



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

Complaint no.	1401 of 2020
Date of filing complaint	18.03.2020
First date of hearing	08.04.2020
Date of decision	04.07.2022

Roshan Lal, S/o Sh. Hari Chand R/o: 407/12, C-1, Bilaspur Bye Pass Road, Jagadhri, Haryana-133001	Complainant
Versus	
TS Realtech Pvt. Ltd. (Through its Managing Director) R/o: E-26, LGF, Panchsheel, New Delhi- 110017	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ms. Taniya Sharma (Advocate)	Complainant
Sh. Mukul Kumar Sanwariya (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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Iris Broadway", Sector 85-86, Gurugram
2.	Nature of project	Commercial Colony
3.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid upto 21.04.2025
4.	RERA registered/not registered	168 of 2017 dated 29.08.2017 valid upto 31.12.2021 (Annexure R-2 at page 23 of Reply to Complaint)
5.	Date of Application	08.06.2013 (Application form on Page 24 of the Complaint)
6.	Unit no.	Unit no. 410, 4 th Floor, Block A (BBA at Page 11 of Promoter Information by Respondent)
7.	Unit measuring	804.00 sq. ft. (Annexure C-3 at page 33 of the Complaint)
8.	Date of execution of flat buyer's agreement	06.08.2013 (Page 7 of Promoter Information by Respondent)
9.	Possession clause	11.1 Possession

		<p><i>If the company is unable to or fails to deliver possession of the said unit to the allottee within 42 months from the date of application or within any extended period or periods as envisaged under this agreement, then in such cases, the allottee shall be entitled to give notice to the company, within 90 days from the expiry of said period of 42 days months or such extended periods, as the case may be, for terminating this agreement.</i></p> <p>(BBA at Page 17 of the Promoter Information by Respondent)</p>
10.	Due date of possession	<p>08.12.2016</p> <p>(Calculated from date of Application Form as as per BBA)</p>
11.	Total sale consideration	<p>Rs. 67,95,093/</p> <p>(Details of payment received at Page 34 of Promoter Information by Respondent)</p>
12.	Total amount paid by the complainant	<p>Rs. 64,86,692/-</p> <p>(As alleged by complainant)</p>
13.	Payment Plan	<p>Construction Linked Payment Plan</p> <p>(Annexure 3 on Page 29 of the Promoter Information by Respondent)</p>
13.	Occupation certificate	<p>29.03.2019</p> <p>(Page 54 of Promoter Information by Respondent)</p>
14.	Offer of Possession	<p>19.04.2019</p> <p>(Page 33 of the Complaint)</p>

B. Facts of the complaint:

- In March 2013, the complainant booked an office space in the project detailed above and paid an amount of Rs. 10,00,000/- as booking amount towards the said unit to the respondent vide cheque bearing no. 066052 and 066053 dated 25.03.2013 and

10.05.2013 respectively. He then made an application dated 08.06.2013 for provisional allotment. The complainant was then allotted unit no. 410, 4th Floor, Block A.

4. That thereafter, on 06.08.2013, a space buyer agreement was executed between the parties for the aforementioned unit. According to the complainant, the same contained unilateral and arbitrary clauses that were heavily in favour of the respondent. As per clause 11.1 of the space buyer agreement, the possession of the unit was to be delivered within 42 months from the date of booking. The unit was booked on 06.08.2013 which means the possession was to be offered by the respondent latest by 08.12.2016.
5. The complainant opted for construction linked payment plan for payment of total consideration of the unit and made the payments as per the schedule and has till now paid a total of Rs. 64,86,692/- i.e., 95% of the total amount.
6. The respondent vide letter dated 19.04.2019 offered possession of the unit which was delayed by almost 2 years 6 months. However, on visiting the site, the complainant came to know that there is no progress in the project site from many years.
7. The respondent had never informed the complainant of any *force majeure* or any other circumstances beyond its control which led to delay the completion of the project. The complainant, on several occasions, had requested the respondent for the refund of the money but the same has not been refunded. Thus, the complainant was left with no other option but to file the present complaint on 18.03.2020.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- Direct the respondent to refund the entire amount of Rs. 64,86,692/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till realisation.
 - Direct the respondent to pay Rs. 1,00,000/- as compensation on account of mental agony and harassment and to pay litigation charges to the tune of Rs. 50,000/-.

D. Reply by respondent:

- The respondent by way of written reply dated 25.02.2021 made the following submissions:
9. The case of respondent is that the complainant is its allottee in the project detailed above but the complaint is untenable in the eyes of law as the Hon'ble Adjudicating Officer doesn't have jurisdiction to hear the case. It has been further submitted that the complaint is barred by the principles of delay and laches.
10. The complainant booked an office space in the project detailed above. He then made an application dated 08.06.2013 for provisional allotment and paid an amount of Rs. 10,00,000/- as booking amount towards the said unit to the respondent vide cheque bearing no. 066052 and 066053 dated 25.03.2013 and 10.05.2013 respectively. He was then allotted unit no. 410, 4th Floor, Block A
11. That a space buyer agreement was executed between the parties on 06.08.2013 wherein clause 11.1 clearly stated that the due date

of possession shall be within 42 months from the date of application or any extended period due to exceptional circumstances. It is not denied that the Project has been delayed. However, in this case, due to the death of the Managing Director (Promoter) of the respondent company on 30.12.2013 and demonetisation in 2016, the construction work had stopped for certain period which ultimately led to a delay in handing over the possession.

