



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2420 of 2023
Date of filing:	31.10.2023
First date of hearing:	23.04.2024
Date of decision:	09.09.2025

Janak Singh,

R/o House no. 197, Veena Nagar Camp

Yamunanagar, Haryana.

.....COMPLAINANT

Versus

Housing Board Haryana, through its Managing Director

C-15, Awas Bhawan,

Sector-6, Panchkula, Haryana

.....RESPONDENT

Present: - Adv. Anil Bidhan, I.d. Counsel for the complainant through
VC.

None for the respondent.

ORDER (Dr. GEETA RATHEE SINGH-MEMBER)

1. Present complaint is filed by the complainant under Section 31 of the
'Real Estate (Regulation & Development) Act, 2016' (hereinafter referred as

Geeta Rathee

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	Defense Personnel Scheme flats, Faridabad Sector 56A
2.	Name of the promoter	Housing Board Haryana
3.	RERA registered/not registered	Unregistered
4.	Unit no.	Not provided
5.	Date of allotment	Not provided
6.	Due date of possession	Not applicable
7.	Possession clause in BBA	Not available
8.	Total sale consideration	Not available
9.	Amount paid by complainant	₹2,14,000/-
10.	Offer of possession	Not given



B. FACTS OF THE PRESENT COMPLAINT

3. That the respondent i.e, Housing Board Haryana had floated a scheme for defense personnel in the state of haryana for allotment of flats in various cities in 2014. Complainant had applied for allotment of a flat of Type-A having super area of 720 Sq. Ft. in Sector 56 A in Faridabad. Loan facility was availed from the approved bank State Bank of India and as per the terms. Rs. 2,14,000/- were deposited as 10% of the tentative cost of the flat to be allotted. Thereafter, the respondent had uploaded a list of the registered applicants who had applied for scheme in Sector 56 A, Faridabad, wherein the complainant's name is shown at Sr. No. 70 against application no. 18591 and it is shown that the amount of Rs. 2,14,000/- has been received for registration under finance.
4. That the complainant kept on enquiring from the respondent's office about the status of his application, but no communication was provided by the respondent, despite many enquiries. The complainant also approached his bank. many times from 2015 to 2017, from which the finance was obtained, but the State Bank of India at Yamuna Nagar, also expressed that no communication or any document or letter of allotment has been received from the Housing Board



Haryana. A letter was given by the bank in 2017 that they have not received any communication from the respondent.

5. That it is pertinent to mention that on much persuasion of the complainant, the staff of Chief Administrator, Housing Board Haryana, on 11.07.2017, conveyed that till then, the land was not available for the construction and the construction had not been undertaken by the Board. The staff provided a copy of the letter of allotment dated 06.02.2015 to the complainant on 11.07.2017 only wherein it was mentioned that an amount of Rs. 3,21,000/-, being 15% of the sale consideration, are to be deposited within one month of letter dated 06.02.2015.
6. That the allotment letter dated 06.02.2015 was never sent to the complainant or the bank financing the loan, and there was no occasion for the complainant to pay the amounts due, and there was no alternative left with the complainant but to submit a request letter dated 02.08.2017 to the respondent for surrender of allotment and refund of the deposited amount of Rs. 2,14,000/-. This request letter was submitted to the respondent's office vide diary no. 1573 of 2017, on 08.08.2017.
7. That moreover, as per conditions in the allotment letter dated 06.02.2015,, if the amount of Rs. 3,21,000/- ,being 15% of the sale



consideration, is not deposited within one month of letter dated 06.02.2015, the registration shall be cancelled by forfeiting 10% of the registration amount of Rs. 2,14,000/-. Though it is the negligence and deficiency on the part of the respondent in not providing the allotment letter in 2015, but in any case, not more than 10% of the registration amount of Rs. 2,14,000/-, can be deducted from this amount, as per the terms of the allotment letter dated 06.02.2015.

8. That the complainant has approached the respondent for refund of their deposited amount along with interest but the respondent has not agreed to the same.
9. That entire cause of action for the purpose of the present complaint started at Yamuna Nagar from where the application was made, and Faridabad, where the flat is situated and, in Panchkula, where the respondent directly is having its head office. Thus, this Hon'ble Authority possesses the requisite territorial jurisdiction to adjudicate the matter.
10. That a period of more than 8 years has lapsed but respondent has failed to handover the unit to the complainant. Since the Respondent could not develop the project in time and handover physical possession of the flat, thus the petitioner is entitled for the refund of the deposited amount along with interest and the respondent be



directed to pay the entire amount deposited by the petitioner with the respondent along with interest in terms of rule 15 of IIRERA Rules, 2017 i.e. SBI MCLR + 2%.

