



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1302 of 2021
Date of filing:	10.12.2021
First date of hearing:	12.01.2022
Date of decision:	09.09.2025

Aarti Behal W/o Deepak Behal,
R/o #6073, Machchi Mohalla,
Ambala Cantt., Haryana-124406

.....COMPLAINANT

VERSUS

Rose Building Solutions Private Limited
Office at 12th Floor, Dr. Gopal Das Bhawan,
28 Barakhamba Road, New Delhi-110001

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Present: - Adv. Arti, Ld. Counsel for Complainant through VC
Adv. Suvir Kumar, Ld. Counsel for Respondent through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 10.12.2021 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short 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 fulfill 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, details of sale consideration, amount paid by the complainant, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	Sunrise - The Premium Floor by Signature Global
2.	Nature of the project	Residential
3.	RERA Registered/not registered	Registered vide Registration No. 269 of 2017
4.	Details of Unit	M1-FF, 1st Floor, Block M-1, measuring super area of 1029.67 sq. ft.
5.	Date of Flat/Builder Buyer Agreement	28.03.2019
6.	Due date of possession	27.08.2020
7.	Possession clause in BBA (Clause 5.1)	<i>"5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said</i>



		<i>Apartment/ Floor to the Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Apartment/ Floor to the Allottee(s) within a period 18 months from the date of allotment."</i>
8.	Total/Basic consideration	sale ₹26,00,131/-
9.	Amount paid by complainant	₹7,02,000/- in two installments as: (An amount of ₹1,21,000/- paid on 07.08.2018 vide cheque no. 000041, copy of which is annexed as Annexure C-1 and C-2 at page no. 14-15 of complaint; Another amount of ₹5,81,000/- claimed to be paid on 02.04.2019, vide cheque no. 765966, however, no documentary proof has been submitted)
10.	Whether occupation certificate received or not.	Received on 21.10.2021
11.	Offer of possession	25.10.2021



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT :

3. In captioned complaint, complainant had booked a unit/apartment bearing no. M1-FF, 1st Floor, Block M-1, measuring super area of 1029.67 sq. ft. in respondent's project, "The Sunrise Premium Floors by Signature Global", Sector-35, Karnal in the year 2018. Further, an allotment letter was issued to the complainant on 27.09.2019.
4. A builder buyer agreement was executed between parties on 28.03.2019. As per clause 5.1, respondent had committed to deliver possession of the unit within 18 months from the date of allotment, which comes to 27.08.2020. The total sale consideration of the unit was fixed as ₹26,00,131/- against which the complainant has paid an amount of ₹7,02,000/-, in two installments of ₹1,21,000/- paid on 07.08.2018 vide cheque no. 000041 and ₹5,81,000/- paid on 02.04.2019, vide cheque no. 765966.
5. It is the submission of the complainant that the project in question falls under the 'Deen Dayal Awas Yojna' scheme, wherein a subsidy amount of ₹2.67 lakhs was to be granted by the Government to the allottees. However, due to inordinate delay in the completion of the project, the said scheme could not be implemented in respect of the booked unit. It is further submitted that the Government discontinued the applicability of the said scheme on 31.03.2021, thereby resulting in a financial loss to the complainant. It is pertinent to note that these events transpired prior to the onset of the COVID-19 pandemic.



6. The complainant made repeated requests to the respondent for the delivery of possession of the allotted unit, as per the agreed terms. However, the respondent consistently evaded compliance on one pretext or another. Till date, neither has the possession of the said unit been handed over to the complainant nor has any amount been refunded by the respondent.
7. That the complainant has disclosed the fact that possession of the unit in question has already been offered to him; however, a copy of offer of possession dated 25.10.2021 alongwith a provisional demand letter dated 25.10.2021 has been placed on record by complainant, copy of which is annexed as Annexure C-3 at page no. 18-21 of the complaint.
8. It is the submission of the complainant that the respondent has miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects even after making payment according to the payment plan of the builder buyer agreement. Therefore, the complainant is left with no other option but to approach this Authority. Hence, the present complaint seeking relief of refund of the amount deposited by the complainant along with interest.

C. RELIEF SOUGHT

9. That complainant seeks following relief(s) and directions to the respondent:-
 - i. To direct the respondent to refund the entire deposited amount of ₹7,02,000/- which has been deposited against the property in question so booked by the complainant along with interest @ 24% per annum



on the amounts from the respective dates of deposit till its actual realization within 90 days according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules.