12. The possession of the unit was offered vide letter dated 19.04.2019 after obtaining the occupation certificate from the concerned department on 29.03.2019. However, the complainant wilfully refused to take over the possession of the unit.
13. It was denied that the respondent has any malafide intention and diverted the money from the project for personal gains.
14. It was further submitted that the respondent has complied with the directions issued by the authority as per Section 11(1) of the Act. It is denied that the respondent has violated Section 4(2)(d) of the Act and has further complied with each direction issued by the authority.
15. That the delay in giving possession has been due to circumstances beyond the control of the respondent and as of now the possession has been offered. The complainant, who did not make payment himself, is not entitled to get any benefit for his own wrongdoing.
16. All other averments made in the complaint were denied in toto.
17. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

18. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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)(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.

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.

F. Findings on the objections raised by the respondents:

F.1 Objection regarding agreement not executed in terms of 2016

Act:

21. The agreement, in this case, was executed on 06.08.2013 i.e., before the Act came into force. The respondent has pleaded that since the present agreement was executed before the enactment of the Act and hence, a complaint based upon the same cannot be adjudicated upon by the authority.
22. At this stage, it is important to note Section 88 of the Act and the same is reproduced below for ready reference,

"The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

since the present agreement was executed before the enactment of the Act and hence, a complaint based upon the same cannot be adjudicated upon by the authority.

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"The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

23. Thus, the Act is in addition to the law of land in force at the time its coming into force. Keeping in view this provision, the Maharashtra RERA in the case titled *Avinash Saraf, Neha Duggar Saraf vs. Runwal Homes Pvt. Ltd.*, ruled that the Authority can take cognizance of the agreements executed before enactment of the Act also and is equally competent to grant the relief relating to it. Thus, the Agreement entered into between the parties would be taken into cognizance and the objection doesn't stand.

F.2 Objection regarding force majeure:

24. The respondent-promoter raised the contention that the construction of the project was delayed due to circumstances beyond its control. It has pleaded that, the death of the managing director (Promoter) of the respondent company and demonetisation in November 2016, the company had suffered to arrange labour for construction. These events could have led to delay only up to certain extent. A delay of 2 years 4 months cannot be justified on account of these events. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees.

Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainant for refund:

G.1 Direct the respondents to refund of amount of Rs. 64,86,692/- paid along with interest at the prescribed rate from the date of receipt of payment till the date of actualisation.

25. In March 2013, the complainant made an application for allotment of the subject unit to the respondent for a total sale consideration of Rs. 64,74,970/- under the construction linked payment plan. A space buyer's agreement dated 06.08.2013 was executed between the parties with regard to that unit. The due date of possession of the subject unit was calculated as per clause 11.1 where the possession of the unit was to be delivered to the allottee within 42 months from the date of application or within any extended period or periods as envisaged under this agreement and which comes out to be 08.12.2016. After execution of space buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 64,86,692/- from March 2013 to November 2017 as is evident from the details of payment received Annexure C-2 (Page 31-32 of the complaint). The possession of the allotted unit was to be offered to the complainant as per clause 11.1 within 42 months from the date of application which as stated above come out to be 08.12.2016. That date has already expired. The occupation certificate was issued on 29.03.2019 and the offer of possession was also made on 19.04.2019 which is 2 years 4 months later from the date mentioned in agreement. But the

payment at the time of offer of possession the allottee wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

27. The due date of possession as per agreement for sale as mentioned in the table above is 08.02.2016 and there is delay of 3 years 4 months on the date of filing of the complaint. The allottee in this case has filed this application/complaint on 08.04.2020 after possession of the unit was offered to him after obtaining occupation certificate by the promoter. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made to him and demand for due payment was raised then only filed a complaint before the authority. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

28. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it impliedly means that the allottee has tacitly wished to continue with the project. The promoter has already invested in the project

to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money he has paid to the promoter are protected accordingly.

29. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. 2021-2022(1)*** 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

30. 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 allottee as per agreement for sale under section 11(4)(a). This judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure 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. But the allottee has failed to exercise this right although it is unqualified one. He has to demand and make his intentions clear that the allottee wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made him entitle to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottee in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.
31. In the case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.2021,***

some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.

As per proviso to sec 18(1) , which runs as under:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such as rate as may be prescribed.

32. In case allottee wishes to withdraw from the project, the promoter is **liable on demand** to the allottee return of the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and this proviso to sec

18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay. This view is supported by the judgement of Hon'ble Supreme Court of India in case of of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)* and also in consonance with the judgement of Hon'ble Supreme Court of India in case of *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.,*

33. The authority hereby directs that the allottee shall be paid by the promoter an interest for every month of delay from due date of possession i.e. 8.12.2016 till offer of possession i.e., 19.04.2019 plus two months which comes out to 19.06.2019 at prescribed rate i.e. the rate of 9.50% (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 within the timelines provided in rule 16(2) of the Haryana Rules 2017 *ibid.* The allottee is obligated to take the possession of the apartment since the construction is completed and possession has been offered after obtaining of occupation certificate from the competent authority. However, the developer is obligated to pay delay interest for the period of delay occurred from the due date till the date of offer of possession was made to the allottees plus two months.

G.2 Legal expenses:

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

H. Directions of the Authority:

35. 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 shall pay interest at the prescribed rate i.e., 9.50% per annum for every month of delay from due date of possession i.e., 8.12.2016 till offer of possession i.e., 19.04.2019 plus two months which comes out to be 19.06.2019. The arrears of interest accrued so far shall be paid to complainant within 90 days from the date of this order as per rule 16(2) of the Rules.
- ii) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.50% by the respondent/ promoter which is the



same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2 (za) of the act.

- iii) The complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv) The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

36. Complaint stands disposed of.

37. File be consigned to the Registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 04.07.2022

