



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

Complaint no. :	2320 of 2019
Date of filing complaint:	25.06.2019
First date of hearing:	17.09.2019
Date of decision :	12.07.2022

1. Smt. Pallavi Grover W/o Sh. Ajay Grover R/O: Flat No. PB-306, Gulmohar Tower, 6/25, Chiranjeev Vihar, Ghaziabad-201001, Uttar Pradesh	Complainant
Versus	
1. M/s Anant Raj Limited 2. KC Chaudhary Regd. office: H-65, Connaught Circus, New Delhi- 110001, India & Plot No. CP-1, Sector-8, IMT Manesar, Gurugram-122051, Haryana, India	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. S.S Hooda (Advocate)	Complainant
Sh. Nitash Charan (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	"Maceo", Sector- 91, Gurgaon
2.	Nature of project	Group housing colony
3.	RERA registered/not registered	Registered vide registration no. 314 of 2017 dated 18.08.2017
	Validity status	17.08.2019
4.	DTPC License no.	71 of 2008 dated 25.03.2008
	Validity status	24.03.2025
	Licensed area	15.575 acres
	Name of licensee	Jubliant Software Service Private Limited
5.	Unit no.	204 on 2 nd floor of tower A [As per clause 2.1 of agreement] <i>(inadvertently mentioned as 4th floor in proceedings dated 12.07.2022)</i>
6.	Unit area admeasuring	1862 sq. ft. [Super area] [As per clause 2.1 of agreement]



7.	Allotment letter	29.07.2013 [As per annexure C-4 placed on record by complainant]
8.	Date of apartment buyer agreement	17.09.2013 [As per annexure C-8 placed on record by the complainant]
9.	Total sale consideration	Rs. 1,12,38,276/- (BSP) [As per clause 3.1 of agreement]
10.	Amount paid by the complainant	Rs. 34,59,663/- [As alleged by complainant in relief sought]
11.	Possession clause	Clause 7.1 <i>The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the said Apartment to the Allottee <u>within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure</u> . The Allottee(s) understands and agrees that the developer shall be entitled for a <u>grace period of 180 days after the expiry of the aforesaid 36 months</u>. The Developer after completing the construction shall apply and obtain the occupation certificate in the in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.</i>
14.	Due date of possession	17.03.2017

		[Calculated from the date of agreement i.e., 17.09.2013 + grace period of 180 days] <i>Grace period of 180 days is allowed.</i>
15.	Occupation certificate	- 07/06/2019 (Tower-G, H, J, K, EWS Block-A and Basement-C) - 28/11/2019 (Tower-A, C, D, E, F, L, M, N and EWS Block-B)
16.	Offer of possession	30.11.2019 (As alleged by the respondents in written submissions)

B. Facts of the complaint:

3. That the complainant booked a residential flat bearing unit no. A-204, having area measuring 1862 sq. ft. on 2nd floor of tower no. A, along with one covered car parking in the project "Maceo", situated in the revenue estate of village Mewka, Tehsil & District Gurugram, Haryana, for a total sale price of Rs. 1,26,50,778/- including EDC, IDC, PLC, IFMS, club membership charges and service tax as applicable, vide application bearing no. 1489.
4. That she was allotted the said unit vide allotment letter dated 29.07.2013 and thereafter, an apartment buyer's agreement dated 17.09.2013 was executed between the parties. The complainant has paid a total sum of

Rs. 34,59,663/- from time to time as demanded by the respondents, from her hard-earned income and lifetime savings.

5. That as per clause 7.1 of the said agreement dated 17.09.2013, the possession of the unit was proposed to be delivered by the respondents within 36 months from the date of the execution of the said agreement i.e. 16.09.2016. It is not out of place to mention here that the complainant never defaulted in making the payment of installments as per payment plan and there was no force majeure. Thus, the possession of the said unit was to be delivered to the complainant within 36 months i.e. on or before 16.09.2016.
6. That the complainant requested it to update about the status of the project and claimed compensation on account of delayed possession of the said unit at the same rate of 24% compounded quarterly interest w.e.f. 16.09.2016 as charged by the respondents on delayed payment of installments from her and also refund of service tax paid to them along with 6% per annum interest as the same is not applicable on under construction unit/apartments sale/ bookings, as per recent court orders, but to no avail.
7. That she visited the site of said project and the office of the respondents several times to know the factual position of the progress of the project and then came to know that no construction work has been started by the respondents till date. Moreover, the respondents have failed to give

satisfactory answer as to when the possession of the unit would be handed over to her.

8. That the complainant having been convinced that the respondents are not going to hand over the possession of the unit as assured by them, visited personally to the office of the respondents, requesting them to refund her entire amount with interest and penalty as she does not want to continue with the project vide email dated 26.04.2019 sent through her son Nitin Grover.
9. That due to the illegal and deliberate wrongful act of the respondents, she suffered mental pain, agony and physical harassment and they are legally liable to compensate the complainant on this count also..