OR/ALTERNATIVELY

In case the Ld. Authority observed that the interest @24% per annum is outside the pure view and jurisdiction.

To direct the respondent to refund the entire deposited amount of ₹7,02,000/- (Rupees Seven Lakh and Two Thousand only) which has been deposited against the property in question so booked by the complainant along with interest as prescribed, on the amounts from the respective dates of deposit till its actual realization according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules.

- ii. To direct the respondent to pay an adequate compensatory interest on the entire deposited amount of ₹7,02,000/- (Rupees Seven Lakh and Two Thousand only) for delayed offer of possession, as deemed fit by the authority.
- iii. To direct the respondent to pay a sum of ₹15,00,000/- on account of grievance, frustration, caused to the complainant by the miserable attitude of the respondent and deficiency in service and for causing



acute mental agony to the complainant, along with interest from the date of filing the present complaint till its realization.

- iv. The registration, if any, granted to the respondent for the project namely, The Sunrise Premium Floors by Signature Global, under RERA read with relevant rules may kindly be revoked under Section 7 of the RERA for violating the provisions of the Act.
 - v. To impose heavy penalty on the respondent under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.
 - vi. The complainant may be allowed with costs and litigation expenses of ₹1,50,000/-
 - vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.
10. During the course of hearing dated 20.12.2023, the complainant was directed to clarify the relief which she is seeking vide the present complaint. Pursuant to the same, the complainant filed an application dated 28.06.2024 for clarifying the relief sought. However, on perusal of said application it was observed that instead of providing clarification in respect of the relief sought in the complaint file, the complainant had amended her relief altogether to seek as follows:



- i. Direction to the respondent to handover the physical possession of the apartment along with interest for delay caused in delivery of possession.
- ii. Direction to restrain respondent from cancellation of allotment in the name of complainant and further allotment of the same to some other person.

11. During hearing, learned counsel for the complainant reiterated the averments as stated in the complaint. He further submitted that when the possession was offered to the complainant, the respondent/builder called her to see the said unit but respondent just wasted her time and showed no unit to her. They were asked to come at one place or the other but no fixed place to see the construction and the allotted unit. Further, the complainant submitted that after the respondent demanded delay interest on the amount already deposited with the respondent, the complainant paid no heed to such demands and instead demanded further payments. It was specifically stated by the complainant that at present the status of the allotted unit is that it is cancelled on 24.06.2022 and allotted to some other allottee without payment of cancellation amount and fulfillment of any other due procedure as prescribed by law. Such cancellation was against the law of natural justice as when the proceedings are pending before the Authority, it becomes duty of the respondent to stay further alienation on the said unit and create no third party rights on it. However, the respondent acted in negation of such



duty and pleaded that as of now the unit is cancelled and subsequently sold to some other party. Therefore, the complainant now prays for the possession of the booked unit in question.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned Counsel for respondent filed reply on 05.08.2022, pleading therein:

12. As per the builder buyer agreement dated 28.03.2019, respondent had proposed to handover the possession of the unit within a period of 18 months from the date of allotment. The possession of the unit was to be handed over by 27.08.2020.
13. As per payment plan given in Schedule B of builder buyer agreement, wherein 25% of the total cost less the booking amount was to be made on completion of 1 month after allotment and the rest 75% of the total cost's payment was to be made on offer of possession.
14. That respondent submitted that the occupation certificate was issued by competent Authority on 21.10.2021 and possession of the unit was offered to the complainant on 25.10.2021 alongwith a demand letter issued on the same day i.e, 25.10.2021 to clear the outstanding dues. Further, respondent submitted that force majeure on account of Covid-19 outbreak be taken into consideration for relaxation as Covid-19 outbreak lead to delay in handing over of possession. Thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest.



15. That time taken by the department since year 2020 for grant of occupation certificate be also taken as one of the force majeure, since respondent had no control over time taken by department allowing to issue occupation certificate. Furthermore, the project is complete in all respects, and the respondent is now offering possession to allottees.
16. It is pertinent to mention here that respondent has filed written submissions, in response to the application dated 28.06.2024 filed by the complainant seeking clarification of relief; specifically, the 'relief of possession', through an application dated 13.05.2025. In the said response, the respondent has categorically stated that the complainant's application is barred by limitation under Section 3 of the Limitation Act, 1963. It is submitted that the cause of action, if any, arose on 25.10.2021, when the possession of the unit was offered to the complainant. However, the complainant has filed the present application on 28.06.2024, i.e., beyond the prescribed limitation period of three years. Furthermore, the complainant has failed to disclose any valid or sufficient grounds for seeking amendment of the original complaint at this belated stage. It is also pertinent to mention here that the unit in question, i.e., Unit No. M1-FF, 1st Floor, Block M-1, has already been allotted to a new allottee, namely Mr. Amit Kumar s/o Sunil Kumar, by way of a welcome letter dated 07.12.2023, followed by an allotment letter issued on 01.12.2024. It is submitted that the complainant, in the original complaint, had sought the relief of refund. However, by way of the present application dated



