



Complaint no.142,144,148,
154,159,160,163,164,
311 & 317 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 142 OF 2021

Anju Bala

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

2. COMPLAINT NO. 144 OF 2021

Babulal

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

3. COMPLAINT NO. 148 OF 2021

Harphool

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

4. COMPLAINT NO. 154 OF 2021

Mukesh

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

5. COMPLAINT NO. 159 OF 2021

VirenderCOMPLAINANT(S)

VERSUS

Housing Board HaryanaRESPONDENT(S)

6. COMPLAINT NO. 160 OF 2021

Ram RatiCOMPLAINANT(S)

VERSUS

Housing Board HaryanaRESPONDENT(S)

7. COMPLAINT NO. 163 OF 2021

Virender YadavCOMPLAINANT(S)

VERSUS

Housing Board HaryanaRESPONDENT(S)

8. COMPLAINT NO. 164 OF 2021

Virender YadavCOMPLAINANT(S)

VERSUS

Housing Board HaryanaRESPONDENT(S)

9. COMPLAINT NO. 311 OF 2021

Chandro DeviCOMPLAINANT(S)

VERSUS

Housing Board HaryanaRESPONDENT(S)



10. COMPLAINT NO. 317 OF 2021

Jagdish

....COMPLAINANT(S)

VERSUS

Housing Board Haryana

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 06.01.2022

Hearing: 6th(in complaint no. 142,144, 148, 154,159,160,163,164 of 2021)
5th (in complaint no. 311, 317 of 2021)

Present: Mr. Ram N Yadav, Learned counsel for the complainant
Mr. Anil Garg, Learned counsel for the respondent
Mr. Jagdish, Estate Manager, Haryana Housing Board, Rewari

ORDER (DILBAG SINGH SIHAG- MEMBER)

1. Captioned complaints have been taken up together as grievances and facts involved are identical and against the same project of the respondent. Taking Complaint no. 148 of 2021 titled Harphool Singh Vs Haryana Housing Board, as the lead case, facts averred are that complainant agreed to purchase an apartment in respondent's project situated at Sisoth, Mahendergarh for which booking was made on 10.05.2011 after paying a booking amount of Rs. 2,19,000/- . Complainant already paid an amount of Rs. 4,35,000/- for said plot against tentative price of Rs. 17.36 lakhs mentioned in the prospectus annexed as Annexure C-1 of complaint file. As per said prospectus, house was likely to be available for allotment by december 2013 but allotment letter was



issued to the complainant on 05.09.2019, without giving any reasonable explanation. Moreover, possession has not been delivered till date. Respondent had rather issued a show cause notice dated 18.10.2019 for cancellation of said house on account of non payment of dues. Respondent later on issued another allotment letter dated 27.05.2020, annexed as Annexure C-5, with such additional charges like liability on cost as were not mentioned in the earlier issued allotment letter. Feeling aggrieved, complainant has filed present complaint for withdrawal of additional demands and to issue directions to the respondent to deliver possession. It was also alleged by the complainant that house allotted to him was not fully constructed and is currently inhabitable, being in a bad shape.

2. Main explanation furnished by complainants for not accepting possession is that respondent alongwith offer of possession had raised additional demand towards payment of GST charges, Corpus fund and cost escalation charges. These charges, according to the complainants, are not payable because GST liability came into existence only after lapse of deemed date of possession and respondent was not discharging his duty to transfer already collected amount of corpus funds to existing Residential Welfare Association (RWA). Another explanation put forth for not accepting offer was that house allotted to the complainant was not fully constructed and even at present it is in dilapidated and uninhabitable condition. In support of his plea complainant filed rejoinder

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dated 01.07.2021 furnishing latest photograph of the allotted house showing defective construction and the risk it poses to the life of allottee.

Learned counsel for the complainant further submitted that vide orders dated 25.08.2021 Authority had directed both parties to conduct joint inspection of the houses allotted to the complainants. On the hearing dated 28.10.2021 both parties had submitted their respective reports alongwith CDs containing videography of joint inspection carried out whereby Authority had observed that houses allotted to complainants are in uninhabitable condition and deficiencies existing in the units were taken on record. Observations recorded by the Authority in regard to joint inspection ^{are} reproduced below .

“ Upon perusal of the report and CD it is evident that the houses allotted to the complainants are in a inhabitable condition and deficiencies revealed thereby are as under:

- (i) Plaster on walls of houses is damaged
- (ii) Heavy growth of weeds in the front and back courtyard of the houses
- (iii) Windows of the houses are damaged
- (iv) Plaster and concrete from roof at various places has fallen down exposing the underlying steel.
- (v) Several portions of houses require reinforcements.
- (vi) Overall condition of houses had deteriorated as the same remained locked and unmaintained for a long time.”

