

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

**Complaint no. : 3907 of 2019/  
1967 of 2021**  
**First date of  
hearing: 14.11.2019**  
**Date of decision : 07.07.2022**

Mr. Parveen Sharma S/o Late. Sh. Raghunath Sharma  
R/o: - House no. 622, Sector-62, Gurugram, Haryana

**Complainant**

Versus

M/s Splendor Landbase Ltd.  
**Regd. Office at:** Splendor Forum, plot no. 3, unit no. 501-  
511, 5th floor, Distt. Centre Jasola, New Delhi

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Sh. Parveen Sharma  
Sh. Ravi Aggarwal

Complainant in person  
Advocate for the 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 28 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
	Name of the project	Splender Epitome, Sector-62
1.	Unit no.	141, First Floor (As per allotment letter, annexure P-G)
2.	Unit admeasuring	565 sq. ft. (As per allotment letter, annexure P-G)
3.	Provisional Allotment Letter	07.07.2013 (As per allotment letter, annexure P-G)
4.	Date of execution of agreement for sale	28.06.2014 (on page no. 37 of reply)
5.	Building Plan	26.12.2018 (As per the detail provided by the planning branch of the authority)



6.	Possession clause	<p>9.2 That <b>the Company shall, under normal circumstances, complete the construction of Said Complex in which the Said Unit is located within a period of 42 forty two months with the grace period of 6 (six) months, and subject to force majeure circumstances as defined herein, from the date of execution of this Agreement in accordance with the said approved plans and specifications seen and accepted by the Allottee (with additional floors with space if permissible)</b> with such additions, deletions, alterations, modifications in the layout plans, change in number dimensions, height, size, area or change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them. In case, these changes are required after execution of the Sale/Conveyance Deed, then in order to Implement those, any Supplementary Deed/Agreement, if necessary will be executed and registered by the Company. In case the same are warranted prior to the</p>
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		execution of the Sale/Conveyance Deed, Company's Intimation to the Allottee shall be enough. <b>(Emphasis supplied).</b>
7.	Due date of delivery of possession	28.12.2017 (calculated from date of execution of agreement )
8.	Total sale consideration	Rs. 42,37,500/- (as per annexure P-G, Provisional allotment letter)
9.	Total amount paid by the complainant	Rs. 12,52,000/- (as per page no. 33 of reply)
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a commercial space approx. 626 sq. ft. FG.(G 59) in the project "Splendor Galleria" of the respondent situated at sector -83, Gurugram, Haryana for a basis sale price of Rs. 8,000/- per sq. ft.
- II. That at the time of booking, the complainant had paid an amount of Rs.2, 50,000/- vide cheque bearing No. 351167 dt. 16-08- 2010, drawn on State Bank of India. The complainant had received a

demand notice dated 13/09/2010 for installment due for unit no.059 in ongoing commercial project "Splendor Galleria", Sec. 83, Gurgaon. The complainant had immediately paid an amount to Rs. 5,00,000/- vide cheque No. 351168 dated 15-9-2010 and amounting to Rs. 5,02,000/- vide Cheque bearing No. 351169 dt. 16-10-2010 , all drawn on State Bank of India

- III. That thereafter, the complainant visited the office of the respondent and asked for execution of the space buyer agreement in respect of the above said retail/office space. But the respondent linger on the matter on one pretext or the other and space buyer agreement was not executed in favour of the complainant.
- IV. That thereafter, the complainant on several occasions has requested and persuaded the respondent to refund his amount as per the provisional allotment and sent several emails, but it paid no heed and threatened the complainant of not returning the amount.
- V. That respondent has given an option to the complainant for shifting to another ongoing project "Splendor Epitome" at sector-62, Gurgaon and would make an endeavour to the complete the construction of the complex including the said space within a period of three year.
- VI. That thereafter, the complainant on several occasions has requested, visited the office of the respondent and asked for

execution of the space buyer agreement in respect of the "Splendor Epitome" at sector-62, Gurgaon, unit no.141, super area approx. 565 sq. ft; retail/office space, but the respondent did not execute the agreement in favour of the complainant till date.

- VII. That thereafter, the complainant visited the office of the respondent and asked for execution of the space buyer agreement in respect of the above said unit, but it refused the request and threatened to complainant for first deposit the outstanding payment of Rs. 20, 03,101/- and then respondent would execute the buyer's agreement for sale of the said unit. Till date the builder buyer agreement has not been executed in favour of the complainant.
- VIII. That after the unprofessional behavior of respondent, complainant decided to cancel the booking and sent a legal notice on dated 15 07-2019, to it for cancellation and refund of the booking advance paid booking amount of Rs. 12, 52,000/- with interest paid by him but no any response from the respondent.
- IX. That the respondent has ignored the request of the complainant to refund the amount, the same would result in the termination/ cancellation of the provisional agreement. It is pertinent to mention here that the terms of the agreement are completely one sided and favoured only the company. The same have been formulated in a way that it can take undue advantage of their



dominant position at the site where the project is being developed and harass the complainant into making payment as and when demanded and also reserving the right with himself to cancel the allotment in case of own fault not even attributable to the complainant.

- X. That the present complaint sets out the various deficiencies in services, obligations and unfair and/or restrictive trade practices adopted by the respondent in sale of the retail shop/ office space and the provisions allied to it. The modus operandi adopted by the respondent, from its point of view, it may be unique and innovative but from the consumer point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the services/utilities as promised at the time of booking or complainant required.

