



**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

<b>Complaint no. :</b>	<b>1955 of 2019</b>
<b>Date of filing complaint:</b>	<b>06.12.2019</b>
<b>First date of hearing:</b>	<b>12.09.2019</b>
<b>Date of decision :</b>	<b>14.07.2022</b>

Smt. Dipti Priyadarshini Aggarwal <b>R/O:</b> House no.1149, Sector-4, Gurugram, 122001	<b>Complainant</b>
Versus	
DSS Buildtech Pvt. Ltd. <b>Regd. office:</b> 506, 5 <sup>th</sup> Floor, Time Sqaure Building, B Block , Sushant Lok -1, Gurugram	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. Alok Singh (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"The Melia" Sector-35,
2.	Project location	17.41875
3.	Nature of the project	Residential
4.	DTCP License no. & validity status	77 of 2013 dated 10.08.2013 upto 09.08.2024
5.	Name of licensee	Smt. Aarti Khandelwal and two others
6.	RERA registered / not registered	Registered vide no. 288 of 2017 dated 10.10.2017
7.	RERA Registration valid upto	25.10.2021
8.	Unit No. (tentative)	E-104 on First Floor (Annexure P 4 Page 28 of complaint)
9.	Unit admeasuring	1750 sq. ft. (Annexure P 4 Page 28 of complaint)
10.	Date of apartment buyer's buyer agreement	Not executed
11.	Date of allotment letter	25.04.2015 (Annexure p 4 of page 28 of complaint)
12.	Date of approval of building plan	Date of approval of building plan is 21.04.2016 from the project details in the DPI submitted by the promoter



13.	Date of environment clearance	20.09.2016 (Annexure R 8 on page 91 of reply)
14.	Date of consent to establish	12.11.2016 (Annexure R 11 of page 130 of reply)
15.	Payment plan	Construction linked payment plan (Annexure R 4 page 50 of the reply)
16.	Possession clause	<p><b>14. DELIVERY OF POSSESSION</b></p> <p><b>14.1</b> Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over <b>possession of the Apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later</b> and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as directed by the DGTCP The resultant period will be called as "Commitment Period". However, <b>this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities (emphasis supplied)</b></p> <p>Taken from the similar project of the complaint.</p>
17.	Due date of possession	12.05.2021

		(Calculated from the date of consent to establish plus added 6 months due to covid)
18.	Total sale consideration	Rs. 83,12,500/- (As alleged by the respondent in the reply on page 3 of reply)
19.	Amount paid by the complainant	Rs. 25,62,494/- (Annexure P-8 on page 67 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered
22.	Grace period	Not allowed

**B. Facts of the complaint:**

3. A project by the name of The Melia situated in sector 35 Sohna District Gurugram was being promoted by the respondent. The complainant coming to know about the same visited the project site with family members and booked a unit in it vide application dated 01.08.2013 for a total sale consideration of Rs 83,12,500 under the construction linked payment plan. A booking amount of Rs 6,00,00 was paid by the complainant. It was assured to the complainant that the project would be completed within a period of 36 months of the booking.
4. That on 01.12.2013 and 26.08.2014, the respondent raised a demand of Rs. 11,13,871/- and Rs. 8,56,936 and the same was paid by the complainant on 07.02.2014. and 01.09.2014.
5. It is further the case of complainant that the allotment of the unit was made on 25.04.2015. On 20.12.2015, the respondent sent an apartment buyer's agreement. As per clause No. 14.1 of flat buyer agreement, the respondent was proposed to handover the possession within 48 months from the receiving of

last approvals for commencement of construction or date of signing of agreement whichever is later.

6. That on 20.02.2016, the respondent raised a demand of Rs. 7,44,518/ as per payment schedule at stage of start of excavation. The respondent started the construction after more than 30 months of receiving booking money. And another demand was raised on 15.05.2017, accumulated demand of Rs. 20,24,771/- as per payment schedule at stage "On casting of Ground Floor".
7. That on 04.04.2018, the complainant visited the office of the respondent and requested for cancellation of booking on account of dip in a source of income and requested for refund of money. That finding no alternative, the complainant sent an email to the respondent on 05.04.2018 and asked for cancellation of allotment and refund of money. The same was refused by the respondent. That as per the statement of account dated 24.04.2019, the complainant has paid Rs. 25,62,484/- i.e., till date 05.09.2014.
8. That for the first-time , cause of action for the present complaint arose in December 2015, when the buyer's agreement containing unfair and unreasonable terms for the first time was forced upon the allottee. The cause of action further arose in April 2018, when the respondent failed to refund the paid money on request of the complainant. Further, the cause of action again arose on various occasions, including on: a) November 2018; b) Feb. 2019, c) April 2019, and on many times till date, when the protests were lodged with the respondent about its failure to refund the money.
9. That the complainant wants to withdraw from the project but the respondent is not ready to refund the money after deduction of earnest money as per application form and terms of flat buyer agreement., the complainant was left with no other alternative but to file the present complaint seeking refund of the paid-up amount besides.

