

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

Complaint no.	:	1156 of 2019
Date of filing complaint:		18.03.2019
First date of hearing:		10.12.2019
Date of decision	:	12.07.2022

Sh. NK Gupta S/o Late Sh. MG Gupta R/O: B3B/77A (MIG Flats) Janakpuri, New Delhi	Complainant
Versus	
1. M/s Angle Infrastructure Private Limited Regd. office: 406, 4 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi- 110025 2. M/s Capital Builders Regd. office: J-9, LGF, Kailash Colony, New Delhi- 110048	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Ravi Agarwal (Advocate)	Complainant
Sh. Aditya Rathee (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia

prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
5.	Unit no.	602 on 06 th floor of tower D [As per page no. 21 of complaint]
6.	Unit area admeasuring	1865 sq. ft. [Super area]



		[As per page no. 21 of complaint]
7.	Allotment letter	04.01.2013 [As per page no. 13 of reply dated 10.02.2020]
8.	Date of apartment buyer agreement	30.04.2013 [As per page no. 18 of complaint]
9.	Total sale consideration	Rs. 1,02,20,200/- (BSP) [As per page no. 21 of complaint]
10.	Amount paid by the complainant	Rs. 34,60,802/- [As alleged by complainant in CRA dated 22.04.2022]
11.	Possession clause	Clause 3.1 <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchaser(s) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or</i>



		<p><i>approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course. The Seller shall give Notice of Offer of Possession in writing to the Purchasers) with regard to the handing over of possession, where after, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment.</i></p>	
12.	Building plan approvals	Not available on record	
13.	Environmental clearance	15.10.2013 (As per page no. 13 of reply)	
14.	Due date of possession	15.07.2018 [Calculated from the date of environmental clearance i.e., 15.10.2013 + grace period of 9 months] Grace period of 9 months is allowed.	
15.	Occupation certificate	Not obtained	
16.	Offer of possession	Not offered	
17.	Notice for cancellation	04.12.2015 (As per page no. 54 of reply)	

18.	Request by complainant to withdraw from the project	29.08.2016 (As per page no. 55 of reply)
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B. Facts of the complaint:

3. That the complainant was issued provisional receipt dated 11.10.2012 by the respondents towards expression of interest in their upcoming project for base price at the rate of Rs. 5,480/- per sq. ft. An amount of Rs. 10,00,000/- vide cheque no. 728103/728104 dated 25.08.2012 drawn on Karnataka Bank Ltd. as issued as advance towards the allotment of a flat/apartment in the said project.
4. That an "apartment buyer agreement" dated 30.04.2013 was executed between the parties (hereinafter referred to as the "said agreement") and vide which apartment no. 602, in tower D in the above said project namely "Florence Estate" was allotted to the complainant.
5. That as per clause no. 3.1 of the said agreement, the respondents were obligated to hand over the possession of the said apartment to the complainant within 4 years along with a grace period of 9 months i.e. maximum by 30.01.2018 including grace period.
6. That the complainant made payment amounting to Rs. 34,60,802/- and the respondents issued receipts no. 212 dated 08.12.2012 for Rs. 9,96,000/-, receipt no. 213 dated 29.11.2012 for Rs. 1,00,000/-, receipt no. 475 dated 14.02.2013 for Rs. 9,00,000/-, receipt no. 476

dated 14.02.2013 for Rs. 1,64,802/- and receipt No. 1524/1621 dated 07.08.2013 for Rs. 3,00,000/-.

7. That the progress of the construction of the said project was very slow and was further standstill from last several months. As such the complainant, who is a retired person was put in huge financial loss due to uncertainty of the completion of the said apartment allotted to him. He has invested his all life-long, hard-earned saved money in the said apartment and there was no surety as to when the said apartment can be given to the complainant for the living purpose. Looking into the condition of the project and the uncertainty, the complainant decided to get back the entire amount refunded and surrender the said apartment as there was no certainty if he can get the said apartment in their lifetime. Hence, he approached the respondent no. 1 for the same upon which it was represented that for taking refund of his money, he has to surrender all his original documents and make request for refund.
8. That under the bonafide belief of the representations made by the officials of the respondent no. 1 and as per their requirement, he wrote a letter dated 05.02.2017 to respondent no.1 and requested it to return the entire amount and submitted the said letter dated 05.02.2017 along with all original documents related to the allotment of the said apartment which were duly admitted and accepted by the him on 15.02.2017. At the time of taking the said request letter with

the said original documents, the officials promised the complainant to refund the whole amount with interest.

9. That believing the said assurances and promise of the respondents, they handed over the original documents in hope that soon he would get his entire amount refunded. After submitting the said documents, the complainant waited for some time but got no response. Then, he visited the office of the respondents several times but no action whatsoever was ever taken and every time the complainant was ensured that his request is in under process and the same would be completed soon and the entire amount shall be refunded.
10. That the officials of the respondents also gave e-mail id of their senior official and managing director to the complainant and asked him to write the e mails to them to expedite the process of refund. The complainant wrote several e-mails to them but got no response till date which vindicates that after taking the said letter along with his original documents, the respondent backed out from its promise with a malafide intention and did not refund the amount of the complainant till date nor cancelled the allotment of the said unit.
11. That the complainant has also visited the project site on 27.02.2019 and found that work in tower D and E of the said project standstill since Oct-Nov 2017. The total floor in said tower -D are 27 and the work completely stopped after 20th floor in the year 2017.