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Pursuant to the same Authority had directed the respondent to carry out requisite repair works and rectify all the deficiencies in the allotted houses and to submit a report in this regard on next date of hearing.

3. Today, Mr. Ram N Yadav, learned counsel for complainants, submitted that respondent has failed to comply with the orders dated 28.10.2021 of the Authority. It has been more than two months and respondent is yet to carry out any repair works or rectify deficiencies existing in the allotted houses. He alleged that respondent has blatantly refused to follow the directions issued by this Authority by not even visiting the site in this two months period.

Learned counsel for complainant further submitted that houses allotted to the complainants are in pathetic condition and need massive repair works to make them habitable for residence. Therefore, he prayed to the Authority that respondent Haryana Housing Board, may be penalised for non compliance of the orders of the Authority and to issue them directions to offer possession of the allotted houses to the complainants after carrying out necessary repairing and finishing works

4. On the other hand, respondent in his reply submitted that as per plan, house would have been available for allotment by 31.12.2013 but construction of the same got delayed awaiting requisite permission from forest department for removal of certain trees from the land. The matter remained pending before

forest department from 2010 to 2013, and the permission was ultimately granted vide letter dated 05.04.2013. Thereafter construction of houses was taken up and completed in 2015. However, external development work at the site was completed by the concerned department by 30.04.2019. After completion of all development works, respondent promoter issued allotment letter/ possession letter to the successful allottees of draw of lots, including complainants in above mentioned complaints. The houses allotted to complainants were completed with all basic amenities by respondent in the year 2015 itself. He further submitted that possession of houses already stands offered to complainants alongwith the allotment letter dated 05.09.2019. It was the complainant who had to accept the said offer within 30 days from the date of issue of the allotment letter after payment of balance price which the complainant failed to do. Hence, respondent is not at fault for delay in offering possession of the allotted houses

He further submitted that as per directions of Hon'ble Authority both parties had conducted joint inspection of allotted houses and report in this regard has been placed before the Authority.

5. Mr. Anil Garg, learned counsel for respondent, submitted that possession of the houses already stands offered to the complainants alongwith allotment letter dated 05.09.2019. It was the complainant who had to accept the said offer within 30 days from the date of issue of the allotment letter that too after payment of balance price which the complainant failed to do. Learned

counsel for respondent averred that as per clause 10 of the brochure, houses were allotted to the complainants on "as is where basis" and any further claims or complaints regarding the condition of houses can not be entertained by the respondent. Clause 10 of the brochure is reproduced below.

" The allottee shall be entitled to delivery of possession of the houses only after he/she has completed all the formalities and paid all dues and furnished/ executed all the documents as required/prescribed. The houses will be handed over on "as is where is basis" and the Board will not entertain any claim for additions or alterations or any complaints, whatsoever regarding the condition of houses, price of houses, it design, the quality of material uses, workmanship, etc"

Learned counsel for respondent further apprised the Authority that respondent has filed an appeal before Hon'ble Appellate Tribunal, Chandigarh against orders of the Authority passed in above complaints.

6. After hearing both parties, Authority observes that as per the brochure issued by respondent, houses should have been available for allotment by 31.12.2013 but allotment cum possession letter was issued to the complainants on 05.09.2019 i.e after a delay of nearly six years. It is alleged by complainants that houses allotted to them were in a dilapidated condition and hence not fit for possession. In order to ascertain allegations put forth by complainants regarding uninhabitability of houses, Authority had ordered joint



inspection of allotted houses by both parties. Report of joint inspection was placed before the Authority and upon perusal of said report Authority had observed that condition of houses allotted to the complainants was indeed dilapidated and they were to be made inhabitable before offering possession. Therefore, offer of possession sent to the complainants in the year 2019 was not a good offer in the eyes of law in view of their uninhabitable condition, and the complainants could not have been forced to accept such an allotment/ offer of possession.

7. In view of the deteriorated condition of the allotted houses, respondent was directed to carry out necessary repair and finishing works in the houses to make them habitable. However, as per submissions of learned counsel for complainant, respondent has failed to comply with the orders of Authority. Reason furnished by respondent Housing Board Haryana is that as per 'Clause 10' of the brochure, houses were to be handed over on "as is where is basis" regardless of the condition of houses. Authority observes that such a clause is arbitrary, unreasonable and unfair clause. Respondent has to offer houses in habitable condition. As the photographs placed on record show, at present no human being can live in them. It is a matter of common sense and understood principle of law that property proposed to be offered has to be in usable condition. Complainants never contested to get dilapidated and uninhabitable houses. As it appears, at present they are in bad shape and may be they are not even safe to live in. The plea of respondent that they have filed an appeal

before Hon'ble Tribunal cannot be entertained at this stage because merely filing an appeal does not discharge respondent from their obligation to comply with the orders of the Authority. Respondent has only made a verbal statement in regard to filing of an appeal in Hon'ble Tribunal. Therefore, Authority directs the respondent to carry out all the necessary repair works and rectify existing deficiencies in the houses allotted to the complainants and upon completion of repair works respondent will issue fresh offer of possession to the complainants within six months of uploading of this order.

