



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2697 of 2023
Date of filing:	22.12.2023
First date of hearing:	23.01.2024
Date of decision:	21.04.2026

Subhash Bhatnagar and Meena Bhatnagar
Flat No. 801, Victoria Tower,
Omaxe Height, Sector 86,
Faridabad 121002

...COMPLAINANT

VERSUS

SRS Real Estate Limited
SRS Tower, 124-126, 1st Floor,
Near Mewla Maharajpur Metro Station,
Faridabad 121003.

.....RESPONDENT

Present :- Sh. Subhash Bhatnagar, Complainant through video conference
Adv. Pranjal P Chaudhary, Learned Counsel for the Respondent
through video conference

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. 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 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 the possession, delay period, if any, have been detailed in the following table:


S.No.	Particulars	Details
1.	Name of the project	SRS Pearl Heights, Sector 87, Faridabad
2.	RERA Registered/not registered	Un-registered
3.	Unit No.	C1/07/ph/87/701
4.	Unit area	1290 sq. ft.
5.	Date of Builder/ Apartment Buyer Agreement	13.05.2013
6.	Due date of possession	13.05.2017 <i>Clause 4.1.....the seller proposes to hand over the possession of flat to the purchaser within a period of 48 months from the date of execution of this agreement.</i>

Patel

7.	Total sale consideration	₹37,75,252/-
8.	Amount paid by complainants	₹35,60,964/-
9.	Offer of possession	18.08.2017
10.	Date of handing over possession	14.01.2022

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. That the complainants Sh. Subhash Bhatnagar and his wife Smt. Meena Bhatnagar purchased a flat bearing no. C1/07/ph/87/701 on 29.04.2011 in the respondent's project namely SRS Pearl Heights, Sector-87, Faridabad. Flat buyer agreement was executed between the parties on 13.05.2013. Total sale consideration of the flat was ₹37,75,252/- against which complainants had already paid ₹35,60,964/-.
4. That the complainant had earlier filed complaint bearing no. 1509 of 2020 before the Authority and complainants were given the possession of the flat through DTP, Faridabad and in the presence of representative of DC, Faridabad on 14.01.2022. Said complaint which was disposed of ex-parte vide order dated 12.05.2022 wherein all dues, if any to be paid by complainant were condoned under different heads and the flat was made free from any financial liability. Further respondent was directed to pay



interest ₹15,65,439/- to the complainant on account of delay in delivery of possession from the deemed date of possession i.e. 13.05.2017 to the date on which complainant had taken over the possession i.e. 14.01.2022.

5. That the flat is in the possession of the complainants under their lock and key. The complainants approached the respondent through registered notice dated 31.10.2023 sent through Ncemka Jail, Faridabad Authority to execute the conveyance deed of the flat with appropriate authority at Faridabad and settle the dues by appointing any representative within one month i.e. upto 30.11.2023.
6. That the respondent builder did not respond to their notice and is not willing to settle the grievances, hence present complaint has been filed.

C. RELIEF SOUGHT

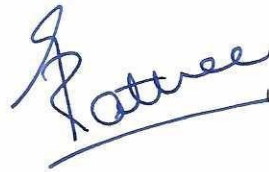
7. In view of the facts mentioned above, the complainants have prayed for the following relief:-
 - (i) Direction to local administration authorities for registration of flat under the relevant rule in the name of complainant and his wife as co-owner of the flat under reference, by local revenue authority having Faridabad jurisdiction.
 - (ii) Declaration that complainant with his wife is sole owner of the flat and is free to use and own all other accompanying benefits of the project like common are benefits.



- (iii) Declaration that complainants can carry out gift, will or can sell the flat at their discretion of desire so.
- (iv) Direct the opposite party/builder to pay interest on total due amount at the rate of 10.75% as to be decided by RERA Authority per annum till the execution of order.
- (v) Direct the opposite party /builder to pay ₹50,000/- as legal expenses.
- (vi) Grant any other reliefs as Hon'ble Authority deems fit to grant/award in the circumstances of the case.

However, during the course of the proceedings, the complainants filed amended complaint on 16.02.2026 wherein following reliefs have been sought:-

- (i) Respectfully pray for using the power and authority under relevant clauses of RERA Act direct the local administration of Faridabad jurisdiction to register the conveyance deed.
- (ii) Respectfully pray to direct the opposite party and direct the heirs of the opposite party to pay all due amount with 10.75% interest or as decided by the honorable Authority till the final date of execution.
- (iii) Direct the opposite part /builder to pay ₹90,000/- as legal expenses.
- (iv) Grant any other reliefs as Hon'ble Authority deems fit to grant/award in the circumstances of the case.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

8. Respondent has not filed any reply in the matter and learned counsel for the respondent stated on instructions that respondent does not wish to file a reply and matter may be decided on the basis of documents available on record.

E. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

9. Sh. Subhash Bhatnagar, complainant reiterated the facts as were stated in the complaint and requested that since possession of the flat has been given with the help of local administration as the respondent was proceeded ex-parte, conveyance deed of the flat may also be executed and direction to local administration be given in this regard.
10. Learned counsel for the respondent stated that respondent is ready and willing to get the conveyance deed executed, however the revenue authorities are not co-operating and are not getting them registered due to direction from Enforcement Directorate to not to proceed.

F. ISSUES FOR ADJUDICATION

11. Whether the complainants are entitled for relief of execution of conveyance deed of the flat in question in their favour?
12. Whether complainants are entitled to be paid due amount along with interest till the final date of execution?




G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

13. Facts set out in the preceding paragraph demonstrates that the complainants purchased a flat bearing no. C1/07/ph/87/701 on 29.04.2011 in the respondent's project namely SRS Pearl Heights, Sector-87, Faridabad. Total sale consideration of the flat was ₹37,75,252/- against which complainant had already paid ₹35,60,964/-. Flat buyer agreement was executed between the parties on 13.05.2013. As per agreement, possession of flat was to be delivered within 48 months from the date of agreement i.e. by 13.05.2017 whereas offer of possession was made on 18.08.2017 with certain demands which were not acceptable to the complainants, hence complaint bearing no. 1509 of 2020 was filed by him. None appeared on behalf of the respondent and the matter was proceeded ex-parte and was finally decided on 12.05.2022. Said order dated 12.05.2022 is reproduced below for reference:

" This is 5th hearing of the matter. Case was discussed in brief vide order dated 09.09.2021 passed by this Authority and the same is reproduced below for ready reference:

1. While initiating his pleadings, complainant submitted that he had purchased a flat bearing no. C1/07/ph/87/701 on 29.04.2011 in the respondent's project namely SRS Pearl Heights, Sector-87, Faridabad. Total sale consideration of the flat was ₹37,75,252/- against which complainant had already paid ₹35,60,964/-. Flat buyer agreement was executed between the parties on 13.05.2013. As per agreement, possession of flat was to be delivered within 48 months from the date of agreement i.e. by 13.05.2017. But offer of possession was made on 18th August 2017 accompanied by certain unjustified and illegal demand of ₹4,56,816/-. Due to the same, complainant did not take possession. Complainant had issued letter dated 02.09.2017 to



the respondent pointing out some deficiencies in his allotted flat but no response had been received from the respondent in this regard.

Ignoring complainant, respondent had again issued demand notice dated 14.09.2017 and 06.11.2017 of ₹4,85,229/-. Other grievance of the complainant is that initially the super area of the flat was 1290 sq. ft. but in demand cum offer of possession letter dated 18.08.2017, it has been increased to 1353 sq. ft. Without giving any justification regarding components of increased area, an additional amount of ₹1,82,032/- demanded by the respondent on account of increased area which is not at all justified. Further, respondent has demanded an amount of ₹18000/- as electric meter charges, ₹20848/- as CGST, ₹20848/- as IGST and ₹43681/- as annual maintenance charges (total comes to ₹59,696/-).

So, he prayed to quash illegal demands raised by the respondent on account of holding charges, increased area, maintenance charges, CGST, SGST and interest charged for delayed payments and further agreed for possession of the flat as on where basis along with delay interest.

2. Since the respondents are stated to be confined in Neemka Jail, Faridabad, notice was served through Jail Superintendent, Neemka Jail Faridabad. However, respondent did not appear despite service of notice on 11.08.2021. Therefore, respondent is ordered to be proceeded against ex-parte.

3. After perusing relevant record and submissions of the complainant during hearing, it has been observed by the Authority that complainant is ready to take possession of his flat as on where basis. But he is disputing illegal demand of ₹4,85,228/- made by the respondent on account of following components:

- (i) basic sale price ₹2,28,578/-
- (ii) interest free maintenance security (IFMS) ₹67,650/-
- (iii) club membership charges ₹75,000/-
- (iv) electric meter and fitting charges ₹18,000/-
- (v) development charges ₹25,893/-
- (vi) holding charges ₹14,901/-
- (vii) CGST and SGST ₹41,696/-
- (x) Interest ₹13,511/-

