



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	3158 of 2022
Date of Filing:	01.12.2022
First Date of Hearing:	14.02.2023
Date of Decision:	09.01.2026

1. Subhash Chander Katyal s/o Sh. Ram Sarup Katyal
R/O 1363, Sector-8, Faridabad,
Haryana, 121006.

2. Rajni Katyal w/o Subhash Chander Katyal
R/O 1363, Sector-8, Faridabad,
Haryana, 121006.

....COMPLAINANTS(S)

VERSUS

1. Skytech Estates Private Limited
385, 11nd Floor Kohat Enclave,
Pitampura, New Delhi, 110088.

2. Skytech Estates Private Limited
Merion Sky Mall, Sector-3, Rohtak,
Haryana.

....RESPONDENT(S)

Ch

CORAM: **Sh. Chander Shekhar** **Member**

Hearing: **10th**

Present: - Mr. Gaurav Gupta, Proxy for Mr. Gaurav Singla, Counsel for the Complainants through VC.
Respondents already Ex-parte vide order dated 28.11.2025.

ORDER:

Present complaint has been filed by the complainants 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 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, details of sale consideration, amount paid by the complainants, 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	Merion Sky Mall, Sector 3, Rohtak, Haryana.
2.	Nature of the project.	Commercial
3.	RERA Registered/Not Registered	Unregistered
4.	Details of the unit	Shop No. FF-101, 1 st Floor, measuring 392 sq. ft.
5.	Date of Builder Buyer Agreement	20.03.2010

6.	Due Date of Possession	Not mentioned in the complaint.
7.	Basic Sale Consideration	₹18,94,500/-
8.	Amount paid by the Complainants	₹24,01,351/- (As mentioned in pleadings)
9.	Offer of Possession	None

B. FACTS OF THE COMPLAINT AS MENTIONED IN THE COMPLAINT

3. Facts of the complaint are that a commercial shop was booked by Mr. Subhash Chander Katyal and Ms. Rajni Katyal in the project namely “Merion sky Mall” situated at Shopping Mall cum Multiplex, Sector-3, Rohtak, Haryana being developed by the respondent promoter. The area of the shop was 392 sq. ft. and Shop No. FF-101 was allotted to the complainants.

4. A total payment of ₹23,01,351/- has been made by the complainants against the Basic Sale Price of ₹18,94,500/-, the details of which have been filed by the complainants vide affidavit dated 21.05.2024. Further, ₹1,00,000/- was adjusted by the respondents in rent at the time of issuing of

MOU dated 22.12.2012. Therefore, the total payment made to the respondents is ₹24,01,351/-.

5. The Builder Buyer Agreement (BBA) was signed between the parties on 20.03.2010, which is annexed as Annexure C-1. As per Clause A of the BBA, there was a Committed Return Plan, as per which the respondent company undertook to make a payment @₹45/- per sq.ft. to the allottees/complainants as a committed return till the date of handing over of the possession. Further, as per Clause 6 of the BBA, the respondent company reserved the right to have first leasing rights to the unit and the allottees/complainants authorized the company to negotiate and finalise the leasing arrangement with any suitable tenants, along with other terms and conditions laid down.

6. Even after 12 years from the date of execution of BBA, neither any amount under the head of committed return plan has been received by the complainants nor have they received the offer of possession till date.

7. On 22.12.2012, a Memorandum Of Understanding (MOU) was signed between the parties, the terms of which commenced from January, 2013. As per Paragraph 3 of the said MOU, the lease amount was to be paid to the complainants by 15th of each calendar month subject to payment of TDS.

8. The complainants approached the developers multiple times through e-mails which are annexed as Annexure C-2, but did not receive any reply. The complainants also visited the head office of the respondents but the officials gave false assurances to hand over possession and no satisfactory answer was given regarding payment of committed return.

9. On 28.05.2015, the respondent issued a letter to the complainants for execution of the sale deed and directed them to provide complete documents and give their consent to execute the sale deed. A copy of the said letter is annexed as Annexure C-3. However, the sale deed was never executed by the respondent.

