



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2582 of 2022
Date of filing:	28.09.2022
First date of hearing:	22.11.2022
Date of decision:	27.05.2024

Usha Saluja

W/o Sh. Subhash Saluja

R/o House no. 169,

Near Ram Lal Chowk, Model Town,

Panipat, Haryana-132103

.....COMPLAINANT

Versus

1. CMD Build Tech Pvt. Ltd.

R/o 909, ITL, Twin Towers,

Netaji Subhash place,

Pitampura, Delhi-110034

2. Pardesi Developers Pvt. Ltd.

R/o 801, Jackson Crown Heights,

3B1 Twin District Centre, Sector 10,
Rohini, Delhi-110088

.....RESPONDENTS

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Hearing: 7th

Present: - Adv. Rahul, counsel for complainant through VC.

None for respondent no.1

Adv. Sushant Dahiya, counsel of respondent no.2 through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 28.09.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:



S.No.	Particulars	Details
1.	Name and location of the project	CMD Narula Ushay Towers, Sector 61, Village Rasoi, Sonipat
2.	Name of the promoters	CMD Build tech Pvt. Ltd. and Pardesi Developers Pvt. Ltd.
3.	RERA registered/not registered Unit No.	Un- registered
4.	Nature of the project	Residential Group Housing project
5.	Flat No.	Flat no. 1002, 10 th floor
6.	Apartment area (Super area)	2275 Sq. ft.
7.	Date of allotment	06.01.2011
8.	Date of Flat Buyer Agreement	04.02.2011
9.	Deemed date of possession	04.08.2013 (30 months from the date of execution of the agreement, i.e, 04.02.2011)
10.	Possession clause in Flat Buyer Agreement	<i>"Clause 12 "that the company shall endeavour to offer the possession of Apartment to apartment allottee within 30 months from the date of sanction of building plans by the authorities subject to force majeure circumstance and on receipt of all payments punctually as per agreed</i>



		<i>terms and on receipt of complete payment of the basic sale price and other charges due and payable upto the date of possession according to the payment plan applicable to allottee."</i>
11.	Total sale consideration	₹47,43,375/- (as specified in the agreement)
12.	Amount paid by complainant	₹15,00,000/- (Receipt attached)
13.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

1. Case of the complainant is that complainant was allotted Flat no. 1002 in Tower-Marina, admeasuring 2275 sq. ft. in the Residential Group Housing project known as "CMD Narula Ushay Towers" situated at Sector 61, Village Rasoi, Sonipat via allotment letter dated 06.01.2011. After the allotment of the unit, both the parties entered into a Flat Buyer Agreement on 04.02.2011. However, the said agreement was arbitrary as it was only signed by the promoter. Copy of Allotment letter dated 06.01.2011 and Flat Buyer Agreement dated 04.02.2011 are annexed as "Annexure C-1" and "Annexure

C-2" respectively. Complainant had made full payment of ₹15,00,000/- against total sale consideration of ₹15,00,000/-.

2. As per terms and conditions of the flat buyer agreement, respondents were under an obligation to handover the possession of the flat within 30 months from the date of execution of agreement. As per complainant, deemed date of possession comes out to be 04.08.2013. However, even after receiving full payment back in the year 2011, respondents failed to offer/ handover the possession of the booked unit till date. In addition, respondent no. 1 without giving any prior intimation to the complainant entered into collaboration agreement with another promoter namely; "M/s Pardesi Developers Pvt. Ltd., i.e., respondent no. 2.
3. That despite receiving Occupation Certificate from the competent authority on 01.02.2018, respondents have failed to handover possession to the complainant. Copy of Occupation Certificate dated 01.02.2018 is annexed as "Annexure C-4".
4. That complainant wrote several letters to the respondent asking about the stage of construction work at the site, but there was no satisfactory response from the promoters. Respondent even after receiving OC and entire sale consideration have failed to handover possession of the unit till date.



C. RELIEFS SOUGHT

5. Complainant has sought following reliefs:

- (i) Direct the respondent to handover the possession of the flat no.1002 allotted to the complainant along with delayed possession compensation.
- (ii) Direct the respondent to pay sum of ₹1,50,000/- to the complainant towards litigation cost.
- (iii) Revoke third party rights if created by the respondents in favour of any other allottee.
- (iv) Grant any other relief that may be necessary in the interest of justice, equity and good conscience.