C. RELIEF SOUGHT

11. Complainant sought following relief:

- (i) Respondent may be directed to refund the entire deposited sum of rs. 2,14,000/- paid by the complainant along with interest @ 12% per annum from the date of payment till its actual realization.
- (ii) Respondent may be directed to pay the compensation of Rs.5,00,000/- for the mental agony and financial loss suffered by the Complainant;
- (iii) Respondent may be directed to Pay Rs. 55,000/-towards the litigation charges; and/or
- (iv) Any other relief/s which this Hon'ble Authority may deem fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

12. That the present complaint is not maintainable against the answering respondent and the instant complaint is liable to be dismissed as no cause of action has accrued in favour of the complainant to file the present complaint. The complainant has filed the present complaint



without exhausting the proper remedies available to him and without approaching the housing board authorities for redressal of his grievance, hence the present complaint is premature and thus liable to be dismissed.

13. That the complainant has portrayed the answering respondent as a "Developer" of real estate whereas Housing Board Haryana is an establishment of Government of Haryana under the Haryana Housing Act 1971 (Haryana Act No. 20 of 1971). Hence, answering respondent is a statutory body and not a mere real estate developer. Sh. Janak Singh S/o Sh. Bhagwan Singh has applied for registration of Type-A flat under defence scheme in the year 2014. The complainant was declared successful against final registration No. 185 Type-A flats under defence scheme at Sector 56, 56-A Faridabad. That the complainant has surrendered his registration and requested for refund of deposit amount as per policy of board.

14. That the complainant is entitled for refund of deposited amount as per Haryana Housing Board Act (Allotment Management and Sale of Tenements regulation 1972 Clause 12 is reproduced as under:

"If the applicant withdraws his application till the date of offer of house by the Board, 10% of the amount deposited with application at the time of registration shall be forfeited to the Board and balance refunded to him without any interest"



15. That refund of Rs. 1,92,600/- has been made to the complainant vide cheque no. 961912 dated 13.01.2024 after deducting 10% of registration money.

16. It is submitted that demand letter dated 06.02.2015 was sent to the controlling branch of State Bank of India as the application money was got financed by State Bank of India.

E. REJOINDER SUBMITTED BY THE COMPLAINANT

17. That the statement of the respondent that complainant had surrendered his registration and requested for refund is false and rather it is the respondent board, who had not intimated the complainant regarding the allotment of the unit to him and there was no remedy left with the complainant but to seek refund of the deposited amount with interest. The stand of the respondent that as per the policy, a deduction of 10% of the registration amount is provided, is wrong and illegal, as it is the respondent who is responsible in not giving information of allotment and sending the allotment-cum-demand letter for deposit of 15% of the total amount to the complainant.

18. That no communication or letter was ever sent to the complainant for deposit of the 15% amount after draw of lots and as such, the complainant was never put in knowledge that he was allotted this unit and 15% amount was to be deposited further. The respondent admits



that the letter dated 06.02.2015 for allotment of flat was sent to the State Bank of India (though doubted and no proof attached) and it was not sent to the complainant.

19. That after two years in 2017, when the complainant filed an application that as he has no knowledge of status of his allotment application, the deposited amount may be refunded to him, but still no action was taken by the respondent. Only after filing of this complaint, a refund of Rs. 1,92,600/- has been made to the complainant after deducting 10% of the deposited amount, and deposited to his account without his consent, which is totally illegal and unjustified, as the complainant is eligible for refund of full deposited of Rs. 2,14,000/- with interest from the date of deposit.

20. That there is no rule or procedure provided in the Housing Board Act and Rules, wherein an allotment letter can be sent to a third party and the board authorities are authorized to send the allotment letter not to the allottee, but to any other party. The board itself is wrong in presuming that that any power is there with the bank to accept the allotment and it is not the allottee who has to accept the allotment. It is an after thought to cover up the mistake of the board. So, there is no question of any deficiency on the part of the complainant and rather,



lack of services on the part of the respondent and as such it is not a case of surrender of the allotment.

21. That therefore, the complainant is fully entitled to refund of deposited amount of Rs. 2,14,000/- with interest. It is, therefore, most respectfully prayed that this complaint may kindly be allowed and the respondent may be directed to refund of deposited amount of Rs. 2,14,000/- with interest, in the interest of justice.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

22. Ld. Counsel for the complainant submitted that respondent had floated a scheme for defense personnel in the state of Haryana in 2014. Complainant applied for allotment of flat type A having an area of 720 sq. ft. in Sector 56 A Faridabad. Complainant has paid an amount of Rs. 2,14,000/- on 30.06.2014 after availing loan from State Bank of India. Since then complainant has not received any communication of allotment from the respondent.