The disputed amounts against all components are discussed in detail and on consideration of documents available on record and submissions made by the complainant, Authority orders as below:



i. Argument of the complainant is that basic sale price of the flat was ₹37,75,252/- at the time of execution of agreement but respondent has increased this to ₹38,62,071/- while offering possession of the flat on 18.08.2017. On perusal of builder buyer agreement dated 13.05.2013, it is revealed that the flat was booked for an area admeasuring 1290 sq. ft. Whereas respondent has increased total sale consideration of the flat on pretext of the increase in area from 1290 sq. ft. to 1353 sq. ft. Under clause 2.1 of BBA, which provides that the complainant and respondent agreed at the time of execution of BBA that any change /revision in building plans may increase or decrease the super built up area of flat and in any such event total sale price and other charges applicable on said flat shall also increase/decreased proportionately. But moot question is that respondent has not elaborated under which component area of the flat has been increased. Whether such increase has been on account of revised approved plans? If it is so, where is the revised approved plan. Therefore, Authority is of the tentative view that increased basic sale price of the flat is liable to be quashed. So is the case of interest on delayed payments.

ii. It has been argued by the complainant that initially amount of IFMS of ₹64,500/- (@ 50/- per sq. ft.) was agreed by the respondent which is evident from payment plan annexed at page 92 of the complaint book. But later on, vide offer of possession letter dated 18.08.2017 placed at page no. 61, 62, amount of IFMS has been increased to ₹67,650/- without giving any justification. Since the super area at the time of booking was 1290 sq. ft. and no justification were given by the respondent for increased area, therefore in tentative view of the Authority, amount of ₹67,500/- is also liable to be quashed. Complainant will only be liable to pay an amount of ₹64,500/- @50/- per sq. ft on account of IFMS. In case, respondent promoter contests, he may file his justification if any.

iii. As far as charges of club membership are concerned, Authority is of view that respondent cannot recover club charges until and unless club becomes operational after its construction. No justification regarding these charges has been attached along with statement of account. Therefore, these charges will be applicable as and when club becomes operational.



iv. As far as charges of ₹18,000/- is concerned, if the complainant wants to make his own arrangement, then the said amount liable to be waived off.

v. It has also been that argued by the complainant initially an amount of ₹5,30,190/- was charged by respondent as development charges which was agreed by the respondent which is evident from payment plan annexed at page 92 of the complaint book. But later on, vide offer of possession letter dated 18.08.2017 placed at page no. 61, 62, amount of development charges has been increased to ₹5,56,083/-. But no detailed justification has been given by the respondent why these charges have been increased. Therefore, Authority on this issue also is of the tentative view that complainant will be liable to pay increased development charges of ₹5,30,190/-.

vi. An amount of ₹14,901/- being charged by the respondent on account of holding charges. Factual position of the case reveals that possession was offered by the respondent to the complainant on 18.08.2017 after receiving OC on 19.07.2017 along with certain unjustified demand. On perusal of the case file, a new fact came into the knowledge of Authority that department of Town and Country Planning has already cancelled occupation certificate (OC) vide its letter dated 30.10.2018 which is annexed as page no.74 of the complaint. Therefore, Authority held that this building is without occupation certificate and offer of possession made by the respondent is illegal. It has also been stated by the complainant that flat is not complete in all respect as certain deficiencies were existing. For this reason, complainant did not take possession and had filed present complaint. Considering the fact that OC stands cancelled and flat is not in a habitual condition, Authority is of tentative view that holding charges cannot be levied on the complainant. However, no justification has been given by the respondent, the complainant, therefore will not liable to pay these charges at present.

vii. Respondent has charged an amount of ₹41,696/- as CGST and SGST. As per builder buyer agreement, deemed date of possession comes out to 13.05.2017 and the GST Act came into force on 01.07.2017. So, GST cannot be charged by the respondent. For this reason, GST charges of ₹41,696/- are liable to be quashed.



4. Since respondents are confined in jail. Despite successful service of notice, none has appeared on behalf of them nor any reply has been filed despite granting opportunity. In these circumstances, Authority decides to proceed against respondent ex parte. As complainant is ready and willing to take possession of his flat as on where basis, therefore, he is directed to take possession through DTP, Faridabad and in the presence of representative of DC, Faridabad. Remaining issues, if any will be decided later. Copy of this order be served to respondent through Jail Superintendent. In case, respondents have any objections, the same may be filed before the next date of hearing and copy of the same be supplied to the complainant in advance.

5. Case is adjourned to 06.10.2021.

2. In the previous hearing, it was apprised by the complainant that he had already taken over possession of his flat on 14.01.2022 in the presence of official of District Magistrate, Faridabad and pointed out several deficiencies which would be removed in order to make the flat in habitable and living condition. He was also directed to file list of deficiencies along with expenses likely to be incurred by him to remove those deficiencies.

3. Today, complainant has filed estimate of expenses prepared by chartered engineer which amounts to ₹4,50,760/- along with GST and the same is taken on record.

4. Facts and circumstances of the captioned complaint are exactly similar to the matter already disposed of by this Authority vide order dated 15.09.2021 in complaint no. 68 of 2020. Operative part of such order is reproduced below for ready reference:

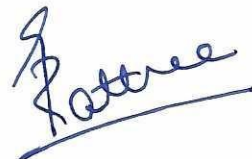
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3. In the aforesaid circumstances, the Authority in the course of previous hearing had ordered that possession to the complainant be delivered as on where basis through District Magistrate and District Town Planner, Faridabad.

