

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

Complaint no. :	5/2021
Date of filing complaint:	13.01.2021
First date of hearing:	18.03.2021
Date of decision :	14.07.2022

Mr. Manish Saini R/o: C-2035, Ground Floor, Sushant Lok, Phase 1, Sector 43, Gurugram	Complainant
Versus	
Chd Developers Ltd R/o: Sf- 17-17, Ist Floor, Madame Bhikaji Cama Bhawan 11, Bhikaji Cama Place, New Delhi 110066	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Vikas Bhardwaj (Advocate)	Complainant
Shri Sachin Rao Proxy Counsel for Shri Ravi Aggarwal (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 provisions 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.No.	Heads	Information
1.	Project name and location	"Resortico", Sector-34, Gurugram, Haryana
2.	Project area	10.025 acres
3.	Nature of the project	Commercial Colony
4.	DTCP License	17 of 2014 dated 10.06.2014 upto 09.06.2019
5.	Name of the licensee	Mukesh Kumar S/o Tulsiram
6.	RERA Registered/ not registered	Registered bearing no. 159 of 2017 dated 29.08.2017 Valid till 28.07.2021 + 6 months COVID extension = 28.01.2022
7.	Unit no.	Not on record
8.	Unit measuring (carpet area)	630 sq. ft. (Page 8 of complaint)
9.	Date of booking	13.10.2013
10.	Date of execution of Serviced Apartment buyer's agreement	Not Executed
11.	Possession clause	No allotment has been done BBA is not executed between the parties Hence possession clause cannot be ascertained
12.	Due date of possession	Not Ascertained

13.	Total sale consideration	Not on record
14.	Total amount paid by the complainant	Rs 2,50,000/- (annexure2 on page no. 17 of complaint)
15.	Occupation Certificate	Not received
16.	Offer of possession	Not offered
17.	Grace Period	The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/ unconditional and has been sought for handing over of possession.

B. Facts of the complaint:

3. The complainant booked a one bhk apartment having saleable area of 630 q. ft. in an upcoming project of respondent situated at Sohna District Gurugram and paid a sum of Rs. 2,50,000/-. An expression of interest was signed by the complainant on the same day.
4. It is the case of complainant that that the officials of respondent told him that once the name of project was finalised, the formal application would be shared.
5. That the respondent accepted booking at pre-launch stage in utter violation in this regard in the State of Haryana. When the complainant came to know about it, he asked for refund of that amount as the respondent was not having any license for the project and the same was received 10.6.2014 vide licence number 17 of 2014.
6. It is further the case of complainant that in May 2015, he received the first and last communication about the project by the name of CHD Resortico to be launched in sector 34 Sohna. Neither any

layout plan or project details were shared by the respondent with complainant nor any unit was allotted to him

7. That as per expression of interest if no unit was allotted within 9 months by the respondent, the complainant was entitled to refund of the paid-up amount along with interest. But in May 2015, the project was changed from residential colony to commercial colony having one bhk serviced apartments.
8. That no buyer's agreement was ever executed between the parties. So, the complainant made a request on 28.05.2015 for refund of bill paid up amount but with no result leading to filing of the present complaint.

C. Relief sought by the complainant:

9. The complainant has sought the following relief(s):
 - i. Direct the respondent to refund the full amount of Rs. 2,50,000/- along with interest.
 - ii. Direct the respondent to pay compensation for mental agony and harassment for Rs. 5,00,000/-.
 - iii. Direct the respondent to pay Rs. 70,000/- towards litigation expenses.

D. Reply by respondent:

The respondent-builder by way of written reply made the following submissions:

10. The case of respondent as set up in the written reply dated 29.10.2021 is that the amount paid by the complainant was towards investment and he was issued a letter in this regard on 12.05.2015.

11. It was further pleaded that since the complainant did not show any interest in the project and kept quiet, so the expression of interest was automatically cancelled after 30 days. Neither any booking in the project was made nor any letter of allotment of any unit was issued in favour of the complainant.
12. It was further pleaded that the complaint filed is barred by limitation. During the last 7 years, neither the complainant filed any complaint or civil suit nor took any steps to recover the deposited amount. So, the present complaint is nothing but misuse of the process of the authority. Thus, the complaint is liable to be dismissed without any further inquiry.
13. Copies of all the relevant do have been filed and placed on record. There authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

14. 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

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2022(1) RCR (c) 357 and reiterated in case*

of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

18. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to refund the amount of Rs. 2,50,000/- along with interest.

19. It is not disputed that the respondent accepted a sum of Rs 2,50,000/- from the complainant at a pre-launch stage for allotment of unit in its upcoming project on 30.10.2013. The amount in this

- regard was paid to the respondent by the complainant vide an account pay cheque bearing number 770436 dated 30.10.2013. It is also a fact that at the time, the respondent was not having any license for any project at Sohna, District Gurugram and the same was issued in its favour on 10.6.2014 vide licence number 17 of 2014 for the land situated in sector 34 Sohna.
20. The complaint was informed in May 2015 with regard to launching a project by the name of CHD Resortico in sector 34 Sohna. But neither details of the project nor layout of the building plans were shared with the complainant. Even, the nature of the project from residential to commercial was also changed in May 2015.
21. Thus, there is neither any letter of allotment nor any booking of the unit and so, it is a case of booking at a pre-launch stage. It is evident that the complainant paid a sum of ₹2,50,000/- to the respondent at that stage on 30.10.2013. But neither any booking of the unit was done in any project leading to allotment of the unit nor there is any other document to prove the continuation of the complainant in the project launched by the developer.
22. Hence, the authority hereby directs the promoter to return the amount received from the complainant along 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 this order till the actual date of refund of the amount.

F.2 Direct the respondent to pay compensation for mental agony and harassment for Rs. 5,00,000/-.

F.3 Direct the respondent to pay Rs. 70,000/- towards litigation expenses.

23. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions issued the Authority:

24. 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 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.2,50,000/- received by it from the complainant 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 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.

25. Complaint stands disposed of.

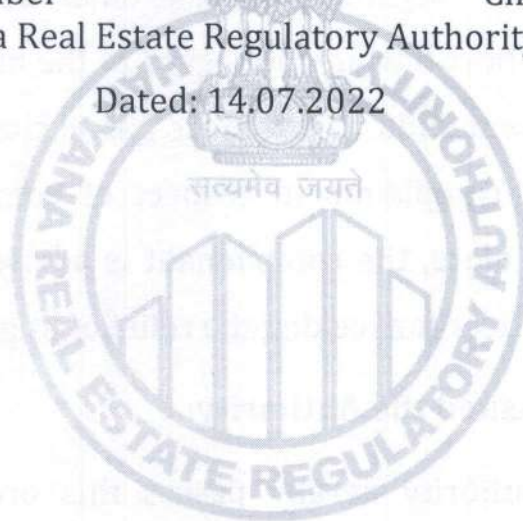
26. File be consigned to the Registry.

v.1-3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022



HARERA
GURUGRAM