10. In the year 2019, the complainants visited the office of the respondent and the officials of the respondent company demanded a sum of ₹2,00,000/- towards CAM charges and property tax charges. Such demand was totally illegal as neither possession letter was issued nor the sale deed was executed by the respondent. However, in light of assurances given by the respondent, the complainants paid ₹1,85,000/- on 24.02.2020.

11. In the year 2020, multiple e-mails were exchanged between the parties and on assurance made by the respondent, the complainants purchased stamp papers of ₹1,17,600/- for the execution of sale deed. But the same has not been executed till date.

12. The complainants served a legal notice upon the respondent on 29.07.2022, copy of which is annexed as Annexure C-4, to claim either possession of the unit along with execution of the conveyance deed or refund of the entire amount paid to the respondent along with interest @18% p.a and also claimed the benefit of ₹45/- per sq.ft. as committed return from 18.12.2014 along with compensation through the said legal notice.

13. The respondent promoter has failed to abide by the contractual obligations cast upon it and the complainants have discharged all their obligations.

C. RELIEF SOUGHT

14. In view of the facts mentioned above, the complainants have prayed for the following relief(s):-

- i. To revoke the registration granted to the Respondents-Promoters for the project namely Merion Sky Mall, Sector-3, Rohtak, Haryana under RERA read with relevant Rules, under Section 7 of the RERA for violating the provisions of the RERA.
- ii. To direct the Respondents-Promoters to place on record all statutory approvals and sanctions of the project under Section 35 of the Act, 2016;

- iii. To compensate the Complainant-Petitioner for the delay in completion of the project and refund the entire amount of ₹24,01,351/- along with interest @18% compound interest from dates of respective instalments/realization of the sale consideration by the Respondent;
- iv. To pay compensation of ₹5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainants—Petitioner on account of deficiency in service and unfair trade practices;
- v. To direct the respondent to pay costs and litigation expenses of ₹50,000/-;
- vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY/APPLICATION SUBMITTED ON BEHALF OF RESPONDENT

15. No reply has been filed by the respondent company till date. However, an application dated 12.01.2023 was filed by the respondent stating that the complaint is baseless and false. The project is not covered under the ambit of RERA as the project is commercial. The respondent has received the Occupation Certificate on 06.09.2011, a copy of which is annexed as Annexure A-1. The said Occupation Certificate was received much prior to the

implementation of the RERA Act, therefore, the provisions of the RERA Act cannot be applicable in the present case in retrospective manner and the present case is liable to be rejected for want of jurisdiction.

16. The complainants are in actual possession of the unit and are receiving the agreed rate of rent since 22.12.2012 by entering into the MOU agreement which is annexed as Annexure A-2.

17. The respondent reserves its right to file a detailed reply and to approach the respective Court against the complainants and the present complaint be dismissed on account of lack of jurisdiction.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENTS

18. During the course of arguments, learned counsel for the complainants reiterated the arguments as were submitted in complaint and pressed upon refund of the amount paid by the complainants along with interest.

19. Neither anyone has appeared on behalf of the respondent company for arguments nor any detailed reply has been filed till date. Therefore, in view of three consecutive non appearances and non filing of the reply, the right of defence of the respondent was accordingly struck off vide order dated 28.11.2025 and the respondent company was ordered to be proceeded ex-parte.

F. ISSUES FOR ADJUDICATION

20. Whether the complainants are entitled for refund of the entire amount deposited by them under Section 18 of the Real Estate (Regulation And Development) Act, 2016, along with interest at the prescribed rate of interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

21. The Authority has carefully considered the submissions made by both the parties. In light of the background of the matter as recorded in this order and the arguments advanced by the complainants, the Authority observes as follows:

i. One of the contentions raised by the respondent company is that the provisions of the Real Estate (Regulation and Development) Act, 2016 do not apply to the present case as the Occupation Certificate has been obtained prior to the commencement of the RERA Act, 2016. The respondent contended that the Act cannot be applicable towards the case in retrospective manner and does not fall within the jurisdiction of the Authority. In this regard, the issue of jurisdiction and retrospective operation of the Act has already been decided as per the judgment of the Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors., Civil Appeal Nos. 6745–6749 of 2021,

wherein it has been categorically held that the real estate projects for which a completion certificate has not been issued by the competent authority falls within the ambit of “ongoing projects,” and hence, the provisions of the RERA Act, 2016 are fully applicable to such projects.

