

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

Complaint no. :	218/2019
Date of filing complaint:	21.01.2019
First date of hearing:	30.04.2019
Date of decision :	29.07.2022

Atul Jain R/o: House No. 19, Gayatri Nagar, Tansen Road, Gwalior, Madhya Pradesh -474003	Complainant
Versus	
1. M/s Haamid Real Estates Pvt. Ltd R/o:232-B, Fourth Floor Okhla Industrial estate, Phase III, New delhi, South Delhi, DL- 10020 2. Sh. Arvinder Singh Pasricha R/oS-304, Greater Kailash, Part-2, South Delhi, New Delhi- 110048 3. Sh. Tirath Lal Anand R/o 82-3 rd Floor, Old Anarkali Near Lal Mandir, Krishna Nagar, Delhi- 110051 4. Sh. Bala Krishna Pandey R/o House No.- 61-A, Bank Colony, Street No.4, Mandoli Saboli, Delhi- 110093	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Dagar Malhotra (Advocate)	Complainant
Sh. M.K Dang (Advocate)	Respondents

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 Peaceful Homes" Sector 70A , Gurgaon
2.	Project area	8.38 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License	16 of 2009 dated 29.05.2009 valid up to 28.05.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of the licensee	Haamid Real Estate Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA Registration valid upto	31.12.2019
8.	Allotment Letter	Not Annexed
9.	Unit no.	C212, 21 st floor, Tower C (Page38 of complaint)
10.	Unit area admeasuring	1565 sq. ft. (super area)



		(Page no. 38 of the complaint)
11.	Date of execution of Flat Buyer's Agreement	26.05.2015
12.	Possession clause	11(a) Schedule for Possession of the unit "The company endeavours to handover the possession of the unit to the allottee within a period of 36) Thirty-Six) months from the date of commencement of construction of the project , which shall mean the date of commencement of the excavation work at the project land and this date shall be duly communicated to the allottee ("commitment period"). The allottee further agrees and understands that the company shall additionally be entitled to the period of 6 (six) months after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining occupation, certificate of the project from the Government Authorities.
13.	Date of commencement of excavation	21.04.014 (Page 28 of reply)
14.	Due date of possession	21.04.2017 (Calculated as per date of excavation)
15.	Total sale consideration	Rs.1,09,72,020/- (As per SOA dated 06.10.2020)
16.	Total amount paid by the complainant	Rs. 1,07,09,767.81/- (As per SOA dated 06.10.2020)
17.	Occupation Certificate	Not obtained
18.	Offer of possession	13.03.2020

B. Facts of the complaint:

3. A project by the name of "The Peaceful Homes" situated at Sector-70 A, Gurugram was being developed by the respondent. The complainant approached the respondents for purchasing a flat in the under-construction project. They informed the complainant that the respondent no 1 is proposing to construct three towers in the plot of land situated at Sector 70- A Gurugram.
4. The complainant coming to know about the same booked of 2 BHK Flat in it vide application dated 16.07.2012. area for a total sale consideration of Rs. 1,09,72,020/-. The allotment of the unit was made by the respondent under a construction linked payment plan. That the respondent has made changes in the plans for obtaining permissions for construction of additional towers in the plot of land.
5. That the overall cost of the complainant has come down because of the increase in number of towers and/ apartments in the same plot of land and the respondent started selling apartments at a much lower cost than it has agreed to sell to the complainant which also put him in a much disadvantageous position in terms of price. Despite making several requests, the respondents were not ready and willing to put the complainant at par with many of the subsequent purchasers, resulting in diminution in value of the apartments allotted to complainant. The complainant also craves liberty to approach consumer disputes redressal forum in connection with the deficiency of services on the part of respondent.
6. That the complainant does not like to be in congested areas and open space available earlier was reduced due to the increase in apartments and the respondents were never ready and willing to compensate the complainant for the loss of comfort and convenience

caused due to change in plans, besides compensation towards the delay caused in completing the projects.

7. It is the case of complainant that the agreement between the parties was executed on 26.05.2015 and by that time, the complainant had already paid Rs. 3,71,029/-. That as per the agreement, the date of commencement of construction was never communicated to the complainant though he visited the project site personally and came to know that the construction on the said project had commenced in 2014.
8. That since the booking of the flat the complainant has paid upto Rs. 1,06,58,059.00/- but yet he has not got the possession of the said flat. Till date, the complainant has paid 95% of the total sale consideration. The complainant visited the site of the project and was astonished to see the construction of the project progressing at a very slow rate. Above all, the material used till date is also of low grade and not up to the mark as per the payments demanded and the promises made by the respondents at the time of booking.
9. However, the possession of the allotted unit was to be offered within a period of 36 months as per clause 11(a) of the buyer's agreement. The excavation of the project commenced on 21.04.2014. Hence, the due date for completion of the project is counted from that date and which comes to 21.04.2017. But despite waiting for more than 6 years the complainant still has not got the possession. The complainant visited the project site and the office of the respondent in the month of September 2018 wherein he was surprised to see a hoarding being displayed at the site stating that, "Pay 10% now and no need to pay for next two years from the date of possession."