28.06.2024, the complainant now seeks the relief of possession, that too after an inordinate delay, and without challenging the cancellation letter dated 24.06.2022 during the pendency of the complaint. Such conduct disentitles the complainant to any equitable relief at this stage.

17. During hearing, ld. counsel for respondent stated that the unit in question was cancelled on 24.06.2022 due to non-payment of outstanding dues. It was further submitted that third-party rights have since been created in respect of the said unit after the institution of the present complaint. The complainant has sought a refund of the deposited amount and has not prayed for possession of the unit. It was contended that had the complainant sought possession as a relief, the principle of *lis pendens* would have applied, and a stay would have operated against the creation of third-party rights. It was further argued that the occupation certificate for the project was issued from the concerned department on 21.10.2021 and subsequently, an offer of possession was made on 25.10.2021 alongwith demand letter issued on the same day i.e., 25.10.2021. Consequently, the liability to pay the outstanding dues arose on the complainant from the date of offer of possession, i.e., 25.10.2021. Despite issuance of multiple demand notices, the complainant failed to make payment of the balance amount due against the allotted unit. Accordingly, the demands raised by the respondent were justified and in accordance with the contractual terms of the builder buyer agreement. Learned counsel for respondent also placed reliance on the builder buyer



agreement dated 28.03.2019, which provides that in the event the developer fails to offer ready-to-move-in possession within 18 months from the date of allotment, such delay would fall within the ambit of force majeure, as defined under the agreement. It was submitted that any delay caused on account of force majeure events shall not render the developer liable for compensation or interest for delayed possession, and the period for offer of possession shall automatically stand extended to the extent of such delay. In view of the foregoing, it was submitted that the respondent is not liable to pay any delay compensation to the complainant.-

E. ISSUES FOR ADJUDICATION

18. Whether the complainant is entitled to relief claimed by her? If yes, the quantum thereof?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

19. In the present complaint, it is not disputed that respondent Rose Building Solutions Private Limited. floated scheme for the development of housing society, to be constructed and developed under project name "Sunrise-the Premium Floors by Signature Global" consisting many floors of different dimensions at different rates in Sector 35, Karnal (Haryana). Consequently, complainant booked a flat admeasuring 1029.67 sq. ft, M1 FF, in block 1 project Sunrise -The Premium Floor by Signature Global on 07.08.2018 and paid Rs.1,21,000/- out of total sale consideration of Rs.25,80,000/- + GST. Thereafter, she paid Rs.5,81,000/- on 02.04.2019 vide Cheque No.765966.



As per the builder buyer agreement/terms of agreement dated 28.03.2019, the possession was to be offered by respondent within 18 months from the date of booking. Meaning thereby the respondent was to offer possession to the complainant up till 06.02.2020.

20. Complainant in her complaint claimed that since respondent did not offer possession uptill 06.02.2020, therefore, she inter-alia stands entitled for seeking refund of amount paid as well as compensation. However, respondent averred that the delay occurred due to injunction granted by Hon'ble Supreme Court as well as due to outbreak of Covid-19. Respondent has further averred that as per apartment buyer agreement, delivery of possession within 18 months was subject to 'force majeure', consequently, the delay cannot be attributed to the respondent. However, subsequently complainant moved hand written application dated 20.12.2023 and thereby prayed for altering the relief of possession from refund. Not only this, but also, she moved an application dated 28.06.2024 and sought relief of ownership and possession. This application has been resisted by the respondent inter-alia on the ground that the relief of possession stood barred by law of limitation and the unit allotted to the complainant has been cancelled and re-allotted to subsequent buyer on 07.12.2023. Resultantly, the first and foremost question that arises for adjudication is, as to whether, complainant can be allowed to alter her relief from refund to possession or not?