The relevant para of the said judgement is reproduced below:

“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.”

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

Further, reference is also made to the judgment of the Hon’ble Punjab and Haryana High Court in Experion Developers Pvt. Ltd. v. State of Haryana & Ors., CWP No. 7852 of 2022, decided on 20.04.2022,



wherein the Court categorically held that for the purposes of exemption under Section 3 of the Real Estate (Regulation and Development) Act, 2016, the issuance of a Completion Certificate (CC) prior to the commencement of the Act is mandatory and mere grant of an Occupation

Certificate (OC) cannot be treated as equivalent to a Completion Certificate. The relevant portion of that order is reproduced below:

"Thus, in our opinion, there being a difference carved out in the Act itself as to what is a completion certificate and an occupancy certificate, unless the petitioner had obtained a completion certificate for the project in question, prior to the date that Section 3 of Act came into effect, i.e. 01.05.2017, it was necessarily required to get itself registered with the respondent authority; but with a completion certificate of an occupancy certificate still not having been obtained, simply obtaining or having applied for such certificate in terms of the Haryana Building Code, 2017, we would not consider the petitioner to be outside the purview of the jurisdiction of the respondent Authority and therefore, if the petitioner is aggrieved in any manner of the impugned orders passed on the merits thereof, obviously it has its remedy of appeal before the Tribunal constituted under the said Act."

Moreover, the exclusion of any project from registration, if applicable, does not absolve the promoter from any of its contractual obligations or liabilities toward the allottee/buyer. These obligations remain fully enforceable and in line with the objective of the RERA Act. Also, as per Section 34(e) of the said Act, it is the function of the Authority to ensure compliance with the obligations cast upon the promoters, allottees and real estate agents under the Act, as well as the rules and regulations made thereunder. Accordingly, this Authority has complete jurisdiction to entertain the present complaint and the objection raised by the respondent regarding lack of jurisdiction is hereby rejected.

ii. Another contention raised by the respondent is that the project is not covered under the ambit of RERA as the project is commercial. The

Preamble of the RERA Act reflects the legislative intent to regulate the real estate sector in its entirety and to protect the interests of consumers therein, without confining such protection only to residential developments. It is important to verify if an allottee-promoter relationship is established. Under Section 2(zk), a 'promoter' is defined in expansive terms to include any person who develops land or constructs a building for the purpose of selling apartments, plots or buildings, and such definition does not distinguish between residential and commercial projects. Correspondingly, Section 2(d) defines an 'allottee' as a person to whom an apartment, plot or building is allotted, sold or otherwise transferred by the promoter, irrespective of the nature or intended use of the unit. Hence, the relationship of an allottee-promoter is established. Once such a relationship is established and the project satisfies the definition of a 'real estate project' under Section 2(zn), the provisions of the RERA Act are applicable. The statute does not carve out any exclusion for commercial projects and therefore, the Authority has the jurisdiction to entertain the present complaint and grant relief under the

 RERA Act notwithstanding the commercial character of the unit.

iii. The respondent further contended that the complainants are in possession of the unit in question and has been receiving the agreed rate of return since 22.12.2012. However, no document or other evidence in support of this assertion has been placed on record by either of the

parties. In the absence of such evidence, the Authority is unable to establish that the complainants have indeed taken possession of the unit or that the agreed returns are being paid. Merely pleadings cannot substitute proof. In view of Sections 104-106 of the Bharatiya Sakshya Adhiniyam, 2023, the said fact is held to be not proved. Consequently, the Authority is proceeding with the assumption that the possession has not been taken and the agreed returns have not been paid, the onus to prove otherwise remaining on the respondent company.

