

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

Complaint no.	:	4845 of 2020
Date of filing complaint:		23.12.2020
First date of hearing:		06.04.2021
Date of decision	:	12.07.2022

1. Sh. Sunil Kumar Gupta S/o Sh. HL Gupta 2. Smt. Radha Goyal W/o Sh. Krishan Kumar Goyal Both R/O: Park Place, G-3, Near DLF Phase-5, Sector-54, Sikanderpur, Ghosi(68), Gurgaon, Haryana- 122002	Complainants
Versus	
M/s Angle Infrastructure Private Limited Regd. office: 406, 4 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi-110025	Respondent

CORAM:

Dr. KK Khandelwal

Chairman

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Smt. Priyanka Agarwal (Advocate)

Complainants

Sh. Aditya Rathee (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/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.	2403 on 23 rd floor of tower B [As per page no. 17 of complaint]
6.	Unit area admeasuring	2125 sq. ft. [Super area] [As per page no. 26 of complaint]
7.	Allotment letter	27.04.2013

		[As per page no. 17 of complaint]
8.	Date of apartment buyer agreement	07.05.2013 [As alleged by the complainant on page no. 07 of complaint] [No date specified on said agreement. Different dates are provided by complainant and respondent (06.06.2013)]
9.	Total sale consideration	Rs. 1,04,12,500/- (BSP) Rs. 1,13,68,750/- (TSC) [As per page no. 69-70 of complaint]
10.	Amount paid by the complainant	Rs. 1,19,16,432.38/- [As per statement of accounts dated 06.01.2020 on page 70 of complaint]
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 Purchasers) within a period of 4 (four) years (with a grace period of 9 (nine) months from the</i>

		<p><i>date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or 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
14.	Due date of possession	<p>15.07.2018</p> <p>[Calculated from the date of environmental clearance i.e., 15.10.2013 + grace period of 9 months]</p> <p>Grace period of 9 months is allowed.</p>
15.	Notice for cancellation dated	<p>04.06.2015</p> <p>[As per page no. 72 of complaint]</p>
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. That in the year 2012, the complainants while searching for an apartment in the vicinity of NCR visited the office of the respondent's company where their agents represented the moonshine reputation of the company and made huge presentations about the project namely "Florence Estate" at Sector - 70, Gurugram launched by M/s. Angle Infrastructure Pvt. Ltd., and handed over one brochure to them which portrayed the project like heaven and tried to hold their interest in every possible way and incited the complainant for payments.
4. That relying on various representations and assurances given by the respondent company, the complainants booked a unit in the project and paid booking amount of Rs. 12,00,000/- on 22.11.2012.
5. That the respondent sent an allotment letter dated 27.04.2013 providing the details of the project, confirming the booking of the unit dated 22.11.2012, allotting unit no. 2403 on 23th floor of tower-B, admeasuring 2125 sq. ft (super built up area) (hereinafter referred to as 'unit') in the project for a total sale consideration of the unit Rs. 1,13,68,750/- which includes basic price, car parking charges, development charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.
6. That the complainants having dream of their own apartment in NCR, signed the agreement in the hope that the unit would be delivered within 4 years

from the date of commencement of construction or execution of the agreement. The said unit was booked under construction linked plan.

7. That respondent sent a letter dated 23.08.2013 for nomination and lock-in-period, stating that lock-in-period/substitution of name for their unit up to 31.03.2014. Subsequently, apartment buyer's agreement was executed between parties on 07.05.2013.
8. That as per clause 3.1 of the said agreement, the respondent has to deliver the possession within a period of 4 years (with grace period of 9 months) from the date of commencement of construction or execution of this agreement or date of obtaining all licenses, permission or approvals for commencement of construction. Therefore, the due date of possession comes out to be 07.05.2017 from date of signing of agreement.
9. That at the time of execution of the agreement, the complainants objected towards the highly tilted and one-sided clauses of the agreement, however, the respondent turned down the concerns of the complainants and curtly informed that the terms and conditions in the agreement were standard one and thus, no change could be made. A bare perusal of the agreement reveals that the terms and conditions imposed on the complainant were totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondent.
10. That though the payment to be made by the complainants were to be made based on the construction on the ground but unfortunately, the demands

being raised were not corresponding to the factual construction situation on the ground.

