

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

<b>Complaint no. :</b>	<b>1503 of 2021</b>
<b>Date of filing complaint:</b>	<b>17.03.2021</b>
<b>First date of hearing:</b>	<b>11.05.2021</b>
<b>Date of decision :</b>	<b>14.07.2022</b>

Divyanshu Sharma <b>R/O:</b> T-2/402, Lotus Boulavard , Sector -100, Noida , (UP) -201301	<b>Complainant</b>
Versus	
M/s Dss uildtech Private Limited <b>Regd. office:</b> 506, 5 <sup>th</sup> Floor, Time Sqaure Building, B-Block , Sushant Lok-I Gurugram-122002	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Imran Khan (Advocate)	Complainant
Sh. Alok K. Singh Advocate (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.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.	G-103 First Floor (Annexure C-4 on page no. 21 of complaint)
9.	Unit measuring	1350 sq. Ft (Annexure C-4 on page no. 21 of complaint)
10.	Allotment Letter	14.11.2015 (Annexure C 4 on page no. 21 of complaint)
11.	Date of execution of apartment buyer agreement	28.11.2015 Not executed



		(Annexure C 5 on page no. 22 of complaint)
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 (Annexure R -4 of page 37 of reply)
15.	Payment plan	Deferred payment plan (Page 51 of the cra)
16.	Possession clause	<b>14. DELIVERY OF POSSESSION</b> <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</b>

		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.84,07,350/- (On page 51 of the cra )
19.	Total amount paid by the complainant	Rs. 28,43,574/- [Annexure R-5 on page 40 of the 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 developed by the respondent. The complainant coming to know about the same along with his wife booked a unit in it vide application dated 15.11.2013 for a total sale consideration of Rs 84,07,350. A booking amount of Rs 12,82,500 was paid by the complainant along with the application form. It was assured to the complainant that the project would be completed within a period of 48 months with a grace period of 6 months of the booking.
4. So, believing the representations of the respondent to be correct, the complainant and his wife Smt. Apurwa was allotted unit no. G-103 first floor in tower G of the project situated at Sohna. Later on, the mother of the complainant namely Smt. Asha Sharma was also added as a co-allottee of the unit.

5. The allotment of the unit was made by the respondent/promoter under a construction linked payment plan.
6. It is the case of complainant that no buyer's agreement was executed between the parties due to its unfair terms and conditions and being not acceptable. But the allottees started depositing various amounts against the allotted unit and deposited a total sum of Rs. 28,43,574 against total sale consideration of Rs. 84,07,350.
7. That the complainant further paid an amount of Rs. 39,629/- vide receipt no. 00041 dated 20.01.2014 towards the service tax for booking of a residential unit in the respondent's project. Thereafter, an amount of Rs. 15,21,445/- was also paid on demand of the respondent vide receipt no. DSS/TM/REC/861 dated 29.10.2015. Hence, a total sum of Rs. 28, 43,574/- was paid to the respondent against the total sale consideration of Rs. 84, 07,350/-
8. It is further the case of complainant that the allotment of the unit was made on 14.11.2015 after making booking on 15.11.2013. The unit was to be delivered within a period of 4 years. But despite waiting for more than 7 years the construction of the project is not complete. The allottees have paid more than the required amount under the construction linked payment plan.
9. That the complainant visited the site of the project and was astonished to see the construction not being complete more than 50%. So, when he lost hope in getting possession of the allotted unit, a request was made for cancellation of the allotment but met with no response.
10. That finding no alternative, the complainant send an email dated 27.12.2018 requesting the respondent for cancellation of the booking and refund of the paid up amount as the project was nowhere towards completion. However, a reply to the same was received mentioning vague false and frivolous pleas.

Even after request for cancellation, the complainant had been receiving demands issued by the respondent vide letters dated 10.12.2018, 16.01.2019 and 01.05.2019 respectively.

