observations, possession was supposed to be delivered upto 11.10.2014. However, respondent fails to give possession till that date. In spite of paying substantial amount of ₹12,88,323/- towards the unit, out of which last payment was of ₹484157/- was made on 14.10.2013, respondent failed to give possession of unit to the complainant as well update regarding the construction of the project. However, respondent issued demand letter dated 18.11.2014, regarding dues of ₹8,33,634.77 towards the unit and second demand letter dated 28.11.2014, demanding dues of ₹8,38,211.77, annexed at page no. 16 ad 18. No payments were made by the complainant inspite of issuance of demand letters. On



22.12.2014, respondent issued cancellation letter to the complainant for non payment of dues annexed at page no. 19 of complaint file. After receiving the cancellation letter, complainant made request to the respondent on 27.12.2014, annexed at page no.17, stating that complainant was not in position to deposit the amount as she suffered paralytic attack and other unavoidable circumstances and requested to extend the time limit for payment of dues. It is to mention that after issuance of cancellation letter in year 2014 complainant made request for extension of time limit, and thereafter, no communication has been made by the complainant with the respondent till 2021. On 09.01.2021, annexed at page no.20 complainant wrote letter to the respondent stating that respondent cancelled the unit of the complainant for non-payment of dues and allotted the unit in question to other allottee without refunding the paid amount of the complainant and compensation. From the sequence of events it is clear that respondent did not handed over the possession of the unit till the deemed date of possession and thereafter, cancelled the unit of the complainant for non payment of dues. It is a well settled law that if allottee defaulted in making payments then builder/respondent has right to cancel the allotment of the allottee. Further, refund the paid amount is governed by the terms and conditions of builder buyer agreement executed between the parties, if



any, however, the same is not executed in the present matter. In the present case, no one appeared on behalf of respondent to prove the validity or justification for cancellation of allotment. Also, as why the amount deposited by the complainant is not refunded to the complainant till date. From the pleadings, it is clear that complainant is no more interested in possession of the unit and wants refund of the paid amount alongwith interest. In these circumstance, Authority observes that as on date respondent fails to fulfill its liability to give possession of the unit and refund of the paid amount deposited by the complainant after cancellation of allotment of unit. After paying his hard earned money, legitimate expectations of the complainant would be that possession of the unit will be delivered within a reasonable period of time. However, respondent has failed to fulfill its obligations as promised to the complainant. Thus, complainant is at liberty to exercise his 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.

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 fit cases for allowing refund in favour of complainant.



10. 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;

11. 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".

12. 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., 19.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.
13. From the above discussions, it is amply proved on record that the respondent no.1 has 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, respondent is liable to pay the complainant interest from the dates amounts were paid by the complainant till the actual realization of the amount.
14. 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	Date of payment	Interest accrued till 19.05.2025
1.	₹2,50,000/-	13.09.2011	₹379985/-
2.	₹3533/-	24.11.2011	₹5293/-
3.	₹330515/-	24.11.2011	₹495126/-
4.	₹220118/-	11.05.2012	₹318434/-
5.	₹484157/-	14.10.2013	₹623695/-
	Total= ₹12,88,323/-		₹18,22,533/-
Total amount to be refunded by respondent to complainant= ₹12,88,323/- + ₹18,22,533/- = ₹31,10,856/-			

K. DIRECTIONS OF THE AUTHORITY

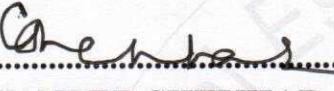
15. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the amount to the complainant as specified in the table provided in para- 14 of this order. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the amount.

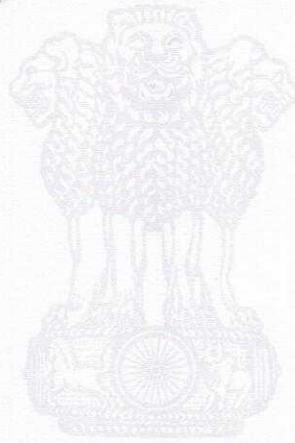


- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would be initiated against the respondent.

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]



सत्यमेव जयते

Panchkula