D. REPLY ON BEHALF OF RESPONDENTS

6. That despite availing opportunities, respondent no. 1 has neither appeared nor denied any claim/allegation made by the complainant meaning thereby that the respondent no.1 has nothing to file in rebuttal to the claims made by the complainant. Respondent no. 1 has failed to file any written statement/reply on his behalf.
7. On the other hand, respondent no.2 has filed a detailed reply on 16.02.2023, stating therein that complainant has wrongly mentioned the total sale price of



the project. Basic sale price of the project is ₹47,43,375/- proof of encashment of cheque or further payment made to the builder has been annexed in the petition. Complainant also concealed the fact that she had conveyed her consent to accept possession of flat no. 1003 in Marina Tower and also agreed to pay the balance amount.

8. Complainant has produced a forged and fabricated receipt (Annexure C-3 in the complaint book) and attempted to show as receipt for booking amount as a receipt for full and final payment receipt for a flat. It is further mentioned that as per the agreement respondent was under an obligation to deliver possession of the unit within 30 months from the date of sanction of building plans by the Authorities. However complainant in his complaint book has misguided the Authority stating that respondent was under an obligation to handover possession of the unit within 30 months from date of execution of the agreement. Respondent has not even offered the possession of the unit, for the reason that complainant has still not cleared all her pending dues. As complainant herself admits in the email sent to the Director, Pardesi group dated 27.02.2022 that *"I request you to please share the pending dues details with your bank account."*



9. That Kundli project namely "Ushay Towers" was under M/s CMD build Tech Pvt. Ltd. and in terms of the orders passed by the Hon'ble Delhi High Court on 18.09.2013 in CP/468/2011, the official liquidator was directed to take over assets at Ushay Towers. Copy of order is annexed as "Annexure R-2/A". The effect of order was that Hon'ble Delhi High Court took over the project with official liquidator being custodian of all the assets related to Ushay Towers. The said order referred above was got modified on an application moved by respondent no. 2 and 12 towers were released in terms of order of Hon'ble Delhi High Court dated 09.11.2017 and finally petition was withdrawn on 12.02.2019. Copies of orders are annexed as Annexure R-2/B and R-2/C. That as per Clause 13 of agreement, if situation is beyond the control of promoter, the company shall be entitled to a reasonable corresponding extension of time of delivery. In spite of circumstances, respondent no. 2 has handed over the possession of the flats as and when it got released from the possession of the official liquidator and is ready to handover the flat to the complainant in the tower which is ready for possession and to which she conveyed her consent vide email dated 27.07.2022.



10. With regard to the request of complainant not to create any third party rights with respect to the booked unit, complainant herself, in her email dated 27.02.2022, sent to the Director Pardesi group states that *"the complainant has visited the corporate office, Rohini (of the respondent no. 2) on 4th April and 29th April, 2022. Where you asked to choose another flat as you have already allotted flat no. 1002 in Marina Tower to someone else. Mr. Nikhil had offered me flat no. 1003 on the same floor Marina Tower and told me to clear pending dues. I have discussed with my family and I am fine with flat no. 1003 that you are offering"*. It is clear with this email that complainant already had knowledge about the position of flat no. 1002 and is ready to accept the offer provided by the company to ask possession of flat no. 1003 after clearing dues. Later, respondent company offered Flat no. Q2/1004 via email dated 17.08.2022 with the same conditions to deposit the dues as per annexure attached to take possession.
11. Further, complainant in her complaint book has herself stated that 50 allottees are already residing in their units in the same project which clearly means that there is no deficiency of services on the part of respondent. Moreover, complainant has filed the present complaint before the Authority on



10.08.2022 and occupational certificate was already received by the respondent on 01.02.2018.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

12. Learned counsel for the complainant stated that respondent no. 2 has not complied with the directions given by the Authority on last date of hearing dated 15.01.2024 wherein, Authority directed the respondent no. 2 to submit copy of original e-mail or screenshot of e-mail dated 27.07.2022 to prove that this e-mail was sent by the complainant. Secondly, to clarify whether respondent no. 2 has sent details of amount due to the complainant and proof as to what further steps were taken by respondent after complainant agreed for change of unit and to pay the balance amount? He further stated that initially the unit allotted to complainant was F-1002. However, third party rights have been created by the respondent no. 2 on the booked flat. He further stated that complainant is ready to take possession of unit no. F-1003 or any alternate similar unit. He requested the Authority that a direction may be passed to respondent to give possession of Unit no. F-1003 or any alternate unit of same size.