4. Today, the complainant has apprised the Authority that he had already obtained possession of his flat. According to him, there are several deficiencies in the flat which need to be rectified. He has submitted a report prepared by Chartered Accountant revealing that an expenditure of ₹4,98,850/- is likely to be incurred for rectifying the deficiencies.

5. In view of above circumstances and report of Chartered Accountant, the Authority allows the complainant to rectify the deficiencies at his own level and will maintain a proper record of the entire expenditure incurred thereon. The amount of


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expenditure actually incurred on rectifying the deficiencies will be liable to be adjusted against the outstanding dues recoverable from the complainant. The respondent will be liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e. 25.03.2017 to the date on which the complainant had taken over the possession i.e. 26.03.2021 at the rate prescribed in Rule 15 of HREERA Rules, 2017.

6. The amount of delay interest payable to the complainant for the above referred period was got calculated by the Accounts Branch of this Authority on the basis of details of payments disclosed by the complainant. Said amount has been worked out of ₹17,40,248/- and the same will also be adjusted towards the outstanding dues payable by the complainant.

7. The complainant will be liable to pay the balance dues in terms of BBA as and when the statement of all payable and receivable amounts is served upon him by the respondent company. It is made clear that the respondent company will be entitled to charge interest @ prescribed under Rule-15 of HREERA Rules, 2017 on the amount which the complainant had not paid on time as per payments schedule attached to the BBA.

8. The complainant will be at liberty to file a fresh complaint for challenging any amount which according to him is not payable to the respondent per terms of BBA. The Authority will adjudicate upon the propriety and legality of such impugned demand at the appropriate stage.

*9. ****

5. Respondent will be liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession i.e. 13.05.2017 to the date on which the complainant had taken over the possession i.e. 14.01.2022 at the rate prescribed in Rule 15 of HREERA Rules, 2017. The amount of delay interest payable to the complainant for the above said as calculated by accounts branch of the Authority works out to 15,65,439/-.

*6. Case is **disposed** of accordingly in the same terms. File be consigned to record room after uploading o order on website."*

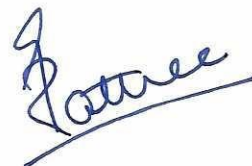
14. Perusal of above order dated 12.05.2022 clearly reveals that all the issues relating to the possession of the flat along with other demands have been already dealt with by the Authority and same cannot be adjudicated again



as it will be against the principle of res-judicata. The complainants have sought the relief that they be given all due amount with 10.75% interest or as decided by the Authority till the final date of execution. Said relief cannot be granted as the issue with regard to payment of interest for delay in handing over possession has already been decided and the complainants will be entitled to interest as per order dated 12.05.2022.

15. Further, the complainants have taken the possession of the flat on 14.01.2022 and it is in their custody since then. After taking the possession of the flat, the next logical step is execution of a conveyance deed which will provide perfect title of the flat to the complainants. However, the conveyance deed has not been executed in their favour. The Authority vide its order dated 12.05.2022 in complaint no. 1509 of 2020 has already decided the receivable and payable amounts and the only issue which is left is the execution of conveyance deed. As per Section 17 of the RERA Act, 2016, respondent is under an obligation to transfer the title of the flat along with necessary documents in favour of the allottee within a specific period. However, till date conveyance deed has not been executed and complainants cannot completely enjoy the title of the flat.

It is pertinent to mention here that complaint no. 1509 of 2020 was decided ex-parte and accordingly possession was handed over to the complainants through local administration. However, in the present complaint, respondent appeared but chose not to file any reply.



Therefore, it would be appropriate to direct the respondent to transfer the title of the flat in question to the complainants by executing conveyance deed in their favour. Accordingly, it is ordered that respondent/promoter shall authorize an official of the company to execute conveyance deeds in favour of allottees. Respondent shall prepare draft conveyance deed and send to the allottee-complainants within 60 days. Thereafter, conveyance deed shall be got executed as per law.

16. Complainant is also seeking litigation expenses of ₹90,000/- . In this regard 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.**" 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 complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.



H. DIRECTIONS OF THE AUTHORITY

17. 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(I) of the Act of 2016:

- (i) Respondent is directed to authorise an official representative of the company to execute conveyance deeds in favour of allottees. Respondent shall prepare draft conveyance deed and send to the allottee-complainants. Thereafter, conveyance deed shall be got executed as per law.
- (ii) Complainant shall remain liable to pay for the prevalent stamp duty charges.
- (iii) 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.

18. Hence, the complaint is accordingly disposed of in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



DR. GEETA RATHEE SINGH
[MEMBER]