Further, for the delay occurred in handing over of possession, complainants are entitled to delay interest from deemed date of possession till actual offer of possession is issued to them respectively in terms of Rule 15 of HRERA Rules 2017 i.e SBI MCLR + 2% which works out to 9.30%.

8. Now with regards to deemed date of possession, Authority observes that in the brochure issued to complainants, respondent has failed to clearly indicate as to when the houses will be ready for possession. It is only mentioned that houses are likely to be available for allotment by December 2013. Thus, in absence of proper builder buyer agreement, it cannot precisely be ascertained as to when possession of said plot was due to be given to the complainant. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known



as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is a reasonable time.

In above mentioned complaints, Authority observes that respondent promoter accepted first payment made by complainants by way of booking amount for a unit in the project. Thereafter, second instalment was demanded and complainants paid the same . Authority presumes that respondent promoter should have begun construction of the project when second instalment was demanded. Accordingly, the date of second instalment is being taken as date of commencement of period of contract. Accordingly, taking period of 3 years from the date of second instalment charged by the respondent, in respective cases as reasonable time to complete development works in the project, respective deemed date to handover possession of the houses to the allottees is being ascertained in each case.

9. On the basis of principle laid down in para 10 above, delay interest payable to each allottee from deemed date of possession till passing of order and monthly interest till actual offer of possession is calculated at the rate of 9.30% and is awarded as shown in following table:



Complain nt No.	Amount (in Rs)	Date of Second Instalment	Deemed date of possession	Delay interest till 06.01.2022	Monthly Interest.
142 of 2021	8,76,000/-	04.04.2012	04.04.2015	4,08,784/-	6,789
144 of 2021	8,77,000/-	17.04.2012	17.04.2015	3,89,812/-	6,797/-
148 of 2021	4,35,000/-	10.04.2012	10.04.2015	2,72,877/-	3,371/-
154 of 2021	10,59,917/-	10.04.2012	10.04.2015	3,95,322/-	8,214/-
159 of 2021	4,20,000/-	10.04.2012	10.04.2015	1,84,624/-	3,255/-
160 of 2021	5,48,000/-	10.04.2012	10.04.2015	3,43,763/-	4,247/-
163 of 2021	8,77,000/-	10.04.2012	10.04.2015	4,08,394/-	6,797/-
164 of 2021	7,34,367	10.04.2012	10.04.2015	3,31,294/-	5,342/-
311 of 2021	11,03,131/-	10.04.2012	10.04.2015	4,27,356/-	8,549/-
317 of 2021	6,30,052/-	10.04.2012	10.04.2015	2,37,869/-	4,883/-

10. Justification of the paid amounts:

- (i) In complaint no. 142 of 2021 complainant has submitted that he has paid an amount of Rs 5,48,000/- to the respondent by 2012. Same has also been conceded by the respondent in his reply and allotment letter issued to complainant on 05.09.2019 also confirmed

said amount. In said allotment letter, respondent raised further demand of Rs 6,62,868/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 3,28,000/- on 30.11.2019 in said bank account and receipt of the same is annexed as Annexure C-2 page 21 of the complaint file. Accordingly, total paid amount comes out to Rs 8,76,000/- by 2019.

(ii) In complaint no. 144 of 2021 complainant has submitted that he has paid an amount of Rs 5,48,000/- to the respondent by 2012. Same has also been conceded by the respondent in his reply and allotment letter issued to complainant on 05.09.2019 also confirmed said amount. Complainant in his complaint has submitted that he has made second instalment to respondent on 10.04.2012 however, no receipt has been attached. On the other hand, respondent in his reply has conceded that a second instalment has been received on 17.04.2012 but no receipt has been attached by respondent either. Since no receipt has been attached, therefore, giving benefit of doubt to respondent date of payment of second instalment is being taken as 17.04.2012. Vide allotment letter dated 05.09.2019 respondent raised further demand of Rs 6,62,868/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 3,29,000/- on 25.06.2020 in said



bank account and receipt of the same is annexed as Annexure 2 page 21 of the complaint file. Accordingly, total paid amount comes out to Rs 8,77,000/- by 2019.