13. On the other hand, learned counsel for respondent no. 2 submitted that with regard to the directions given by the Authority vide its last order dated 15.01.2024, the Directors of company are out of country so he seeks some time to arrange for a copy of original email dated 27.07.2022 vide which complainant has given acceptance to take possession of alternate unit no. F-1003. Furthermore, respondent no. 2 had no reason to delay the handover of the unit to the allottees, as the occupation certificate for the project was already received by the respondents on 01.02.2018.

F. ISSUES FOR ADJUDICATION

14. Whether the complainant is entitled to get possession of booked flat or unit no. F-1003 or any other alternate unit along with delay interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as follows:

15. Complainant in this case had initially booked a flat no. F-1002, Marina Tower measuring 2275 sq. ft. in the project of the respondent no. 1 vide allotment letter dated 06.01.2011 by paying an amount of ₹15,00,000/-. Later on,



complainant entered into collaboration with another promoter, i.e, respondent no. 2 namely, "M/s Pardesi Developers Pvt. Ltd." Further, as per complainant the total sale consideration for the booked unit is 15,00,000/- and full and final payment has already been made by the complainant against the booked unit. However, respondent no.2 in his reply has averred that total sale price of the unit is ₹47,43,375/-. With regard to the said issue, Authority observes that, complainant has annexed a copy of flat buyer agreement in her complaint book on page no. 19 as "Annexure C-2". However said agreement is only signed by the promoter, i.e., respondent no. 1 and allottee has not signed the same. But complainant is relying upon the said flat buyer agreement for ascertaining the deemed date of possession. Even respondent no. 2 in his reply has also mentioned about the said flat buyer agreement, so even respondent no. 2 is not denying the execution of the agreement. Therefore, Authority deems appropriate to ascertain total sale price of the unit from the flat buyer agreement. From clause 1 at page no. 22 of flat buyer agreement, it is clear that the total sale price of the booked unit is ₹47,43,375/-. Therefore, complainant has paid total amount of ₹15,00,000/- against the total sale price of ₹47,43,375/-.



16. As per Clause 12 of the flat buyer agreement, the possession was to be delivered to the allottee/complainant *within 30 months from the date of sanction of building plans by the Authorities*. Perusal of files reveals that neither complainant nor respondents have given any specific date of sanction of building plans. Therefore, to ascertain the tentative deemed date of possession, Authority deems appropriate to calculate deemed date of possession, "30 months from the date of execution of the agreement". Careful perusal of buyer agreement (page no. 20 of the complaint book) reveals that it is written "*4th day of 2011*" as date of execution of agreement. But with this information is not possible to ascertain the month in which said agreement was executed. For ascertaining the same, Authority has gone through the files, wherein it is revealed that both the parties have confirmed the date of execution of agreement as 04.02.2011. Complainant in her paper book of the complaint, at page no. 6 has mentioned that "*the respondent executed a flat buyer agreement dated 04.02.2011 with the complainant*". On the other hand, respondent in his reply has written at page no. 8 of the written statement that "*as per the clause 12 of the flat buyer agreement dated 04.02.2011 executed with the complainant.....*". Concluding the same, the date of execution of agreement is taken as 04.02.2011 and deemed date of possession is calculated



as 30 months from the date of execution of agreement which comes out to be **04.08.2013**. It is pertinent to mention here that respondent no. 2 was under an obligation to handover the possession of the booked flat to the complainant which is also clear from para 5 at page 6 of the reply wherein, respondent no. 2 has written “...respondent no. 2 has handed over the possession of the flats as when it got released from the possession of the official liquidator and is ready to handover the flat to the complainant in the tower which is ready for possession and to which she had also conveyed her consent vide email dated 27.07.2022....” However, the respondent no. 2 has not offered possession of the booked unit till date to the complainant. Respondent no. 2 has failed to fulfil his obligation of delivering possession of unit within the stipulated time without assigning any justification for it. Moreover, respondent has also received occupation certificate from the competent authority on 01.02.2018.

17. Despite availing opportunities respondent no. 1 has neither appeared nor denied any claim/allegation made by the complainant. Further, in spite of successful publication of public notice on 26.08.2023, respondent no. 1 chose not to appear before the Authority. Meaning thereby, that the respondent no.1 has nothing to file in rebuttal to the claims made by the complainant.



