

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

Complaint no.	:	2574 of 2021
Date of filing complaint:		19.09.2019
First date of hearing:		11.11.2019
Date of decision	:	14.07.2022

Ashish Sharma R/O: 129, Ground Floor, Navjiwan Coperative , Housing Society , New delhi-110017	Complainant
Versus	
M/s Dss Buildtech Private Limited 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. Pankaj Chandola (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.	D-1106 over D (As alleged by complainant on page no. 1 of complaint)
9.	Unit measuring	1350 sq. Ft (As alleged by complainant on page no. 1 of complaint)
10.	Date of apartment buyer agreement	Not Executed
11.	Date of booking	24.10.2013



		(Page no. 21 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 6 page 9 of promoter information by respondent)
14.	Date of consent to establish	12.11.2016 (Annexure R 11 of page 166 of reply)
15.	Payment plan	Deferred payment plan (Page 23 of the 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. 79,34,850/- (Annexure 8 of promoter information)
19.	Total amount paid by the complainant	Rs. 10,00,000/- (Annexure R-8 on page 65 & 67 of the reply)
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 by the name of The Melia, Sector 35 Sohna Road, Gurugram for a total sale consideration of Rs. 79,34,850/-. A booking amount of Rs. 6,00,000/- was paid by the complainant on 11.07.2013.
- That the complainant earlier booked a serviced apartment in one of the respondent group company project "Merchant Plaza" at Sector-88, Gurgaon and paid a booking amount of Rs. 4,00,000/-. Due to the problems reported in that project and other issues the complainant made an application to withdrawal from the project and requested to transfer the monetary consideration of Rs. 4,00,000/- against the old unit, in the project "The Melia". A letter was received by the respondent on 09.02.15 for cancellation of booking in the old project "Merchant Plaza" and the transfer of amount paid for booking of Rs. 4,00,000/- to the project "The Melia" was done.

5. The allotment of the unit was made by the respondent/promoter under a construction linked payment plan.
6. That the complainant due to slow progress in the project requested the respondent to change his existing construction linked payment plan to deferred payment plan. Later on, the respondent vide e-mail dated 24.07.2015, offered a deferred payment plan being Rs. 5100/- per sq. ft.
7. That it was a utter shock for the complainant that the respondent has enhanced the rate per sq. ft. of his unit unlawfully without having any discussions or consent. It is pertinent to mention here that the complainant booked the unit at the rate of Rs. 4750/- per sq. ft. but, the respondent unlawfully demanded excess rate for per sq. ft. which is Rs. 350/- i.e., more than the actual rate of booking.
8. That the complainant sent a e-mail dated 06.08.2015, and showed his disagreement with the rate that had been offered but met with no response. The complainant was consistently requesting the respondent to redress the concerns via various verbal and telephonic communications.
9. That the complainant visited the site of the project in the years 2016 and 2017 and was astonished to see that there was no progress in the construction work of the project.
10. That finding no alternative the complainant again send a legal notice to the respondent on 18.07.2017 for not replying to the queries raised by him regarding non-completion of the construction work, etc. However, the respondent did not reply to the legal notice and kept raising the demands unlawfully without redressing the grievances of the complainant.
11. That the respondent sent a demand letter on 01.05.2019 and raised a demand of Rs. 62,33,783/- without completing the project as per the agreed terms and

schedule. That the complainant again issued a legal notice to the respondent on 04.07.2019 but met with no response.

12. It is the case of complainant that no buyer's agreement was executed. Further, it is submitted that the respondent revised the rate of the unit.
13. 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:

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

- i. Direct the respondent to refund the amount of of Rs. 10,00,000/- with interest.
- ii. Direct the respondent to pay compensation of Rs. 2,00,000/- for causing mental agony, harassment to the complainant.
- iii. Direct the respondent to pay cost of litigation Rs. 1,00,000/-
- iv. Direct the respondent to compensate the complainant for financial loss due to loss of appreciation and opportunity that has occurred an account of misrepresentation on the value of the unit.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

15. That the complainant approached the respondent for booking a flat in his project at the basic sale price of Rs. 4,750/- per sq. ft. and paid a sum of Rs. 6,00,000/- as booking amount. That at the time of booking the flat, the complainant has opted for construction linked payment plan. That after

receiving the application form from the complainant, allotment of the flat was done by the respondent.

16. It was denied that the construction of the project is not complete. Rather, the structural work of most of the towers in project, including tower d in which the complainant has booked the said flat, is complete. The complainant only paid a total amount of Rs. 10,00,000/- from which booking amount of Rs. 6,00,000/- was paid with the application form for booking the flat and Rs. 4,00,000/- vide adjustment of cancellation of booking of unit in the commercial project being developed by another group company.
17. That as per the terms and conditions of application form and payment plan, 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 sent 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 .
18. That the complainant avoided the execution of the standard buyer's agreement. That as per standard buyer's agreement the tentative deadline given to the respondent to complete the project was 48 months with grace period of 180 days for the date of receiving the last approvals required for commencement of construction.
19. That the respondent had commenced the construction of the said project on 01.12.2016 after receiving the approval of consent to establish dated 12.11.2016.
20. That there is outstanding amount of Rs. 62,33,786/- along with interest of Rs. 21,15,047/- to be paid by the complainant. The respondent offered one time

settlement vide letter dated 01.05.2019, to waive off the interest charges till that date amounting to Rs. 17,44,675/-.

21. But the complainant stopped making payment of installment dues, in spite of repeated reminders sent by the respondent.
22. Copies of all the relevant do 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:

23. 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

24. 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.

25. 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 complainant at a later stage.

26. 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."

27. 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 amount of Rs. 10,00,000/- with interest.

28. The subject unit was booked by the complainant on 24.10.2013 under the construction linked payment plan which was later on changed to a deferred payment plan. He paid a sum of Rs.10,00,000/- towards the allotted unit of total consideration. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has enhanced the rate per sq. ft. of his unit unlawfully without having any discussions and secondly, the allottee does not want to continue with the project. He has filed the complaint before the due date which makes the case of surrender by the complainant.

29. 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 complaint has been filed on 19.09.2019 whereas as per clause 14, 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.

30. 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.

"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 amount of the real estate i.e. apartment/plot/building as the case may be in all case 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."

31. Keeping in view the above-mentioned facts and since the allottee 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 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 intimation of surrender i.e., 19.09.2019 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 compensation of Rs. 2,00,000/- for causing mental agony, harassment to the complainant.

F.III Direct the respondent to pay cost of litigation Rs. 1,00,000/-

F.III Direct the respondent to compensate the complainant for financial loss due to loss of appreciation and opportunity that has occurred an account of misrepresentation on the value of the unit.

32. The the complainant is 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. 2021-2022 (1) RCR (c) 357*, 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:

33. 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-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest



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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 amount, from the date of intimation of surrender i.e 19.09.2019 till the actual date of refund of the amount within the timeline provided in rule 16 of the Haryana Rules Act.

34. Complaint stands disposed of.

35. File be consigned to the registry.

v.i-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram



(Dr. KK Khandelwal)

Chairman

Dated: 14.07.2022

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