C. Relief sought by the complainant:

12. The complainant have sought following relief(s):
- i. Direct to the respondent to refund an amount of Rs. 34,60,802/- along with interest.
 - ii. Direct the respondent to pay cost of litigation.

No reply has been filed by respondent no. 2.

D. Reply by respondent no. 1:

The respondent no. 1 by way of written reply made following submissions

13. That M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said project land to the respondent.
14. That the respondent proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project").
15. That initially, Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a license bearing No. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said project on the said project land. M/s. Capital Builders subsequently transferred the license to the respondent. DTCP sanctioned the site plan on 14.05.2013 and State Environment Impact

Assessment Authority, Haryana issued the environment clearance certificate dated 15.10.2013 to the respondent.

16. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached, applied and expressed his interest in purchasing an apartment in the said project being.
17. That vide provisional allotment letter dated 04.01.2013, the complainant was provisionally allotted unit no. D-602 on 6th floor of tower D admeasuring 1865 sq. ft. saleable area in for a total basic sale consideration of Rs. 1,02,20,200/- and thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 30.04.2013 was executed between the parties.
18. That however, even after repeated requests, he failed to pay the due consideration amount as per the payment schedule. As such, with no other option left, the respondent vide notice dated 04.12.2015 called upon him to pay a sum of Rs. 45,34,533.64/- failing which it would cancel the allotment and terminate the apartment buyer's agreement.
19. That thereafter, the complainant gave assurance to the respondent that he will pay the due consideration amount within a short period of time. As such at his request, the respondent did not cancel the allotment and agreement. However, again, the complainant failed to pay the due consideration amount to the respondent. Thereafter, the

complainant vide letter dated 29.08.2016 asked the respondent to refund the amount paid by him.

20. That complainant has surrendered the allotment and paid a total sum of Rs. 34,60,802.00. After deducting a sum of Rs. 1,49,200/- , the respondent is ready and willing to refund a sum of Rs. 33,11,602.00.
21. That in terms of the clause 3.5 of the agreement, the complainant agreed that, if the respondent failed to complete the construction of the apartment within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control then, the respondent would be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession.
22. That sometime in the year 2013, one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties to maintain status-quo with regard to transfer and construction in respect to the said project of the respondent herein. In view of the aforesaid order passed by the Hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still.

23. That the Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition. In view of the said order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the respondent was forced to keep in hold all the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.
24. That certain disputes arose between M/s. Capital Builders and the respondent. In an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the respondent herein from creating any third-party interest in respect of unsold flats. The Hon'ble High Court vide order dated 08.05.2019 modified the earlier order dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order.
25. That this authority has granted registration of the said project under the Act of 2016. The respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
26. That as per terms of clause 3.5 of the agreement, if the respondent fails to complete the construction of the apartment within the period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control, then it is entitled to reasonable extension of time

for completion of construction of the project and delivery of the possession of the apartment to the complainant. Further as per the said clause 3.5, the complainant is not entitled to any compensation, penalty and holding charges of any nature.

27. That in view of the circumstances beyond its control, the respondent was unable to complete the construction and deliver the possession of the apartment to the complainant within the stipulated period of time and there is no failure on part of the respondent in completing the construction and delivering the possession of the apartment.
28. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

29. 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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. Entitlement of the complainant for refund:

F.I Direct to the respondent to refund an amount of Rs. 34,60,802/- along with interest.

30. The project detailed above was launched by the respondent as group housing complex and the complainant was allotted the subject unit in tower D on 04.01.2013 against total sale consideration of Rs.

1,02,20,200/- . It led to execution of builder buyer agreement between the parties on 30.04.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 4 years along with a grace period of 9 months was allowed to the respondent for completion of the project and that period has admittedly expired on 15.07.2018. It has come on record that against the total sale consideration of Rs. 1,02,20,200/-, the complainant have paid a sum of Rs. 34,60,802/- to the respondent.

31. The respondent-builder submitted that due to repetitive defaulting nature of complainant, it issued notice for cancellation dated 04.12.2015 directing him to timely payments of due installments. On issue of notice for cancellation, the complainant assured the respondent that he would not make further defaults. However, vide letter dated 29.08.2016, the complainant surrendered his unit showing his inability to pay further installments. It is pertinent to note that there is nothing on record to show that the respondent has proceeded with the cancellation of the allotted unit.
32. The authority observes that the said request of surrendering the unit by the complainant was taken into account by the respondent. As per assurance of the respondent, the complainant handed over the documents to the respondent.
33. The attention of the authority was drawn towards annexure R6 on page 55 of the reply where the complainant has mentioned that the booking was got done by him for unit no .D- 0602 in Florence Estate Gurugram and have also confirmed that till then Rs. 34,60,802/- has been paid. Due to unavoidable circumstances, it was not possible for

him to pay further payment. This request of the complainant was in response to the notice of cancellation of allotment dated 04.12.2015 from the promoter. Although, the promoter should have done the amount after deduction of 10% of total sale consideration but the same has not been refunded by it. As the complainant is seeking refund of the entire amount which has not been done so far by the promoter, the authority hereby direct the promoter to refund the amount after deduction of 10% of the total sale consideration and from the date of request by the complainant for surrender i.e. 29.08.2016 along with the interest at the prescribed rates.

F.II Direct the respondent to cost of litigation.

34. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

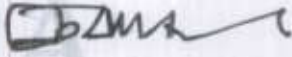
H. Directions of the Authority:

35. 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 of Rs. 34,60,802/- 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 along with an interest @ 9.70% p.a. on the refundable amount, from the date of surrender till the date of realization of payment.
 - ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
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: 12.07.2022