iv. Admittedly, the complainants had purchased the unit in question in the project of the respondent in the year 2009, for Basic Sale Consideration of ₹18,94,500/- against which an amount of ₹21,83,751/- already stands paid to the respondent, along with adjustment of ₹1,00,000/- from rent at the time of issuance of the MOU. However, nothing has been placed on record to establish the adjustment of ₹1,00,000/- from rent. Further, the complainants have purchased the stamp papers for ₹1,17,600/- on alleged assurances of execution of sale deed by the respondent. The affidavit dated 21.05.2024 regarding receipts of the payment was filed by the complainants.

v. Further, a letter was sent by the respondent to the complainants on 28.05.2015 for execution of the sale deed. However, the sale deed was never executed. In the year 2019, the respondents allegedly demanded

₹2,00,000/- on account of CAM and property tax charges, of which ₹1,85,000/- was paid by the complainants on 24.02.2020, following an email sent by the respondent regarding the same on 21.02.2020. The relevant email communications are annexed as Annexure C-2.

vi. The right of the respondent to defend its case was struck off on 28.11.2025 on account of consecutive non appearances and non filing of the reply and the respondent was thereby proceeded ex-parte.

vii. Keeping in view the aforesaid facts and submissions, the Authority observes that the respondent was under a contractual and statutory obligation to deliver possession of the booked unit to the complainants upon receipt of the complete payments or else to make payment of committed returns till the date of handing over possession. However, the respondent has failed to place on record any evidence to establish that the possession has been handed over to the complainants or the respondent has made any payment of agreed committed returns at the time of execution of Builder Buyer Agreement till date of offer of possession or handing over of possession.

viii. Authority observes that the Builder Buyer Agreement was executed on 20.03.2010 and there is no clause pertaining to the deemed date of possession in the agreement. In absence of a specific clause of deemed date of possession in the Builder Buyer Agreement, it cannot

rightly be ascertained as to when the possession of said unit was due to be given to the complainants. In Appeal No. 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Appellate 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 the period of three years is reasonable time of completion of construction work and delivery of possession. In the present complaint, the BBA was executed on 20.03.2010 between the parties. Accordingly, taking a period of three years from the date of BBA as a reasonable time to complete development works in the project and to handover possession to the allottees/complainants, the deemed date of possession comes to 20.03.2013. In the present situation, the respondent failed to honour its contractual obligations without any reasonable justification.

22. Considering the prolonged inordinate delay and the statutory and contractual obligations of the respondent, the Authority finds it a fit case for allowing refund of the entire amount paid by the complainants along with interest. The complainants claim is, therefore, held to be just and enforceable under the provisions of the RERA Act, 2016.

23. The 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;

24. As per the website of the State Bank of India (<https://sbi.co.in>), the highest Marginal Cost of Lending Rate (MCLR) as on 09.01.2026 is 8.80%. Accordingly, in terms of HRERA rules, the prescribed rate of interest for the refund shall be MCLR + 2% = 10.80% per annum, calculated from the date of deposit of each installment until the date of actual payment.

25. 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 sub-section (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”

26. In view of the foregoing findings, the Authority directs the respondent to refund an amount of ₹18,83,751/-, deposited by the complainants along with interest at the rate prescribed under the RERA Act, 2016. Regarding this, it is observed that the complainants have contended that they have paid ₹21,83,751/- along with ₹1,00,000/- towards adjustment in rent at the time of MOU and ₹1,17,600/- towards stamp duty charges. However, no material evidence has been placed on record to establish payment of ₹1,00,000/- by adjustment in rent at the time of execution of the MOU. Further, with respect to stamp duty charges of ₹1,17,600/-, the complainants had themselves agreed to bear all expenses relating to execution/registration of conveyance deed under Clause 23 of the Builder Buyer Agreement. Accordingly, the Authority is not inclined to grant a refund of ₹1,00,000/- and ₹1,17,600/- to the complainants.

