

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

| | |
|----------------------------------|---------------------|
| Complaint no. : | 2944 of 2021 |
| Date of filing complaint: | 02.08.2021 |
| First date of hearing: | 20.08.2021 |
| Date of decision : | 14.07.2022 |

| | |
|--|---------------------|
| 1. Aashihsh Prakash 2. Sona Dokania R/O: G-1202, Bestech Park View SPA Next, Sector -67 , Gurugram | Complainants |
| Versus | |
| M/s Dss Buildtech Pvt. Ltd. Regd. office: 506, 5 th Floor, Time Sqaure Building, B-Block, Sushant Lok-I Gurugram-122002 | Respondent |

| | |
|------------------------------|-----------------|
| CORAM: | |
| Dr. KK Khandelwal | Chairman |
| Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | |
| Sh. Imran Khan (Advocate) | Complainant |
| Sh. Alok K. Singh (Advocate) | Respondent |

ORDER

1. The present complaint has been filed by the complainants/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.No. | Heads | Information |
|-------|-----------------------------------|---|
| 1. | Project name and location | The Melia, Sector 35 Sohna Road, Gurugram |
| 2. | Project area | 17.41875 acres |
| 3. | Nature of the project | Group Housing Project |
| 4. | DTCP License | 77 of 2013 dated 10.08.2013 upto 09.08.2024 |
| 5. | Name of the 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. | E 606 TOWER 6 th floor (page no. 5 of cra) |
| 9. | Unit measuring | 1750 sq. Ft (Page no. 5 of cra) |
| 10. | Date of Booking | August 2013 First payment made on 12.03.2014 |
| 11. | Date of apartment buyer agreement | Not executed |
| 12. | Date of approval of building plan | 21.04.2016 Taken from the project details |



| | | |
|-----|-------------------------------|---|
| 13. | Date of environment clearance | 20.09.2016 (Annexure R 3 page 27) |
| 14. | Date of consent to establish | 12.11.2016 (Taken from the project details) |
| 15. | Payment plan | Construction linked payment plan (Page30 of complaint) |
| 16. | Possession clause | 14. DELIVERY OF POSSESSION 14.1 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 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 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, 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) |
| 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.83,86,000/- (page no. 5 of the new cra) |
| 19. | Total amount paid by the complainants | Rs. 16,92,944/- [Annexure P-6 on page 40 of the old complaint] |
| 20. | Occupation Certificate | Not obtained |
| 21. | Offer of possession | Not offered |
| 22. | Grace Period | Not Allowed |

B. Facts of the complaint:

3. That in the month of August 2013, the complainants received a marketing call from the office of the respondent. The manager of the respondent marketed a residential project namely "The Melia" situated at Sector - 35, Gurugram. The complainants visited the Gurugram office and project site of the respondent/builder.
4. Thereafter the complainants booked 3BHK Flat/Apartment bearing No. E-606 in tower E, on 6th Floor for size, admeasuring 1750 sq. ft. and paid a booking amount of Rs. 6,00,000/- vide cheque No. 182886 drawn on ICICI Bank dated 12.03.2014. The flat/apartment was purchased under the construction linked plan for a sale consideration of Rs. 83,86,000/-
5. That on 01.11.2014, the complainants paid a demand of Rs. 10,76,522/ raised by the respondent for which the payment receipt was issued. Later on, the respondent raised a demand of Rs. 10,02,824/- on 10.07.2015 and upon receiving the demand letter, the complainants asked the respondent to execute BBA and then only they would pay the current demand. But the

respondent assured them that after the payment of the current demand, it would execute the agreement.

6. That the complainants many times asked the respondent for the execution of BBA, but it did not sent any agreement. So, they asked the respondent for cancellation of the unit by deduction of 10% of the earnest money & refund of the balance paid amount but the respondent kept sending the reminder letters to the complainants for the payment of the outstanding amount and failed to cancel the unit. Later on, the complainants visited the office of the respondent regarding same but it did not paid any attention.
7. That on 19.06.2019, the respondent sent a payment request letter to the complainants and asked to pay the outstanding demand of Rs 1,03,12,202/- . The complainants have paid a total sum of Rs. 16,92,944 as confirmed by the statement of account issued by the respondent.
8. That for the first-time, the cause of action for the present complaint arose in July 2015 when the respondent raised the demand without even executing the builder buyer agreement. The cause of action further arose on many occasions when despite the repeated requests made by the complainants for cancellation of the unit, the respondent kept on sending the payment reminder letters and failed to do the same. And later on the cause of action arose on various occasions, on: a) October 2016; b) Feb. 2017; c) May 2018, d) March 2019, e) July 2020, f) Feb 2021, and on many times till date, when the protests were lodged with the respondent and asked for a refund of money along with interest.
9. That the complainants want to withdraw from the project. Despite requesting for cancellation of the allotted unit, the respondent did not cancel the allotted unit, Thus the complainants were left with no other alternative

but to file the present complaint seeking refund of the paid-up amount besides interest and compensation.

C. Relief sought by the complainant:

10. The complainants have sought following relief(s):

- i. Direct the respondent to refund of Rs. 16,92,944/-
- ii. Direct the respondent to give compensation Rs. 10,00,000 and cost of litigation of Rs. 50,000/-

11. The respondent put in appearance Sh. Alok K. Singh but did not file any written reply despite giving several opportunities. So, the authority was left with no option but to proceed based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

12. 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.

D. 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 complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

13. 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.

14. 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.
15. 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. 2021-2022 (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."

16. 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.

E. Entitlement of the complainants for refund:

E. I Direct the respondent to refund of Rs. 16,92,944 with interest.

17. The subject unit was booked in August 2013 under the construction linked payment plan. A sum of Rs.16,92,944, /- was paid in all towards the allotted unit. The complainants approached the authority seeking relief of refund of the paid-up amount on the ground that no buyer's agreement has been executed even after paying the demands by them and they do not want to continue with the project.

18. 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 the buyer's agreement of similar project of the same builder and the same comes to 12.05.2021 after

excluding grace period. It has come in the pleadings that complainants requested for cancellation of the unit to the respondent seeking refund and withdrawal from the project. But the respondent did not act upon that communication as requested and never informed the complainants. The Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. . 2021-2022(1) RCR (c) 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others. (Supra)*** observed as under: -

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

20. At the time of arguments both the counsel has agreed that refund the entire amount along with interest after deducting 10% of the basic sale consideration be allowed. The Authority observes that refund the amount from the date of surrender i.e 02.08.2011 till actual realization.
21. 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.
22. Keeping in view the above-mentioned facts, the authority hereby directs the promoter to return the amount of Rs. 16,92,944 after forfeiture of 10% of total sale consideration 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 filing of the complaint i.e 02.08.2021 as agreed by the parties till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

E.II Direct the respondent to give compensation Rs. 10,00,000 and cost of litigation of Rs. 50,000/-

23. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the Authority:

24. 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:
25. The respondent-promoter is directed to refund the amount of Rs.16,92,944/- 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 along with interest @ 9.70% p.a. on the refundable amount, from the date of filing of the complaint i.e 02.08.2021 as agreed by the parties till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.
26. Complaint stands disposed of.
27. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman

Dated: 14.07.2022