**C. Relief sought by the complainant:**

- **Direct the respondent to return sale consideration sum of Rs. 82,20,191/- towards the principle amount along with interest w.e.f. 06.03.2017 till the date of realization of the amount.**
4. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been

committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

5. The respondent contested the complaint on the following grounds: -

- i. That the complainant has approached this authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the hon'ble apex court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

The respondent has contented on the following grounds:

- ◆ That in and around August, 2010, the complainant approached the respondent for seeking to invest in the upcoming commercial project 'Splendor Galleria' at Sector - 83, Gurgaon and submitted an application with it for provisional registration of commercial space in the said project. That under the said application, the complainant had



deposited advance amount of Rs,12,52,000/- with the respondent.

- ◆ It is submitted that the complainant made several defaults in making timely payments as a result thereof, respondent had to issue reminder letters for payment of the outstanding amount.
- ii. From the above, it is very well established, that the complainant has approached this authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law and the complaint warrants dismissal without any further adjudication.
- iii. The complainant had also submitted an indemnity bond dated 30.05.2013 with the respondent reiterating the contents of the said letter and requested the respondent to transfer his booking in the subject project and amount paid against the same.
- iv. In pursuance of the request of the complainant, the respondent vide provisional allotment letter dated 07.07.2013 allotted a new unit to complainant in its another project namely "Splendor Epitome" and allotted a new unit No. 141, having super area 565 sq. ft. (approx) for total basic sale consideration of Rs. 42, 37,500/-

and also transferred the amount of Rs. 12,52,000/- paid by him towards adjustment of payment of the new unit as an advance part payment. The payment of the basic sale consideration, other dues and charges were as per said allotment letter. The complainant had suppressed complete allotment letter dated 07.07.2013 from this authority.

- v. That after aforesaid allotment in favour the complainant, the respondent sent demand letter dated 19.12.2013 and reminder letter dated 25.4.2014 asking to him to make payment of outstanding installment of Rs.6,61,225/- as per payment plan opted by him, but he failed to make any payment.
- vi. That the complainant instead of making payment as per agreed payment plan of the allotment letter , asked the company to execute space buyer agreement which was executed on 28.06.2014. Even after execution of the said agreement, the complainant failed to make payment of outstanding installments. The respondent waited for a substantial period and again sent demand letter dated 22.05.2019 and reminder letter dated 05.07.2019 to him to make payment of outstanding amount of Rs.20.03.101/- as per payment plan agreed upon by him and reproduced in the said buyer's agreement.
- vii. It is pertinent to mention though the complainant was already a defaulter having made default in payment as per previous demand

letter, as a gesture of goodwill, the respondent has not charged any interest on delayed payment from him. The complainant instead of making the payment of the due amount, sent a legal notice dated 15.07.2019 demanding for refund of the booking payment on the baseless ground of unfair trade practice, deficiency in service etc, and refused to make the payment of outstanding amount causing further serious prejudice to it.

- viii. That the complainant has again failed to make payment of outstanding amount as per payment plan agreed under the said allotment letter and said agreement and has filed the present compliant to evade his liability and make an unjust enrichment. Therefore, the question of any refund on account of delayed construction does not arise since the complainant himself is a defaulter and it is clear that he is unable to continue with the allotment of the said unit (as he was earlier in respect of his booking of retail space in 'Splendor Galleria' Project) and wants to evade making payment towards the said Unit.
- ix. Copies of all the relevant documents have been filed and placed on the record. Their 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**

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

8. 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.*

9. 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.

10. 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. 2021-2022(1) RCR (Civil), 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."*

11. 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 that amount.

**E. Findings on the relief sought by the complainant.**

**E. I Direct the respondents to refund sum of Rs. 12,52,000/-/- paid by him with prescribed rate of interest.**

12. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject space along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference.

***“Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*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 the possession, at such rate as may be prescribed.”*

*(Emphasis supplied)*

13. Clause 9.2 of the agreement to sell provides for handing over of possession and is reproduced below:

***9.2 That the Company shall, under normal circumstances, complete the construction of Said Complex in which the Said Unit is located within a period of 42 forty two months with the grace period of***



*6 (six) months, and subject to force majeure circumstances as defined herein, from the date of execution of this Agreement in accordance with the said approved plans and specifications seen and accepted by the Allottee (with additional floors with space if permissible) with such additions, deletions, alterations, modifications in the layout plans, change in number dimensions, height, size, area or change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them. In case, these changes are required after execution of the Sale/Conveyance Deed, then in order to Implement those, any Supplementary Deed/Agreement, if necessary will be executed and registered by the Company. In case the same are warranted prior to the execution of the Sale/Conveyance Deed, Company's Intimation to the Allottee shall be enough..*

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to but subject to force majeure, political disturbances, circumstances cash flow mismatch and reason beyond the control of the company. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottees that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of his right accruing after delay in possession. This is just to comment as to how the builder has misused their dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

15. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the rate of 18% p.a. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.07.2022 is **7.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.80%**.
18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule **18(1)**, the Authority is satisfied



that the respondent is in contravention of the provisions of the Act. By virtue of clause 9.2 of the agreement to sell executed between the parties on 28.06.2014, the possession of the subject unit was to be delivered within a period of 42 months from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession is 28.12.2017. Further, the authority observes that neither occupation certificate of the project has been received nor the respondent has offered possession of the allotted unit to the complainant. So, in view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within her right to do the same in view of section 18(1) of the Act, 2016. Further, the authority has no hitch in proceeding further and to grant a relief in the present matter in view of the recent judgement ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."*** (Supra)

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 9.80% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 & 16 of the rules, 2017.

**F. Directions of the authority**

20. 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 function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount of Rs. 12,50,000/- paid by the complainant along with prescribed rate of interest @ 9.80% p.a. from the date of each payment till the actual date of refund of the deposited 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

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

Dated: 07.07.2022