

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

Complaint no.	:	3304 of 2020
Date of filing complaint:		09.10.2020
First date of hearing:		03.03.2021
Date of decision	:	29.07.2022

Amit K Lalit R/O: 295/1, Adarsh Nagar, Gurugram	Complainant
Versus	
<ol style="list-style-type: none">1. Haamid Real Estates Private Limited Regd. office: The Masterpiece, Sector 54, Golf Course Road, Gurugram2. Daljeet Singh Regd. Office: B-3, Ansal Villa Farm houses, Satbari, Delhi3. Arvind Tiwari Regd. Office: Mohalla, Tughalkabad Village, Badarpur, New Delhi4. Jasbir Singh Regd. Office: 82, 3rd Floor, Old Anarkali Near Lal Mandir, Krishna Nagar, New Delhi5. Bala Krishna Pandey Regd. Office: H.no.. 61 -A, Bank Colony, Street No. 4 Mandolosaboli, New Delhi	Respondents

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

ORDER

- 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 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

- 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, Gurugram	
2.	Nature of the project	Group Housing	
3.	DTCP License	16 of 2009 dated 29.05.2009	73 of 2013 dated 30.07.2013
4.	Validity Status	28.05.2024	09.07.2019
5.	Name of licensee	Haamid Real Estates Private Limited	
6.	Licensed Area	27.163 acres	
7.	RERA Registered / not registered	63 of 2019 dated 22.10.2019	
8.	Valid till	31.12.2019	
9.	Area	8.38 acres	
10.	Unit no.	C274	



		(Annexure C-2 page no. 19 of the complaint)
11.	Unit admeasuring	1565 sq. ft. (Annexure C-2 page no. 19 of the complaint)
12.	Date of allotment letter	11.06.2015 (Annexure C-2 page no. 19 of the complaint)
13.	Date of execution of apartment buyer agreement	16.07.2015
14.	Possession clause	35. The Company proposes to hand over the possession of the Unit to the allottee within a period of 36 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 site and this date shall be duly communicated to the Applicant (Commitment Period"). The Applicant further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for any contingencies or delays in obtaining the Occupation/Completion Certificate etc., of the Project from the concerned Authorities / Departments.
15.	Due date of possession	25.04.2017 (Taken from the date of excavation i.e., 25.04.2014 provided by the project details)

16.	Total sale consideration	Rs.98,68,890 /- (Annexure C-3 page 33 of complaint)
17.	Total amount paid by the complainant	Rs 52,40,479/- (Annexure C-2 page 19 of complaint and same is alleged by complainant in the facts)
18.	Occupation certificate	29.10.2019, Not offered The above-mentioned OC is not for the unit allotted .It is for tower AS1, AS2, AS3, EWS Block.
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. That in the year 2012 the respondent no. 1 approached the complainant for investing in the project namely THE PEACEFUL HOMES in sector 70-A, Gurugram, Haryana. The complainant booked a flat on 03.06.2012 for a total sale consideration of Rs.98,68,890/- and paid a booking amount of Rs. 9,00,000/ on 27.06.2012. In this regard, the complainant was allotted unit No. 123, 12th Floor, Tower C of the project situated at Gurugram.
4. That the complainant further paid an amount of Rs. 52,40,479/- which was collected by the respondents within a period of one year of the said allotment. The respondents promised the complainant at the time of allotment that the excavation work would start. The unit was to be delivered within a period of 36 months. However, there was no work started at the project site for the first 36 months.
5. That in the year 2015, the respondents cancelled the allotment of the said flat and allotted a new/different flat in their project. The allotment of the new unit

was done on 11.06.2015. The Buyer's Agreement was executed on 16.07.2015 in respect of the new flat.

6. But despite after six years after the said date of original booking the respondents have failed to complete the construction and hand over the possession. The complainant orally requested the respondents to refund the entire amount received by them till date but met with no response. The respondents continued to send demand notices in respect of the allotted flat to the complainants.
7. That the complainant took a home loan from ICICI Bank for payment of above referred money and a sum of Rs. 25,00,000/- out of the aforesaid paid-up sum of Rs. 52,40,479/- was disbursed by ICICI Bank. It implies that ICICI Bank also has an interest/lien in the flat which is being allotted to the complainant in the project.
8. That in the month of June in year 2019, the respondents terminated the allotment of the flat vide the termination letter dated 13.06.2019 and illegally forfeited the entire amount of Rs. 52,40,479/- which was paid by the complainant.
9. That till date, the complainant regularly followed up with the respondents over phone for the refund of entire money but met with no response. The complainant also sent a legal notice to the respondents on 11.01.2020 for refund of the paid-up amount as he has not got possession till now.
10. The cause of action for the present suit arose on different dates. The cause of action first arose in 2015 when the respondent intentionally & unilaterally cancelled the allotment of the said flat & issued allotment of a new/different flat in a project. The cause of action also arose on 13.06.2019 when the respondents terminated the booking of the flat and forfeited the entire amount.