27. Further, on perusal of the record, it has been observed that out of the total payment of ₹21,83,751/-; ₹2,50,000/- and ₹50,000/- has been paid in cash by the complainants and the receipts filed by the complainants neither bear seal/signatures of the respondent company nor are they issued under proper letter head of the respondent company. In such an event, it is not possible for the Authority to verify the said receipts. Further, the complainants in the complaint and affidavit dated 21.05.2024 have mentioned the date of cash payment of ₹50,000/- as 10.11.2019. However, the receipts and affidavit dated 22.01.2025

filed by the complainants shows the date of payment as 10.11.2009. Moreover, the receipt of ₹50,000/- pertains to Shop No. GF 18 and not the unit in question. Therefore, on account of multiple ambiguities in the said payments, the Authority is not inclined to award the refund of ₹2,50,000/- and ₹50,000/- and the total principal refund amount is calculated as ₹18,83,751/-.

28. The Authority has calculated the total refundable amount along with interest at the prescribed rate of 10.80% per annum till the date of this order. The total amount payable by the respondent to the complainants works out to be ₹48,73,017/-, as detailed in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 09.01.2026
1.	₹4,00,000/-	17.11.2009	₹6,98,065/-
2.	₹11,00,000/-	18.01.2010	₹18,99,498/-
3.	₹1,48,965/-	29.12.2012	₹2,09,808/-
4.	₹10,586/-	28.08.2013	₹14,152/-
5.	₹19,600/-	07.12.2013	₹25,616/-
6.	₹19,600/-	31.05.2014	₹24,601/-
7.	₹1,85,000/-	24.02.2020	₹1,17,526/-
<i>Cst</i>		Total = ₹18,83,751/-	Total = ₹29,89,266/-
Total Payable to the Complainant		₹18,83,751/- + ₹29,89,266/-	₹48,73,017/-

29. The complainants, during the course of arguments have not pressed upon reliefs (i) and (ii) as mentioned under the reliefs sought, therefore, no observation is made regarding the said reliefs.

30. The complainants have also sought compensation on account of harassment, mental agony, undue hardship and litigation costs. In this regard, it is observed that the Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027, M/s Newtech Promoters and Developers Pvt. Ltd. v. 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 19 of the RERA Act, 2016. The Court further clarified that such claims are to be adjudicated by the learned Adjudicating Officer under Section 71 of the Act, 2016, and the quantum of compensation and legal expenses is to be determined having due regard to the factors enumerated in Section 72 of the Act, 2016. Accordingly, the Authority observes that the claim for compensation and litigation costs cannot be adjudicated in the present proceedings. The complainants are, therefore, advised to approach the learned Adjudicating Officer for seeking relief in respect of compensation and litigation expenses.

Costs
31. The complainants have prayed for interest @18% per annum. However, the RERA Act, 2016, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, prescribes interest at the rate of SBI

MCLR + 2%, which, as on date, works out to be **10.80% per annum**.

Accordingly, the interest shall be calculated and awarded at this statutory rate.

H. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby issues the following directions under Section 37 of the RERA Act, 2016, to ensure compliance with the obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act, 2016:

i. Respondent is directed to refund the amount of ₹18,83,751/- with interest of ₹29,89,266/- to the complainants i.e. ₹48,73,017/- in total within 90 days from the date of passing of this order. It is further clarified that respondent will remain liable to pay interest to the complainants till the actual realization of the amount.

ii. The respondent-promoter is directed to comply with all the directions issued in this order within a period of 90 days from the date of receipt of this order, as provided under Rule 16 of the Haryana Real Estate (Regulation & Development) Rules, 2017.

33. Accordingly, the case is **Disposed of**. File be consigned to the record room after uploading of order on the website of the Authority.

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CHANDER SHEKHAR
[MEMBER]

09.01.2026

Raghav Jain
(Law Associate)