

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

Complaint no.	:	2357/2021
Date of filing complaint:		07.06.2021
First date of hearing:		20.08.2021
Date of decision	:	14.07.2022

1. Mr. Vismay Singhal 2. Mr. Vikas Kumar Singhal both R/o: Raheja Atlantis, Sector 31 , Gurugram , Haryana -122002	Complainants
Versus	
1. M/s Dss Buildtech Pvt. Ltd. R/o: 506, 5 th Floor, Time Sqaure Building, B-Block , Sushant Lok-I Gurugram-122002 2. Silverglades Holdings Pvt. Ltd. R/o: C-8/1-A , Vasant Vihar , NewDelhi	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. M.K Dang (Advocate)	Complainants
Sh. Alok K. Singh (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees 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 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.	D-701, Seventh Floor (Page no.39 of the complaint)
9.	Unit measuring	1350 sq. Ft (page no.39 of the complaint)
10.	Date of allotment	24.04.2015 (Annexure C-7 page 39 of the complaint)



11.	Date of approval of building plan	21.04.2016 Taken from the project details
12.	Date of environment clearance	20.09.2016 (Annexure 5 page 50 of reply)
13.	Date of execution of apartment buyer's agreement	Not executed
14.	Date of consent to establish	12.11.2016 (Annexure R-2 of page 60 of reply)
15.	Payment plan	Construction linked payment plan (Annexure C-3 page 35 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 DGTC 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. 77,99,850/- (Annexure R-5 on page 95 of reply)
19.	Total amount paid by the complainants	Rs. 20,24,946/- (Annexure R-5 on page 95 of reply)
20.	Request for withdrawal by complainants	21.03.2016, 11.07.2017, 17.05.2017, 07.09.2017, & 30.01.2018 (Complainants requested the respondent to discuss several clauses mentioned in the standard agreement and they in various emails specifically gave clause wise explanation to the unilateral terms of the agreement ultimately, the complainant requested the respondent to cancel the allotment of the unit and to refund the amount already paid by the hem towards the total sale consideration)
21.	Occupation Certificate	Not obtained
22.	Offer of possession	Not offered
23.	Grace Period	Not Allowed

B. Facts of the complaints:

3. A project by the name of "The melia" situated in sector 35, Sohna, District Gurugram was being developed by the respondent. In the month of June 2013, the complainants received a marketing call from the office of the respondents for booking in the project and they decided to book a residential unit. The respondents demanded the booking amount from the complainants vide cheque No. 827941 dated 21.07.2013 drawn on SBI Bank and they made payment of Rs. 6,00,000/-. The complainants signed several blank and printed papers including the booking application form at the instance of the respondents on the ground that the same were required for completing the booking formalities and they were not given a chance to read or understand the said documents and they signed the same.
4. That after going through the booking application form in detail, the complainants figured out that there were no detailed terms and conditions of the allotment mentioned in the form. This fact was intimated by the complainants to the respondents and their representatives assured that the terms and conditions of the allotment would be shared with the complainants very shortly.
5. Thereafter respondent no. 2 sent several demands to the complainants to make part-payment towards the total sale consideration. Thus, the allottees deposited various amounts against the unit and deposited a total sum of Rs. 20,24,946/- towards the total sale consideration of Rs. 77,99,850/-
6. After almost 2 years, the allotment of the unit was done on 24.04. 2015.. Even in the allotment letter, no terms and conditions were mentioned pertaining to the allotment. The complainants yet again requested the respondents to share with them the terms and conditions but with no results.

7. That the complainants requested the respondents vide several e-mails dated 10.02.2016, 13.02.2016, 15.02.2016, 25.02.2016, 01.03.2016, 21.03.2016, 22.03.2016, 20.04.2016, 21.04.2016, 27.04.2016, 08.08.2016, 11.01.2017, 03.03.2017, 20.04.2017, 17.05.2017, 07.09.2017 and 30.01.2018 that they had issue with several clauses mentioned in the agreement sent by them. They in such e-mails specifically gave clause wise explanations to the unilateral terms of the agreement. The complainants also requested the respondents to cancel the allotment of the unit and to refund amount already paid by them towards the total sale consideration. On the basis of those e-mails, there were few meetings with the representatives of the respondents and who assured that the terms of the agreement would be amended in consonance with the Model Agreement .
8. That the respondents had commenced the construction of the project only on 01.12.2016 and the same has been admitted by them when the consent to establish was granted by the concerned authorities. However, the demand for commencement of excavation was raised prior to the grant of the consent to establish dated 12.11.2016. The said demand was sent by the respondents to the complainants vide demand letter dated 01.02.2016. Moreover, it is evident from a bare perusal of the ledger sent by the respondents to the complainants that the demand for excavation was raised on 08.12.2015 i.e., almost a year before the commencement of the project on 01.12.2016 has admitted by the respondents.
9. The complainants visited the site of the project and were astonished to see the construction status of the tower in question. No construction activity was going on at project site. The last payment

demand 'on casting on internal plaster' was issued by the respondents to the complainants on 20.08.2019. Even otherwise, there has been an inordinate delay in developing the project as of what was promised to the complainants at the time of booking

