

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

Complaint no. :	1394/2021
Date of filing complaint:	22.03.2021
First date of hearing:	11.05.2021
Date of decision :	14.07.2022

Karan Singh R/o: Flat no.9, Ground Floor, Street No. H-2, Vatika India Next , Sector -82 , Shikhopur , Gurgaon -122004	<b>Complainant</b>
Versus	
Dss Buildtech Pvt. Ltd R/o:506, 5 <sup>th</sup> Floor, Time Sqaure Building, B Block, Sushant Lok -I , Gurgaon -122002	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Karamjeet Singh (Advocate)	Complainant
Sh. Alok K. 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 provisions 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 valid up to 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-1505 (earmarked/reserved unit) (Promoter information by respondent)
9.	Unit measuring	1350 sq. ft. (Page no. 6 of complaint)
10.	Date of builder buyer agreement	Not executed
11.	Date of Application Form	16.11.2013 (Page 13 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 2 of page 21 of complaint)
14.	Date of consent to establish	12.11.2016 (Annexure R-4 of page 31 of complaint)
15.	Payment plan	Construction linked payment plan (Page 15 of complaint)
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</b> 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.76,72,950/- (Total basic sale price as per statement of account) (Annexure R/6 page 39 of reply)
19.	Total amount paid by the complainant	Rs. 6,00,000/- (Annexure R-6 on page no. 39 of reply) [NOTE: - The allottee has paid this amount prior to the execution of the unit and the unit buyer's agreement, being the booking amount]
20.	Occupation Certificate	Not obtained
21.	Offer of possession	Not offered
22.	Grace Period	Not Allowed

**B. Facts of the complaint:**

- That the complainant booked a unit in the project of M/s Silverglades holdings private limited by paying Rs. 6,00,000/- dated 22-08-2013 drawn on Union Bank of India .M/s Silverglades holdings private limited had merged or changed his name to DSS Builtech private limited i.e respondent and took confirmation from the complainant to transfer his amount from Silverglades to DSS buildtech. The complainant confirmed for the same and then M/s Silverglades transferred his booking amount to the DSS Builtech Private Limited and that was acknowledged by M/s Silverglades .
- The respondent had filed a new application form & payment plan by his own handwriting in the name of the respondent itself vide dated 16-11-2013 and allotted a 2 BHK+S flat with construction linked plan in project named as "The MELIA", Sector-35, Sohna Road, Distt

Gurgaon, Haryana and also acknowledged that the complainant had paid Rs.6,00,000/- vide Cheque bearing no.085044 dated 22-08-2013 drawn on UB.

5. That the complainant requested the respondent to execute & sign the Builder buyer agreement and to issue a flat number, but the respondent ignored the same. Even after 7 years of booking no flat no. has been allotted and nor any buyer's agreement was executed between the parties. The complainant then decided to get refund of his entire amount which was paid by him for the booking of flat and for which he approached the respondent and the same was refused by him. So, the complainant sent a legal notice to the respondent on 28.12.2020 through post claiming to refund the whole amount but the respondent did not reply.
6. It is further the case of complainant that despite asking for refund and sending legal notice, the respondent neither allotted the flat number nor signed the builder buyer's agreement leading to filing of this complaint seeking refund of the deposited amount.

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

7. The complainant has sought the following relief(s):
  - i. Direct the respondent to refund the amount of Rs. 6,00,000/- along with interest.
  - ii. Direct the respondent to pay an amount of Rs. 1,00,000 for deficiency in service
  - iii. Direct the respondent to pay an amount of Rs. 50,000 for causing mental agony /torture, physical harassment.
  - iv. Direct the respondent to pay litigation charges.

**D. Reply by respondent:**

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

8. That the complainant approached the respondent and submitted an application dated 16.11.2013 for booking of a 2BHK+ S flat and paid a sum of Rs. 6,00,000/- as booking amount. The complainant had agreed and signed the payment plan for payment of installments dues as per construction linked plan.
9. That the complainant failed to make installments as per the application form even after several reminders sent to him by the respondent. Due to this default, the complainant was not issued allotment letter by the respondent.
10. Hence, the respondent is not liable to refund the booking amount deposited by the complainant as he defaulted to pay installments. The complainant has himself executed with free consent under no undue influence without any coercion the application form in which it is clearly mentioned that 10% of the total sales consideration would be treated as "Earnest Money" which can be forfeited by the company in the event of any default committed by the buyer. In this case, non-payment of installments is a default and so the booking amount of Rs. 6,00,000 which is 10% of the basic sales price can be forfeited by the respondent.
11. 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:**

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.

### **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**

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.

**F. Findings on the reliefs sought by the complainant:**

**F.1 Direct the respondent to refund the amount of Rs. 6,00,000/- with interest.**

17. The subject unit was allotted to the complainant on 24.10.2013 as first payment was given on this date. The application form was signed on 16.11.2013. The complainant has paid an amount of Rs. 6,00,000 towards total sale consideration of Rs.76,72,950/- which constitutes 7.82% of total consideration. The complaint seeking refund was filed on 22.03.2021 whereas the due date comes out to be 12.05.2021.

18. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that neither the respondent allotted the flat number nor signed the builder buyer's agreement.

19. 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 BBA of similar project of the same builder and the same comes to 12.05.2021 after excluding grace period. However, the complainant has paid an amount of Rs. 6,00,000/- against a total consideration of Rs.76,72,950/- constituting 7.82% of total consideration, which is less than 10% of total consideration. Hence, no direction for refund of the paid-up amount by the complainant to the respondent can be given.

20. As per note 4 of payment plan annexed with application form entered into between the parties on 16.11.2013, promoter was required to refund the amount after deduction of 10% earnest money. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

*"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"*

21. In view of aforesaid circumstances, the respondent is required to refund the amount paid by the complainant after deducting 10% of the sale consideration of the unit being earnest money as per clause xii of application form for allotment dated 16.11.2013 & regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018. However, the complainant has paid an amount of Rs. 6,00,000/- against a total consideration of Rs. 76,72,950/- constituting 7.82% of total consideration, which is less than 10% of total consideration. Hence, no direction to this effect can be given to refund of any amount.

**F.2 Direct the respondent to pay an amount of Rs. 1,00,000 for deficiency in service**

**F.3 Direct respondent to pay an amount of Rs. 50,000 for causing mental agony /torture, physical harassment**

**F.4 Direct the respondent to pay litigation charges.**

22. The complainant is claiming compensation under the present relief.

The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

23. Complaint stands disposed of.

24. File be consigned to the Registry.

V.1-3  
(Vijay Kumar Goyal)  
Member

(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022


Request the respondent to pay an amount of \$2,000.00 for  
delinquent taxes.


As the respondent to pay an amount of \$2,000.00 for delinquent  
taxes.

The first respondent to pay delinquent taxes.

The complainant is claiming respondent made the payment for  
the property of the respondent as shown in the attached  
the fact was clearly proved by the respondent and the respondent  
assignment report which was filed with the respondent  
complaint in Section 11 and Section 12 of the  
statute and the respondent's failure to pay the  
amount under Section 11 was willful and the respondent  
of the respondent.

13. Complainant's copy of  
14. The respondent of the respondent

  
[Name]  
[Title]  
[Address]

  
[Name]  
[Title]  
[Address]

Dated this 20th day of