23. Ld. Counsel for the complainant referred to a letter dated 21.07.2017 at page 25 of his complaint issued by State Bank of India stating that the loan account stands liquidated on 19.01.2015 and nothing is due. It has also been mentioned in the letter that bank has not got any



documents from Housing Board Haryana with respect to allotment of plot of Mr. Janak Singh till date.

24. Thereafter, complainant had sent a letter dated 02.08.2017 to the respondent for surrender of his flat and refund of his paid amount along with interest. Respondent has not responded to said letter of the complainant and complainant was left with no option except to register complaint before this Authority against the respondent. After filing of this complaint, respondent refunded an amount of Rs. 1,92,600/- after deducting 10% of deposited amount as earnest money as per their condition no. 12 on 13.01.2024. Ld. Counsel for the complainant pressed for relief of refund along with interest from the date such payment was made till date.

25. Ld. Counsel for the respondent submitted that allotment letter of the complainant was sent to State Bank of India. Further an amount of Rs. 1,92,600/- after deducting 10% earnest money as per their condition no. 12 has been refunded to the complainant on 13.01.2024.

G. ISSUE FOR ADJUDICATION

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

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY



27. Respondent has taken a preliminary objection that present complaint is not maintainable against the answering respondent as Housing Board Haryana is not a developer but an establishment of Govt. of Haryana under the Haryana Housing Act, 1971. In this regard the Authority observes, it needs to be examined whether respondent (Housing Board Haryana) falls under the definition of promoter provided in RERA Act, 2016 and whether there exists a relationship of allottee and promoter between the complainant and respondent. For this purpose, definition of "promoter" under section 2(zk) needs to be perused. Definition is provided below:

(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.*

Plain reading of the definition of promoter provided under section 2(zk) makes it clear that any development authority in respect of allottee of building/apartment, as the case may be, constructed by such authority for sale is a promoter in respect of allottees of those buildings/apartments. Here, Housing Board Haryana is a Development Authority, that conducted the draw of allotment and declared the complainant as a successful applicant/allottee and admittedly allotted a flat at Faridabad,



Sector 56,56-A, Faridabad. Hence, Housing Board is covered under the definition of promoter under Section 2(zk).

28. Now moving ahead on merits, admittedly the respondent floated a scheme for defense personal in 2014 after which the complainant applied for flat of Type having an area of 720 sq. ft in sector 56 A, Faridabad. Thereafter list of successful allottees was uploaded wherein complainant's name was shown at serial no. 70 against application no. 18591.

There is no dispute with regard to the fact that complainant booked a flat in the respondent's project after paying an amount of Rs. 2,14,000/- on 30.06.2014 after availing loan from State Bank of India. Main grouse of the complainant is that even after paying an amount of Rs. 2,14,000/- and after being declared as successful allottee in the list he did not receive any communication with respect to allotment from the respondent Housing Board Haryana from 2014 till 2017. It is only in July 2017 complainant was orally conveyed that land was not available for construction and that no construction has been undertaken by the board. At the same moment complainant was also provided with the copy of allotment letter dated 06.02.2015 which was earlier never received by him.



29. Respondent's stand with regard to allotment letter dated 06.02.2015 is that since the complainant had availed the loan from the State Bank of India the said letter was sent to the concerned bank of the complainant. Perusal of the said allotment letter annexed at page 26 of complaint reveals that it is addressed to the complainant "Janak Singh" with complete postal address of the complainant and not to the bank. Therefore, under no circumstance the letter could have delivered to the concerned bank as has been claimed by the respondent. Also, no dispatch or delivery report has been placed on record by respondent. Further the bank State Bank of India has also issued a letter dated 21.07.2017 (annexed at page 25) of the complaint confirming that no communication with regard to allotment was ever received by the bank from the respondent. Hence, it could not be proved that the complainant or his financing bank ever received the letter of allotment dated 06.02.2015.

30. In the present case, builder buyer agreement has not been executed between the parties and no terms and conditions have been agreed upon which could have determined the due date of possession. Therefore, reference has been made to observation of the Apex Court in 2018 STPL 4215 SC titled as **M/s Fortune Infrastructure** (now



known as M/s Hicon Infrastructure) and anr for reckoning the deemed date of possession. Relevant para is being reproduced below:

Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.

In view of the above judgement, deemed date of possession works out to be 30.06.2017.