21. Coming to the question as to whether complainant can be allowed to alter her relief; the complainant was to get the possession uptill 06.02.2020 when she did not get possession uptill 06.02.2020, then she instituted the present complaint on 10.12.2021 and sought relief of refund. However, on that day, relief of possession was also available to her, which she opted not to avail. Thereafter, she has moved the application for amendment in relief in December 2023 i.e., after more than 3 years, and as such, it can fairly be concluded that the said relief has become barred by delay and laches. Secondly, perusal of documents annexed with the reply filed by respondent shows that even prior to the application of complainant for amendment of relief (hand written dated 20.12.2023), the unit stood allotted to the third party, and as such, the amendment in relief has become impracticable. Though there may be an argument that allotment to subsequent buyer has been made during the pendency of litigation, however, be that as it may, since the complainant was seeking the relief of refund only and not possession, therefore, the doctrine of lis-pendence would not be able to make out a case for the complainant. Thirdly, it is cardinal principle of law of amendment that mutually destructive plea cannot be allowed to be raised by way of amendment. Since, the earlier plea of refund and the proposed plea of possession would not co-exist rather are opposite to each other and thus, mutually destructive, therefore, the same cannot be allowed. Fourthly, though in the application, the complainant has claimed that she wants to clarify the



relief, however, in the considered view of Authority, complainant's plea cannot be considered to be clarification of relief by any standard. Rather, by way of clever drafting, now at the fag end she wants to change her stand and intends to raise an altogether different plea, which cannot be allowed. Lastly, perusal of file shows that the respondent received occupation certificate on 21.12.2021 and wrote letter thereby offering the possession on 25.10.2021. However, the complainant instead of taking possession, filed the present complaint, thereby seeking relief of refund. It is judicial noticeable fact that thereafter there has been a steep price rise in real estate. Therefore, the present application for change in relief seems to be accreted due to rise of prices in real estate and not the genuine prayer. Thus, looking the application from all angles, Authority is of considered view that this application is nothing but changing goal post as per her choice. Thus, there is no justification for allowing the application.

22. Once, it stood established that the complainant cannot be allowed to change her relief, then, the next question arises for determination is as to whether complainant is entitled to the relief of refund as claimed in original complaint? Undisputedly, the respondent was to offer the possession to complainant on or before 06.02.2020. Complainant has claimed that the possession of the unit was not offered by respondent uptill 06.02.2020. Neither it is the case of respondent nor there is any document that the possession of the unit was offered by respondent to complainant on or before



06.02.2020. Rather, perusal of file shows that the respondent purportedly offered the possession of the unit to complainant vide letter dated 25.10.2021 i.e., much beyond the due date. Though the respondent has developed its case that the delay occurred due to force majeure; as Hon'ble Supreme Court has granted injunction against construction activities, however, there is no convincing and legally admissible material on record to substantiate this pleading. Once the respondent failed to offer possession within stipulated period, then, unqualified rights to seek refund along with interest as per Section 18(1) of RERA Act stood accrued in favour of complainant. It is a matter of record that the respondent offered the possession on 25.10.2021, after obtaining occupation certificate from competent Authority vide letter dated 21.10.2021. Therefore, it was incumbent upon the complainant either to accept the possession or demand the refund along with interest. Filing of complaint on 10.12.2021 within 2 months from the offer of possession dated 25.10.2021 per se reflects that the complainant opted for refund. Consequently, she is held entitled to the refund along with interest at the prescribed rate. 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;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “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 (NCLR) 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”..”

23. 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 of order i.e., 09.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.



Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 09.09.2025
1.	121000	07.08.2018	93194
2.	Total= 1,21,000/-		Total= 93,194 /-
3.	Total Payable to complainant = 2,14,194/-		

24. Complainant in its pleadings claims to have paid an amount of ₹7,02,000/- to the respondent in lieu of booked unit. However, upon perusal of file it is observed that the complainant has attached receipt only for an amount of ₹1,21,000/- . For the remaining amount of ₹5,81,000/- no proof of payment has been attached. Therefore, the total paid amount for the purpose of calculation of interest is being taken as ₹1,21,000/- only.
25. So far as the relief of compensation is concerned 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.

G. DIRECTIONS OF THE AUTHORITY

26. Hence, the Authority hereby passes this order 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 the entire amount of Rs. 2,14,194/- to the complainant. It is further clarified that respondent will remain liable to pay the interest to the complainant till the actual realization of the above said 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.

27. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



DR. GEETA RATHEE SINGH

[MEMBER]