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
 - i. Direct to the respondents to refund an amount of Rs. 34,59,663/- along with interest @ 24%.
 - ii. Direct the respondents to pay compensation.

D. Reply by respondents:

The respondents by way of written reply made following submissions

11. That the respondent no. 1 is a separate entity from its director/ employees/ representatives. Since, the complainant allegedly aggrieved under the apartment buyer's agreement entered into between respondent no. 1, thus, the present complaint ought to have been filed

against respondent no. 1 only and not against respondent no. 2, who was merely acting on behalf of the respondent-company as its representatives for signing the agreement.

12. That the complainant booked unit no. A-204 on 05.06.2013 admeasuring 1708 sq. ft. which was revised to 1862 sq. ft. The total flat cost including tax, covered car parking, IFMS, EDC-IDC, club membership & PLC is Rs. 1,22,97,599/-. The complainant has paid only Rs. 40,23,520/- against total sale price including credit voucher of Rs. 5,28,910/- on account of delay compensation.
13. The project "Maceo" had to undergo unforeseen and adverse circumstances causing the work progress being hampered and delayed due of which the possession of the flat could not be handed over within the stipulated period.
14. That the progress of the project was affected due to circumstances were beyond the control of the respondent and the same is covered under the force majeure clause 19 of the buyer agreement. The delays were caused on account orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to take additional precautions and steps to curtail pollution. On account of the aforementioned reasons, the progress of the work was abruptly hampered.
15. That all these events led to suspension and stoppage of works on several occasions which also resulted in labour and contractors abandoning

work and as a result of various directions from the authorities at different occasions, regarding water shortage and pollution control etc., coupled with labour and contractors abandoning the works; the respondent had to run from pillar to post in order to find new contractors and labour, thus affecting the progress of the project resulting in the flat/unit being not handed over within the stipulated period.

16. That despite all the hindrances and shortcomings, the project is nearing completion and the respondent no.1 has already received occupation certificate for the project on 07.06.2019 for towers G, H, J, K and EWS Block A and on 28.11.2019 for towers A, C, D, E, F, L, M, N and EWS Block B. Hence, in lieu of the same, the possession has been offered to her on 30.11.2019 by way of offer for possession cum demand letter..
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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

18. The plea of the respondents 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. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions.

19. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders of National Green Tribunal & State Pollution Control Board (hereinafter, NGT & SPCB) subsequently resulting in shortage of labour and delay in construction of project. The subject unit was allotted to the complainant vide allotment letter dated 29.07.2013 and as per clause 7.1 of agreement dated 17.09.2013 executed inter-se parties; the possession of the said unit was to be handed over within a period of 36 months from date of execution of this agreement along with grace period of 180 days. The authority is of considered view that no period over and above specified grace period of 180 days can be given to the respondent-builder although he taken plea of various NGT orders, SPBC orders and shortage of labours. But it is pertinent to note that such orders were not chronic and were for shorter spans. Hence, the plea taken by the respondent is devoid of merits and hence, is rejected.

G. Entitlement of the complainant for refund:

- G.I Direct to the respondent to refund the entire amount paid by the complainant along with interest.
20. The project detailed above was launched by the respondent as group housing colony and the complainant was allotted the subject unit in tower "A" for total sale consideration of Rs. 1,12,38,276/-. It led to execution of apartment buyer's agreement between the parties on 17.09.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 36 months along with a grace period of 180 days was allowed to the respondent and that period has admittedly expired on 17.03.2017. It has come on record that against the total sale

consideration of Rs. 1,12,38,276/-, the complainant has paid a sum of Rs. 34,59,663/-.

21. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount 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.
22. The due date of possession as per agreement for sale as mentioned in the table above is **17.03.2017** and there is delay of 2 years 3 months 08 days on the date of filing of the complaint i.e. 25.06.2019.
23. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received on 28.11.2019 i.e. after filing of application by the complainant for return of the amount received by the promoter on failure of 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. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled her right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return

the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

24. 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. (SLP(Civil) No(s). 3711-3715 OF 2021)* 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

25. 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). 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 the allottee 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.

26. This is without prejudice to any other remedy available to the allottee including compensation for which she may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
27. The authority hereby directs the promoter to return the amount received by him i.e. **Rs. 34,59,663/-** with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
28. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on failure of 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. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled to right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of

the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottee including compensation for which allottee 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.

G.II Direct the respondent to pay compensation.

29. 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. (supra)*, 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 complaint in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

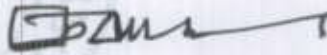
H. Directions of the Authority:

30. 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 respondents are directed to refund the amount received by him i.e. **Rs. 34,59,663/-** with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 to the complainant 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.
- 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.
31. Complaint stands disposed of.
32. File be consigned to the registry.

V.1 - 5
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022