10. That it is again reasserted that the project was pre-launched by the respondents. The complainants even believe that no occupation certificate has been issued for the project in question till date nor the same has even been applied by the respondents despite the lapse of the due date as per the terms of the agreement. That finding no alternative, the complainants withdrew the project and the allotment made in their favour by the respondents within some days of the knowledge of the terms and conditions of the allotment.
11. That when despite moving for cancellation of the allotted unit vide email dated 21.03.2016 the respondents did not cancel the allotted unit and refused to do so, the complainants were left with no other option but to file the present complaint seeking refund of the paid-up amount.

C. Relief sought by the complainants:

12. The complainants have sought the following relief(s):

- i. Direct the respondents to refund the amount of Rs. 20,24,946/- along with interest.

D. Reply by respondent:

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

13. That the respondents had commenced the construction of the said project on 01.12.2016 after receiving the approval of 'consent to

establish" dated 12.11.2016 from the Haryana State Pollution Control Board.

14. The complainants submitted an application form dated 15.11.2013 for booking of a 2BHK flat. The complainants paid Rs. 6,00,000/- as initial booking amount and agreed to pay instalments and dues as per construction linked payment plan. The said unit was allotted vide allotment letter dated 24.04.2015. As per the provisions of Act, the buyer/ allottees have no right to withhold the due payments for any reason whatsoever.
15. That the respondents sent an Apartment Buyer's Agreement to the complainants, and they did not return the signed copy to them. That complainants have not made any payment since 2014 and the amount of Rs. 55,28,933/- & 24,80,853/- is outstanding on account of instalment delay respectively. The respondents offered one time settlement, vide letter dated 01.05.2019, to waive of the interest charges amounting to Rs. 10,63,039/-.
16. It was denied that the construction of the tower is not complete and rather the construction of the said tower is in full swing.
17. Copies of all the relevant do have been filed and placed on record. There 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:

18. The plea of the respondents 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

19. 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.

20. 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.

21. 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. 2020-2022(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."

22. 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 relief sought by the complainants:

F.1 Direct the respondent to refund the amount of Rs. 20,24,946/- along with interest.

23. The subject unit was allotted to the complainants on 24.04.2015. They paid a sum of Rs.20,24,946/ and approached the authority seeking relief of refund of the paid-up amount on the ground that the construction of the project is nowhere completion and secondly at the time of booking, they were told that the land has been purchased by the company. But in the agreement sent by the respondents, it is was evident that the company has not purchased/registered the land yet.

24. 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 12.05.2021 after excluding grace period. The allotment of the unit was made in favour of the complainants on 24.04.2015 and the complaint has been filed on 07.06.2021 whereas as per clause 14.1, the due date of handing over of possession comes out to be 12.05.2021. It has come in the pleadings that the complainants send an email dated 21.03.2016 (page 96 of complaint) to the respondents seeking refund and withdrawal from the project but that was also before the due date for completion of the project has expired. So, it means that the complainants want to withdraw from the project and are seeking refund before the due date has expired. Till 30.01.2018, the complainants had been writing email for the cancellation and refund

of the unit. The same was denied by the respondents on 02.02.2018 vide email.

25. 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.
26. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, 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"

27. Keeping in view the above-mentioned facts and since the allottees requested for cancellation of the allotment on 21.03.2016 and even withdrew from the project by filing the complaint, so the respondents were bound to act upon the same. Hence, the authority hereby directs the promoter to return the amount received from the complainants 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 of surrender i.e., 21.03.2016 till the actual date of actual realization of the amount.

H. Directions issued the Authority:


28. Hence, the Authority hereby passes this order and issues 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/ promoters are directed to refund the amount after deducting 10% of total sale consideration of the unit being earnest as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder (Regulations , 2018 within 90 days from the date of this order along with an interest @ 9.70% p.a on the refundable amount from the date of email of surrender till the actual date of refund of the amount.

29. Complaint stands disposed of.

30. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022