18. Now, with regard to the relief of complainant wherein she is seeking possession of unit no. F-1002, Authority observes that complainant has made payment of ₹15,00,000/- to the respondent no.1 against the unit no. F-1002. Believing the fact, that she has made full and final payment of the unit, complainant didn't pay the balance consideration to the respondent. Consequently, respondent no. 2 cancelled the unit and allotted the same to some other person. This can be inferred firstly, from the an email dated 27.07.2022 at page no. 38 annexed by the respondent in his reply wherein, complainant has written that *"the complainant has visited the corporate office, Rohini (of respondent no. 2) on 4th April and 29th April 2022, where you asked to choose another flat as you have already allotted flat no. 1002 in marina Tower to someone else. Mr. Nikhil had offered me flat no. 1003 on the same floor marina Tower and told me to clear pending dues. I have discussed with my family and I am fine with flat no. 1003 that you are offering"*. Secondly, even counsel for complainant requested the Authority for issuing directions to the respondents for offering possession of same unit or different unit of same area during hearing on 05.12.2023. Moreover, complainant has filed captioned complaint on 28.09.2022 and cancellation of the unit was prior to filing of the complaint. Further, there is no proof on the record that even



after paying such a huge amount of ₹15,00,000/- to the respondent, complainant has sent any email/communications to the respondent asking the status of construction of the project. Based on the contractual terms and circumstances presented, the respondent's cancellation of unit F-1102 is upheld as valid. The respondent acted in accordance with the contractual provisions of agreement by cancelling the booking when the balance was not paid within the stipulated timeframe.

19. Furthermore, Authority vide its order dated 05.12.2023 directed "*respondent no. 2 not to create any third party rights against the flat no. 1003 of the complainant. In case any third party rights are already created, one unit of the similar size and similarly situated may be reserved for the complainant till the disposal of the matter*". In addition, vide order dated 15.01.2024 passed by the Authority, Id. Counsel for complainant orally stated that complainant is seeking possession of the booked unit or any ***alternate unit*** of the same area from respondent no.2. It is clear that complainant wants to continue with the project and is only seeking relief of possession of the unit. Even occupation certificate was obtained by the respondent from the competent authority on 01.02.2018. It proves that all construction and development work are complete on the part of respondent no. 2 in the project. Considering the



situation, where neither complainant nor respondent no. 2 has provided status of unit no. F-1003 to the Authority, Authority deems appropriate to give directions to the respondent no. 2 to handover possession of unit no. F-1003, if available or any alternate flat of similar size and similarly situated to the complainant.

20. In the present complaint, complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

21. Per contra respondent no. 2 has failed to put forth any valid reason/ground for not offering the possession of the booked unit. Complainant, however, is interested in getting the possession of the booked unit or alternate unit. She does not wish to withdraw from the project. In such circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while



exercising the option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. Hence, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e. 04.08.2013 till the date on which a legal valid offer is made to her. 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;

22. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e.



27.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

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

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

23. Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 04.08.2013 till the date of this order, i.e, 27.05.2024 at the rate of 10.85% till, and said amount works out to ₹17,61,267/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession (04.08.2013) or date of payment (06.01.2011) whichever is later	Interest Accrued till 27.05.2024 (Date of decision)



1.	₹15,00,000/-	04.08.2013	₹17,61,267/-
	Total= ₹15,00,000/-		Total= ₹17,61,267/-
2.	Monthly interest		₹/-13,823/-

24. Accordingly, respondent is liable to pay the upfront delay interest of ₹17,61,267/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹15,00,000/- monthly interest of ₹13,823/- shall be payable up to the date of actual handing over of the possession. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to her.
25. The complainant is also seeking compensation of ₹1,50,000/- towards litigation cost. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

26. Hence, the Authority hereby passes this order and issue 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 no.2 is directed to handover the possession of unit no. F-1003, or any alternate flat of similar size and similarly situated to the complainant.
- (ii) Respondent no. 2 is directed to pay upfront delay interest of ₹17,61,267/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹15,00,000/- monthly interest of ₹13,823/- shall be payable by the respondent no. 2 to the complainant up to the date of actual handing over of the possession.



- (iii) Complainant will remain liable to pay balance consideration amount to the respondent no. 2 at the time of offer of possession to her.
- (iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.85% which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]