10. That on enquiry at the site sales office, the respondents confirmed the same and that scheme was also offered to the complainant for new flat booking. a.) Total cost of 2 BHK including all taxes and charges is around 1.12crore to 1.13 crore. b.) Only 10% of the total cost was required to be paid. c.) That the possession would be around March/April 2019 seven months. D). There would be a subvention scheme and AIPL would pay interest for 31 months on the loan amount which is the sale price of the flat minus 10% of the sale price which is being payable as an initial payment.
11. The complainant also expected and requested the similar beneficial treatment from the respondents being one of the initial purchaser of the flat in the respondent's project. But the same was declined. The complainant also sent an e-mail/speed post requesting the same on 07.11.2018 but met with no response. Hence, the necessity of filing of the present complaint against the respondent arose.
12. That as the aforesaid project was based on "Pre Launch System" .That as per the initial plans, as presented by the respondents, only three towers were to be constructed in the total land area of 11.7 acres .As per the initial layout plan, the complainant was to be entitled for a proportionately large undivided interest in the total land area as well as common amenities and would have been a part of a low density group housing complex.
13. That to the utter shock the respondents without the consent of the complainant, unilaterally changed the layout plans. The said unilateral change in the layout plan entailed construction of additional towers on the same land area as a different project. Thereby, resulting in making the impugned project in which the complainant booked a flat, a high-density group housing complex

which is not what he initially booked for and decrease in undivided interest of the complainant in both the land area and common amenities, adversely affected his investment in the flat unit purchased for his own residential purpose.

14. Hence, the complainant intend to withdraw from the project and he is 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:

15. The complainant has sought the following relief(s):

- i. Direct the respondent to refund the amount of Rs. 1,07,09,767.81/- along with interest.
- ii. Direct the respondent to pay an amount of Rs. 10,00,000/- as compensation on account of mental agony.
- iii. Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation cost.

D. Reply by respondent:

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

16. The complainant approached for purchasing a flat in the under-construction project of respondents and applied for allotment of an apartment. The same was allotted under the construction linked payment. After the allotment, the complainant executed the buyer's agreement on 26.05.2015.

17. That respondent no.1 raised payment demands from the complainant and he has till date made the part-payment out of the total sale consideration.
18. That the possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. However, there have been several unforeseeable events which were beyond the reasonable control of the respondents materially and adversely affecting the timely completion of the project.
19. That more than 60% of the allottees to the instant project have defaulted in their payments. Due to defaults on part of the allottees, the respondents were constrained to approach Financial Institutions to raise funds to complete the construction of the project. Further, the said financial institutions have their own internal compliances before such funds are disbursed to entities like the respondent No.1 which led to further delay in procurement of funds.
20. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the civil contractors of the respondents viz. Shri Balaji Buildmate Private Limited which took a considerable amount of time. A police complaint was also filed by the respondents against the aforesaid civil contractor. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time.
21. That there was a major accident at the project site which resulted in the untimely death of two laborers and three were hospitalized. Due to this accident, the work at the project site had to be stopped for about a month, as the labour union had started raising various

demands etc. Due to the demonetization and policy changes by the Central Government, the pace of construction of the project was severely affected for a period of approximately six months from November 2016 to April 2017. Beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which further affected the timely completion of the said project.

22. That the aforesaid circumstances fall within the ambit of the definition of the 'force majeure' for which respondent no.1 shall not be responsible or is liable.
23. It was denied that the construction of the project is not complete. Rather, the respondent no.1 has already completed the construction of the tower in which the unit allotted to the complainant is located.
24. That the respondents have made changes in the building plans in the said project after obtaining requisite permissions from the concerned authorities and in accordance with applicable law. Pursuant to the directions of the Director General, Town and Country Planning (Haryana), the respondents company issued a notice to all the then existing allottees of the said project, inviting objections/suggestions on the proposed revision of the building plans in the said project. A similar notice dated 13.06.2014 was sent to the complainant seeking his objections/suggestions on such proposed changes in the building plans.
25. That through the said notice, the complainant was requested to peruse the earlier approved building plan and the revised building plan on the respondents no. 1 company's website and accord his

consent. However, the complainant chose not to raise any objection with respect to the above-mentioned revised building plans.

26. That the instant complaint ought to be dismissed at the outset.

27. 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:

28. 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

29. 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.

30. 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.
31. 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."

32. 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 complainant:

F.1 Direct the respondent to refund the amount of Rs. 1,07,09,767.81/- along with interest.

33. The complainant booked a 2 BHK Flat in the project of respondent vide application dated 16.07.2012 for a total sale consideration of Rs. 1,09,72,020/- under a construction linked payment plan.

34. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent changed the layout plans and they have not handed over the possession of the said unit to the complainant. Though the respondent offered the possession of the unit on 13.03.2020 but the OC obtained is not for the said flat. So, the possession stands invalid.

35. It is an admitted fact that the buyer's agreement was executed on 26.05.2015 between the parties. So, the due date for completion of

the project and handing over possession of the allotted unit comes to be 21.04.2017.

36. So, keeping in view the fact that the allottee- complainant wishes to withdraw from the project and is demanding return of the amount of Rs.1,07,09,767.81 received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
37. The due date of possession as per agreement for sale as mentioned in the table above is 21.04.2017 and there is delay of 1 year 9 months on the date of filing of the complaint.
38. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna &Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

“” The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

Then, the Hon'ble Supreme Court in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P.** and Ors. (supra) 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. 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

39. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made there under or to the allottee 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 it in respect of the unit with interest at such rate as may be prescribed.

40. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

41. The Authority hereby directs the promoter to return to the complainant the amount received by him i.e Rs. 1,07,09,767.81/- with interest at the rate of 9.80% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.2 Direct the respondent to pay an amount of Rs. 10,00,000/- as compensation for mental agony caused to the complainants.

F.3 Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation cost.

42. 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. (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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses

G. Directions issued the Authority:

43. 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:

- i. The respondent/ promoter is directed to refund the amount of Rs.1,07,09,767.81/- received by it from the complainant along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 from the date of each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017.

44. Complaint stands disposed of.

45. File be consigned to the Registry.

v.i - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. KK Khandelwal)

Chairman

Dated: 29.07.2022