11. That as per demands raised by the respondent and based on the payment plan, they have already paid a total sum of Rs. 1,19,16,432/- towards the said unit against total sale consideration of Rs. 1,13,68,750/-.
12. That the complainants regularly contacted the respondent on several occasions. However, it was never able to give any satisfactory response to them regarding the status of the construction and was never definite about the delivery of the possession. They kept pursuing the matter by regularly visiting their office as well as raising concerns as to why construction was going on at such a slow pace but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
13. That the respondent sent a letter dated 24.07.2015, stating that execution court in Gurugram in Exe. 183 of 2015, vide its order dated 16.07.2015 read with order dated 21.07.2015, removed the order of attachment on the project land. Further stating that project land was now free from all and any kind of court orders.
14. That the respondent sent a letter dated 04.06.2015, on account of cancellation of allotment of the buyer's agreement of unit. It is pertinent to note here that complainants made timely payments to the respondent and in return, the respondent instead of completing the project, kept of raising illegal demand toward the said unit.

15. That the respondent has completely failed to honour the promises and has not provided the services as promised and agreed through the brochure, booking application and the different advertisements released from time to time.

C. Relief sought by the complainant:

16. The complainants have sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by them along with interest.
- ii. Direct the respondent to restrain it from raising any fresh demand from the complainants.
- iii. Direct the respondent to pay litigation cost of Rs. 1,00,000/-.

D. Reply by respondent:

The respondent by way of written reply made following submissions

17. 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 to sell groups housing project on the said project land.
18. That the respondent proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project").
19. 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.

20. That after conducting own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached and applied and expressed an interest in purchasing an apartment in the said project being.
21. That vide allotment letter dated 04.01.2012, the complainants were provisionally allotted unit no. 2403 on 23rd floor of tower B admeasuring 2125 sq. ft. saleable area in for a total basic sale consideration of Rs. 1,04,12,500/-. Thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 30.12.2013 was executed between the parties.
22. That as per clause 3(1) of the agreement, the respondent was under obligation is to hand over the actual, vacant, physical possession of the apartment to the complainant within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of the agreement or date of obtaining all licenses, permissions or

approvals for commencement of construction, whichever is later i.e. on or before 30.07.2021, subject to force majeure.

23. That in terms of the clause 3.5 of the agreement, the complainants agreed that, if the respondent fails 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 the control of the respondent, then they agreed that it shall be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession.
24. That the complainants always failed to make the payment as per the payment plan i.e. annexure D of the agreement. They used to make the payments only on receiving the reminder letters. With no other option left, the respondent issued a notice of cancellation of allotment dated 04.06.2015 informing them, failure to pay the due amount, the allotment would be cancelled, and the buyers agreement dated 06.06.2013 would be terminated.
25. 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 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.

26. 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 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.
27. 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 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.
28. 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.

29. 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 the control of the respondent, then it was 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 complainants are not entitled to any compensation, penalty and holding charges of any nature.
30. That the complainants are speculative investors and they have booked several apartments through their relatives and friends. They cancelled the allotment of the other apartments and adjusted the amounts paid against those allotments against the consideration payable towards the allotment of unit number B-2403 allotted to them.
31. 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:

32. 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. Findings on the objections raised by the respondent:

F.I Objection regarding entitlement of refund on account of complainant being investors.

33. The respondent has taken a stand that the complainant are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant are buyer and they have paid total price of Rs. 1,19,16,432.38/- to the promoter towards purchase of an apartment in the project of the promoter.

At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that they are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in *appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Entitlement of the complainants for refund:

- G.I Direct the respondent to refund the entire amount paid by the complainant along with interest.**

34. The project detailed above was launched by the respondent as group housing complex and the complainants were allotted the subject unit in tower B on 27.04.2013 against total sale consideration of Rs. 1,13,68,750/-. It led to execution of builder buyer agreement between the parties on 07.05.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions and the due date of possession, etc. A period of 4 years along with 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. 1,09,37,500 the complainants have paid a sum of Rs. 1,14,49,190/- to the respondent.
35. The respondent-builder submitted that due to repetitive defaulting nature of complainants, it issued notice for cancellation dated 04.06.2015 directing them to timely payments of due installments. However, there is nothing on record to show that the respondent has proceeded with the cancellation of the allotted unit. Whereas on the other hand, the complainants submitted that the said unit was booked under construction linked payment plan and the construction was going on at a very slow pace resulting on delay of completion of project. Thus, keeping in view the fact that the allottee- complainant wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure 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. The due date of possession as per agreement for sale as mentioned in the table above is 15.07.2018 and

there is delay of 2 years 05 months 08 days on the date of filing of the initial complaint i.e. 23.12.2020.

36. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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 allottee 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....."

37. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)** 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

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 allottees wish 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.

38. 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.

The authority hereby directs the promoter to return the amount received by him i.e., **Rs. 1,19,16,432.38/-** 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 complainants 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*.

H. Directions of the Authority:

39. 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 i.e. **Rs. 1,19,16,432.38/-** received by him from the complainants along with interest at the rate of 9.70% 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 amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

40. Complaint stands disposed of.

41. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman

Dated: 12.07.2022