31. Complainant after a lapse of approx. 3 years of booking vide letter dated 02.08.2017 communicated about surrender of his flat due to the default on part of respondent to complete the project or even to issue a valid allotment letter. No action with respect to refund was taken by the respondent till the date of filing of this complaint before the Authority. On perusal of the record it is revealed that no letter/communication whatsoever was ever sent to the complainant even after receiving the surrender letter dated 02.08.2017 except for the refund of the amount of Rs. 1,92,600/- on 13.01.2024 after filing the present complaint and that too after deducting 10% of the earnest money. On one hand respondent had failed to fulfil its obligations of



issuing allotment letter to complainant and on the other hand it has enriched itself by retaining amount paid by the complainant towards registration/booking of the plot till 13.01.2024.

32. In the present case complainant was a successful applicant.

Respondent within a reasonable time of booking was expected to issue allotment letter in favour of the complainant, execute a builder buyer agreement, to complete construction of the plot and deliver possession of the purchased unit. The government provides land for building of houses under such scheme at subsidized rates and also facilitates arrangement of loan on subsidized rate to allottees of such scheme.

The whole idea is to squeeze the sale price of flats to a level within the reach of people of Haryana applying in such schemes. Respondent cannot be allowed to take an amount of Rs. 2,14,000/- and not deliver possession even after lapse of approx. 10-11 years from the date of booking. In these circumstances the interest of the allottee gets affected as he was not informed of the allotment or status of the project within a reasonable time.

33. The respondent in present case has not submitted status of completion of the project and has been utilizing an amount of Rs. 2,14,000/-, already paid by the complainant, till 13.01.2024 without paying any



interest. Such conduct of the respondent being unreasonable and unconscionable cannot sustain legally sustained.

34. 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."



35. The decision of the Hon'ble 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.

36. In the present case complainant has surrendered his plot on 02.08.2017 after waiting for 3 years from the date of booking. Respondent in its reply has submitted that 10% earnest money has been deducted as per clause 12 of the Haryana Housing Board Act (Allotment Management and Sale of Tenements Regulation 1972). Said clause would have been binding on the complainant only on receipt of the allotment letter by the complainant or execution of agreement for sale between the parties. As already discussed in the preceeding paragraphs of this order complainant or his bank never received the allotment letter and there was no agreement for sale executed between the parties. Further this clause would have been applicable on the complainant in case the complainant would have withdrawn from the project before the due date of possession and respondent would have completed the project within prescribed time or atleast within the reasonable time period of 3 years. No deemed



date of possession has been agreed upon between the parties. Therefore, complainant is entitled to get refund of the entire paid amount without any forfeiture along with interest in terms of provisions of RERA Act, 2016. As per section 18 of the RERA Act, 2016 and in light of the Supreme Court judgement in "***Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***" complainant is entitled to interest at "prescribed rate" from the date of payment till date of refund of amounts.

37. 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;

38. Rule 15 of IRERA 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".

39. 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., 09.09.2025 is 9.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% ,i.e., 9.90%

40. As observed above in para 36 complainant is entitled for refund of entire paid amount along with interest from date of payment of amounts till actual realization of amount. However in the present case complainant has not submitted any receipt for payment of an amount of Rs. 2,14,000/- instead has relied upon list of successful allottees



annexed as annexure C-2. This list and payment has not been disputed by the respondent. Therefore, for the purpose of calculation, date of amount paid by the complainant is taken from the list of successful allottees of the complaint which is 30.06.2014. Thus, respondent will be liable to pay the complainant, interest from date of payments till the date of refund. Respondent had already refunded an amount of ₹1,92,600/- to the complainant on 13.01.2024, thus, interest on total amount paid by the complainant i.e, Rs. 2,14,000/- will be payable for the period of 30.06.2014 up till 13.01.2024(date of payment by respondent) and interest on the remaining amount of Rs. 21,400/- will be payable from 13.01.2024 till the date of order i.e, 09.09.2025. However respondent shall also remain liable to refund the balance principal amount, i.e., 21,400/-. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no	Principal amount	Date of Payment	Interest from date of Payment till date of refund by the respondent (30.06.2014-13.01.2024 (in Rs.)
1.	2,14,000/-	30.06.2014	2,02,283/-



Sr.no	Balance amount (Principal amount - Refund amount)	Principal (Principal - Refund)	Interest from date of refund till date of order (14.01.2024-09.09.2025(in Rs.))
1.	21,400/-		3,512/-
	Total= 21400+3512=24,912/-	(Principal amount+ Interest)	

Total amount to be refunded to the complainant- 2,27,195/-

41. Further, the complainant is seeking compensation and litigation expenses. 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 and 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 and litigation expenses 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 and legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



I.DIRECTIONS OF THE AUTHORITY

41. Hence, the Authority hereby passes this order in the present complaint and issues 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 amount of ₹ 2,27,195/- along with interest from date of refund till the actual realization of the amount failing which legal consequences shall follow.
- (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 of. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
DR. GEETA RASTHEE SINGH
[MEMBER]