11. That when despite moving for cancellation of the allotted unit vide email dated 27.12.2018, the respondent did not cancel the allotted unit, the complainant was 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:**

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

- i. Direct the respondent to refund of Rs. 28,43,574.
- ii. Direct the respondent to pay an amount of Rs. 5,00,000/- plus 2% brokerage charge on account of escalation in price of the unit to enable the complainant to buy similar unit in the similar project/area.

**D. Reply by respondent:**

The respondent by way of written reply made the following submissions

13. The complainant along with his wife and mother are allottees of the above-mentioned unit for a total sale consideration of Rs. 84,07,350 and the same was allotted under a construction linked payment plan.

14. That after booking of the allotted unit, the allottees were required to execute an apartment buyer agreement. The same was sent to them by the respondent vide letters dated 14.11.2015 and 28.11.2015 for execution. But the allottees did not execute the same with a malafide intention.

15. It was denied that the construction of the project is not complete. Rather the construction of the project is going on with full swing after receiving an approval of consent to establish from the Haryana state pollution control board. So, in view of that the respondent is committed to complete the project and handover possession of the allotted unit to the allottees as well as the complainant.
16. 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.
17. That as per model buyer agreement, the tentative deadline given to for the respondent to complete the project was 48 months with a grace period of 180 days from the date of receiving last approval required for commencement of construction.
18. That due to non-payment of dues by the complainant and other allottees including delay on construction order by national green tribunal several times, the construction of the project was hampered. However, the respondent had been sending the complainant the status and progress of the project from time to time. A sum of Rs. 39,28,065 besides interest of Rs. 15,72,302 is due against the complainant and which he has failed to pay despite issuance of a number of reminders.
19. It was further pleaded that keeping in view the above-mentioned factual position, the complainant is not entitled to withdraw from the project and seek refund of the paid-up amount and particularly when the project is in an

advanced stage of completion. All other averments made in the complaint were denied in total.

20. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

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

**E. II Subject matter jurisdiction**

22. 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.

23. 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.
24. 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."*

25. 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 complainant for refund:**

**F. I Direct the respondent to refund of Rs. 28,43,574 with interest.**

26. The subject unit was allotted to the complainant along with his wife and mother on 14.11.2015 under the construction linked payment plan. They paid a sum of Rs.28,43,574/- towards the allotted unit which constitutes 33.82% of total consideration. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the constriction of the project is not as per schedule and secondly the allottees do not want to continue with the project as the same has not been completed more than 7 years of the booking

27. 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 model agreement placed on the file and the same comes to 17.03.2021 after excluding grace period. The allotment of the unit was made in favour of the complainant and others on 24.11.2015. The complaint has been filed on 17.03.2021 whereas as per clause 14.1, in 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 27.12.2018(Annexure C-7, page 64) (inadvertently mentioned the date of email as 04.10.2020 in the proceedings of the day) 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 . But the respondent did not act upon that communication as requested and informed the complainant about non cancellation of the unit vide email dated 04.10.2020.(Annexure c-7, page 63)

28. 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.
29. Keeping in view the above-mentioned facts and since the allottees requested for cancellation of the allotment on 27.12.2018 and even with due from their 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 of Rs. 28,43,574 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 email for cancellation i.e., 27.12.2018 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 pay an amount of Rs. 5,00,000/- plus 2% brokerage charge on account of escalation in price of the unit to enable the complainant to buy similar unit in the similar project/area.**

30. 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

**G. Directions of the Authority:**

31. 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 promoters 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 along with interest @ 9.70% p.a. on the refundable amount, from the date of email of cancellation till the actual date of refund of the amount within the timeline provided in rule 16 of the Haryana Rules Act.



**HARERA**  
**GURUGRAM**

Complaint No. 1503 of 2021

32. Complaint stands disposed of.
33. File be consigned to the registry.

*V.K. Goyal*

**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

*Dr. KK Khandelwal*

**(Dr. KK Khandelwal)**

Chairman

**Dated: 14.07.2022**



**HARERA**  
**GURUGRAM**