**C. Relief sought by the complainant:**

10. The complainant has sought following relief(s):

- i. Direct the respondent to refund the amount of Rs. 25,62,494 with interest.
- ii. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the application form and or flat buyer agreement.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

11. That the complainant approached the respondent and submitted an application dated 15.11.2013 for booking of the unit. and paid a sum of Rs. 6,00,000/- as booking amount. The complainant signed the payment plan for payment of instalments dues as per construction linked plan.
12. That the respondent allotted the complainant a flat vide allotment letter dated 24.04.2015, for the basic sale consideration of Rs. 83,12,500/- plus all other charges, service tax, levies and other allied charges as per payment plan.
13. That the respondent had sent the apartment buyer's Agreement to the complainant, vide letter date 02.09.2015 for executing the same. The complainant signed the ABA, but intentionally did not return it . Then the complainant has paid Rs. 25,62,494/- to the respondent as on date. On 24.10.2013, the complainant paid a sum of Rs. 6,00,000. On 12.02.2014 the complainant paid a sum of Rs. 10,97,246/- On 22.08.2014. The complainant paid a sum of Rs. 16,625/- 3. On 05.09.2014 the complainant paid a sum of Rs. 8,48,623/-
14. That as per the terms and conditions of apartment buyer agreement, the allottees were required to pay installments on time. However as per the

payment plan , the allottees did not pay the amount due despite repeated reminders including the amnesty scheme given by the respondent .Since the complainant failed to adhere to the schedule of payment , so the respondent is entitled to charge interest on the delayed payments at the rate of 15%P.A .

15. That development of the project is directly related to the fund received from the allottees including complainant and relying on the assurance of the allottees including the complainant that they will make the payments on time, the construction of the project was started. It is pertinent to note that on one side , the respondent is obligated to complete the Project and deliver the possession of respective Apartments/Flats within the promised time period to the allottees in the project including the said Flat of the complainant, on the other hand due to default of the complainant & other allottees like the complainant, the respondent is facing hardship in developing the project due to shortage of fund. That in spite of non-payment of dues by the allottees like the complainant, the construction work of the said project is going on with full swing. The structural work of most of the Towers in project, including Tower E in which the Complainant has booked the said flat, is completed and the brick work & other internal finishing works is also going on with full swing.

16. That there is outstanding amount of Rs. 66,42,746/- along with interest of Rs. 14,12,710/- to be paid by the complainant. The respondent offered one time settlement vide letter dated 01.05.2019, to waive of the interest charges amounting to Rs. 14,12,710/-.

17. But the complainant, stopped making payment of instalment dues, in spite of repeated reminders sent by the respondent.

18. As per the ABA, the due date of possession of the said flat is 11.05.2021. Further, the respondent is ready to hand over the possession of the said flat to the complainant as per the terms and conditions of the ABA , subject to the reasons beyond the control of the respondent.

**E. Jurisdiction of the authority:**

19. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

20. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**



*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

21. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
22. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

23. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to

entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Entitlement of the complainants for refund:**

**F. I Direct the respondent to refund the amount of Rs.25,62,494.**

24. In the present case, the subject unit was allotted to the complainant on 25.04.2015 under the construction linked payment plan. He paid a sum of Rs. 25,62,494/-towards total consideration of allotted unit which constitutes 30.83 % of total consideration. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the allottee does not want to continue with the project as he sent a cancellation email on 05.04.2018. The said complaint has been filed on 09.05.2019 whereas as per clause 14.1, the due date of handing over of possession comes out to be 12.05.2021.
25. It is an admitted fact that no buyer's agreement was executed between the parties. So, the due date for completion of the project and handing over possession of the allotted unit is being taken from model agreement placed on the file and the same comes to 12.05.2021 after excluding grace period. The allotment of the unit was made in favour of the complainant on 25.04.2015 and complaint has been filed on 09.05.2019 whereas as per clause 14.1, the due date of handing over of possession comes out to be 12.05.2021. So, it means that the complainant wants to withdraw from the project and is seeking refund before the due date has expired. It has come in his pleadings that he send an email dated 05.04.2018 (Annexure P-7, page 65 to the respondent seeking refund and withdrawal from the project but that was also before the due date for completion of the project has expired .



26. The cancellation of any allotted unit by the respondent builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately.
27. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

28. Keeping in view the above-mentioned facts and since the allottee requested for cancellation of the allotment on 05.04.2018 and even withdrew from the project by filing the complaint, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount after forfeiture of 10% of total sale consideration which comes out to be Rs. 17,31,244/- with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of email of surrender (inadvertently mentioned as email for cancellation in the proceeding of the

day) i.e., 05.04.2018 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**F.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the application form and or flat buyer agreement.**

In view of finding of relief no. 1 the remaining relief became redundant.

**G. Directions of the Authority:**

29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:


i) The respondent-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 with interest @ 9.70% p.a. on the refundable from the date of email of surrender (inadvertently mentioned as email for cancellation in the proceeding of the day) i.e., 05.04.2018 till the actual date of refund of the amount.

30. Complaint stands disposed of.

31. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

**Dated: 14.07.2022**