11. 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 the amount of Rs. 52,40,479/- with interest.
- ii. Direct the respondent to pay compensation of Rs. 10,00,000/- causing mental agony/torture, physical harassment.
- iii. Direct the respondent to pay cost of litigation Rs. 50,000/-

D. Reply by respondent:

The respondent by way of written reply made the following submissions

13. The complainant applied for allotment of an apartment and was allotted unit no.C-274 by respondent no.1. The after booking of the allotted unit the Flat Buyer's Agreement was executed between the complainant and the respondents on 16.07.2015. Two reminders were sent by the respondent no. 1 on 07.01.2015 and 09.03.2015 to the complainant and then only , all the documents pertaining to the allotment were executed by the complainants.
14. That the complainant committed several defaults in making timely payments of the demanded amount. The respondents have raised the payment demand on 21.04.2014 for the amount of Rs. 17,17,665/-. However, the complainant failed to remit the due amount despite reminders dated 12.05.2014, 19.06.2014 and 27.10.2014 issued by respondent no.1. It also raised the installment demand of net payable amount of Rs. 24,73,227/- on 12.03.2015. However, the amount was received only after a reminder dated 29.05.2015.

15. That various demand and reminder letters were issued by respondent no.1 on 12.05.2014, 19.06.2014, 27.10.2014, 07.09.2015, 11.12.2015, 20.02.2016, 18.03.2016 22.04.2016 19.07.2016, 15.10.2016, 01.02.2017, 13.05.2017, 07.01.2018 and on 22.01.2018 respectively for payments for which the total amount comes to be of Rs. 3,42,68,046/-. Despite sending many reminder / letters, the complainant failed to remit the demanded amount and a pre-termination letter was issued on 16.04.2019.
16. That there have been several unforeseeable events which were beyond the reasonable control of the respondent no.1 materially and adversely affecting the timely completion of the project. Due to defaults on part of the many allottees, including the complainants, respondent no.1 was constrained to approach financial institutions to raise funds to complete the construction of the project. That during the course of construction, various disputes in relation to quality and delay in work on the project arose with the civil contractors. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time, and the project was put to a complete standstill. 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 and carry forward the work from the previous contractor.
17. It is further submitted that there was a major accident at the project site which resulted in the untimely death of two labourers and three labourers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, as the labour union started raising various demands etc. after the unfortunate incident. An FIR was also filed in this regard. Due to the demonetisation policy change 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 as the withdrawal of money was restricted.

18. That on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities of the project were hampered.
19. That in the year 2016 due to heavy rainfall and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks, because of these, various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
20. That since the hurdles faced were beyond its control, no fault can be found qua the respondent. The aforesaid circumstances fall within the ambit of the definition of the force majeure.
21. That the essence of allotment is clause 8 of the flat buyer's agreement and timely payment of instalments within the agreed time schedule.
22. Despite failure of making payments by the complainant, respondent no.1 has completed the construction of the tower in which the unit allotted to him was located. After several opportunities already given to the complainant by respondent no.1, the allotment of the complainant was cancelled on 13.06.2019 and the earnest money deposited by him along with other charges was forfeited.
23. 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:

24. 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

25. 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.

26. 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.
27. 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."

28. 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 the amount of Rs. 52,40,479 with interest.

29. The subject unit was allotted to the complainant on 11.06.2015. He paid a sum of Rs.52,40,479/- towards the allotted unit. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondents cancelled the allotment of the earlier unit for which no allotment letter was issued and issued an allotment of a new flat in the same project for which a letter was issued on 11.06.2015 and secondly the respondents cancelled the flat.
30. It is an admitted fact that buyer's agreement was executed between the parties on 6.07.2015. So, the due date for completion of the project comes to 25.07.2017. The respondent send various demand letters and reminder letters for the payment since 2014 but the complainant did not pay any amount regarding the same. So, the respondent sent a pre termination letter on 16.04.2019. The final termination letter was sent by respondents on 13.06.2019.
31. The Hon'ble Supreme Court of India 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. 2021-2022(1) RCR (c) 357 observed as under: -
32. *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."

33. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees 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 allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
34. 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."

35. Keeping in view the above-mentioned facts, the allottee failed to pay the amount requested by the respondents. Hence, the authority hereby directs the promoter to refund the amount after forfeiture of 10% of total sale consideration within a period of 90 days 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 email for cancellation i.e., 13.06.2019 till the actual date of refund of the amount.

F.II Direct the respondent to pay compensation of Rs. 10,00,000/- causing mental agony/torture, physical harassment.

F.III Direct the respondent to pay cost of litigation Rs. 50,000/-

36. 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 complainants are advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

G. Directions of the Authority:

37. 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 with interest @ 9.80% p.a. on the refundable amount, from the date of email of cancellation till the actual date of refund of the amount.
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.


38. Complaint stands disposed of.

39. File be consigned to the registry.

V.1-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 29.07.2022