(iii) In complaint no. 148 of 2021, complainant has submitted that he has paid an amount of Rs 4,35,000/- to the respondent by 2012. Same has also been conceded by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. Accordingly, total paid amount comes out to Rs 4,35,000/- by 2012.

(iv) In complaint no. 154 of 2021, complainant has submitted that he has paid an amount of Rs 10,59,000/- to the respondent. However, respondent in his reply and allotment letter issued to complainant on 05.09.2019 has only conceded to a payment of Rs 4,35,000/-. Complainant had paid an amount of Rs 4,35,000/- to the respondent by the year 2012. Vide allotment letter dated 05.09.2019 respondent raised further demand of Rs 6,24,917/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Said amount was paid by complainant on 29.11.2019 and receipt of the same is annexed as Annexure C-2 page 21 of the complaint file. Accordingly, the total paid amount comes out to Rs 10,59,917/- by 2019.

(v) In complaint no. 159 of 2021, complainant has submitted that he has paid an amount of Rs 2,60,000/- to the respondent by



2012. Same has been agreed by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. In said allotment letter respondent raised further demand of Rs 3,71,044/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 1,60,000/- on 28.07.2020 in said bank account and receipt of the same has been mailed by counsel for the complainant on the office email id on 21.01.2022. Accordingly, total paid amount comes out to Rs 4,20,000/- by 2020.

(vi) In complaint no. 160 of 2021 complainant has submitted that he has paid an amount of Rs 5,48,000/- to the respondent by 2012. Same has been agreed by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. Accordingly, total paid amount comes out to Rs 5,48,000/- by 2012.

(vii) In complaint no. 163 of 2021 complainant has submitted that he has paid an amount of Rs 5,48,000/- to the respondent by 2012. Same has been agreed by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. In said allotment letter respondent raised further demand of Rs 6,62,868/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 3,29,000/- on 27.11.2019 in said bank account and receipt of the



same has been sent by counsel for the complainant on the office email id on 20.01.2022. Accordingly, total paid amount comes out to Rs 8,77,000/- by 2019.

(viii) In complaint no. 164 of 2021 complainant has submitted that he has paid an amount of Rs 4,35,000/- to the respondent by 2012. Same has also been conceded by the respondent in his reply and allotment letter issued to complainant on 05.09.2019 also confirmed said amount. In said allotment letter, respondent raised further demand of Rs 5,93,122/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 2,61,00/- on 27.11.2019 receipt of the same has been annexed at page 22 of complaint file and Rs 19,000/- on 13/01/2019 and Rs 19,367/- on 30.01.2020, receipt of which has been mailed by counsel for the complainant on the office email id on 27.01.2022 in said bank account. Accordingly, total paid amount comes out to Rs 7,34,367/- by 2020.

(ix) In complaint no. 311 of 2021 complainant has submitted that he has paid an amount of Rs 5,48,000/- to the respondent by 2012. Same has been agreed by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. In said allotment letter respondent raised further demand of Rs 6,86,439/- and directed the allottees to deposit the amount in Punjab National

Bank, Main Branch, Narnaul. Complainant paid an amount of Rs 5,55,131/- on 26.05.2020 in said bank account and receipt of the same has been annexed at page 21 of complaint file. Accordingly, total paid amount comes out to Rs 11,03,131/- by 2020.

(x) In complaint no. 317 of 2021 complainant has submitted that he has paid an amount of Rs 2,60,000/- to the respondent by 2012. Same has been agreed by the respondent in his reply and allotment letter issued to complainant on 05.09.2019. In said allotment letter respondent raised further demand of Rs 3,70,052/- and directed the allottees to deposit the amount in Punjab National Bank, Main Branch, Narnaul. Said amount was paid by complainant on 05.11.2019 in said bank account and receipt of the same has been sent by counsel for the complainant on the office email id on 27.01.2022. Accordingly, total paid amount comes out to Rs 6,30,052/- by 2019.

11. Considering all written submissions as well as verbal submissions, Authority directs respondent to carry out requisite repair works and rectify all deficiencies existing in the allotted houses of the complainants within six months of uploading of this order. Thereafter, respondent shall issue a fresh offer of possession to the complainants duly incorporating therein the respective delay interest payable to all complainants upto the date of passing this order as calculated by the Accounts department of the Authority and distinctly shown in



table under para 10 above and further monthly delay interest shall be payable to the complainants till actual offer of possession is made.

12. With these directions, cases are disposed of. Order be uploaded on the website of Authority and files be consigned to record room



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]