



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

Complaint no. : 643 of 2021
First date of hearing: 24.03.2021
Date of decision : 04.05.2022

MS. Reshma Magan W/o Shri. Kapil Magan R/O: A-20, New Agra, Agra 282005	Complainants
Versus	
1. M/s Ace Mega Structures Private Limited R/o: Plot no. 1B, Greater Noida Expressway, Sector 126, Noida. 2. M/s Bright Buidltech Pvt. Ltd. R/O: D-107, Panchsheel Enclave New Delhi. 3. Orris Infrastructure Pvt. Ltd. R/o: J-10/5, DLF, Phase 2, Gurugram.	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ms. Rhea Luthra	Advocate for the complainants
Sh. Deeptanshu Jain	Advocate for respondents no. 1 & 2
Ms. Charu Rastogi	Advocate for respondent no. 3

ORDER

1. The present complaint dated 10.02.2021 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 as provided 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:

S.No.	Heads	Information
1.	Project name and location	"WOODVIEW RESIDENCES", Sector- 89-90, Gurugram.
2.	Project area	101.08 Acres (As per the DTCP LICENCE.)
3.	Nature of the project	PLOTTED COLONY.
4.	DTCP license no. and validity status	59 of 2013 dated 16.07.2013 valid till 15.07.2021
5.	Name of licensee	Orris infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered.
7.	RERA registration valid up to	NA



8.	Unit no.	E-53, second floor. [Page no.2 of complaint]
9.	Unit measuring	1875 sq. ft. [super area]
10.	Date of execution of Builder Buyer Agreement	28.07.2015 [page no. 30, annexure-2 of complaint]
11.	Payment plan	Construction linked payment plan. [Page no.52 of complaint]
12.	Total consideration	Rs.1,69,49,779.20/- [as per payment plan page no. 52 of complaint]
13.	Total amount paid by the complainant	Rs.43,51,079/- [as per latest statement and information provided by the complainant page no. 2 of complaint]
14.	Due date of delivery of possession as per clause 5.1 of the buyer developer agreement plus 6 months grace period upto the offer letter of possession or actual physical possession whichever is earlier. [Page 30, annexure- 2 of complaint]	28.01.2019 5.1 possession clause Subject to clause 5.1 and subject to the buyer making timely payment , the company shall endeavour to complete the structure of the building block in which the dwelling unit is situated within 36 months , with grace period of 6 (six) months from the date of issuance of allotment letter provided that all amounts entitled to reasonable extension of the time for possession of the dwelling unit in the event of any default or negligence attribute to the buyers fulfilment of terms and



		conditions of this agreement. (Note: Grace period of 6 months is allowed being unqualified one) (Page 36 of complaint, BBA)
15.	Delay in handing over possession till the date of order.	2 years 5 months
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not made

B. Facts of the complaint:

3. In the year 2013, the complainant applied for a fully furnished dwelling unit/plot in the project under the name of "**Woodview Residencies**" in Sector 89-90, Gurugram, Haryana being developed by the respondents. It is submitted that the Complainant was allotted a unit, bearing unit no. E-53, 2ND Floor in the said project admeasuring super area of unit approximately 1875 Sq. Ft. along with basement and terrace area of 41.43 Sq. Ft. (hereinafter referred to as "**said unit**"). The Complainant was issued a allotted a provisional letter dated 11.02.2015 which was subject to execution of Builder Buyer Agreement and other terms of the application dated 08.11.2013. Thereafter, the Complainant entered into a Buyer Agreement dated 28.07.2015 with respondent No. 2 and whereby she was assured that all the necessary approvals and sanctions are in place and the Complainant shall be offered



possession of the said unit within a period of 36 months from the date of issuance of the allotment letter i.e., by August 2018.

4. It is further submitted that in compliance with the terms of the application form as well as the Buyer Agreement dated 28.07.2015, the Complainant kept paying the instalments as per the terms of the payment schedule and has till date paid a total amount of Rs.43,51,079/- towards purchase of the said unit. It is to be noted that the said amount was paid through various cheques and demand drafts. However, instead of handing over the possession of the said unit by August 2018, as assured, the Complainant received a letter dated 03.10.2019 from respondent No. 1, whereby it informed her that the management for the said project has been taken over by it. It was further informed to her that respondent no. 1 shall now be responsible for developing and delivering the said project under the name of "**ACE Palm Floors**" within a period of two years from the date of registration of the project with the RERA Authority, Gurugram (Haryana) in a phase wise manner.
5. It is submitted that despite waiting for almost five years for possession of the said unit and sending numerous reminders to the respondents, the complainant did not receive any positive reply. Therefore, being left with no other option, she was forced to write an email dated 12.07.2020 to respondent No. 1 asking for refund of the amount already along with interest. It is to be noted that the Complainant immediately received a reply from respondent No. 1 vide an email dated 13.07.2020 stating that her said email has been forwarded to the concerned team and who shall contact her once



the RERA registration number is obtained. It is pertinent to note that even after waiting for six months seeking for refund from the respondent No. 1, the complainant has till date did not receive any response from it. Thus, being left with no other remedy available, the complainant has approached the authority seeking refund besides interest and compensation by way of this complaint from the respondents.

C. Relief(s) sought by the complainant:

- Amount paid till now Rs 43,51,079 /- (Including Taxes) as per the cheque dated 28.10.2013, 06.05.2014, 23.04.2015 and 21.07.2015.
 - Refund the entire amount deposited on pro rata basis with interest for every month of delay at Prevailing rate of interest from the actual date of deposit of each payment till date of realization.
6. On the date of hearing, the authority explained to the respondent/promoters 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 respondents

7. It was pleaded by respondent no .3 through its counsel that it has nothing to do with the complaint as the builder buyer agreement was signed by respondent no .1 and who also received the payments against the allotted unit. It was respondent no.2 who was also responsible for development of the colony and so the name of respondent no.3 be deleted from the array of respondents.



8. The respondent no. 1 & 2 by way of joint written reply took a plea that though the complainant is an allottee of the dwelling unit mentioned above but is a chronic defaulter in making due payments. A number of reminders for the payment of the due amount were issued to her but with no positive results. Moreover, due to a number of reasons beyond the control of the respondents, the construction of the project could not take off at the desired speed. There was shortage of construction material, labour, imposition of nationwide lockdown due to covid-19 and stoppage of construction activities due to various orders passed by NGT adversely affecting the pace of construction. Moreover respondent no. 2 also filed an application for change of developer, and which remained pending with the competent authority for a long time. In addition to that non-booking of apartments due to recession, rising cost of manpower and material cost, approvals and procedural difficulties, shortage of water in the area and demonetisation etc affected the development of the project leading to delay in completion of same. It was further pleaded that the project is at an advanced stage and 70% of its work is complete. Lastly, it was pleaded that the complainant is an investor and who booked the unit not for personal use but only to earn profit. Thus, when the project is complete more than 70%, then the authority should not allow refund as it would hamper its completion adversely affecting the other allottees who have invested their hard-earned money to get the units booked for their use.
9. All other averments made in the complaint were denied in total.



10. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

11. 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.

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.

Subject matter jurisdiction

12. 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 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:

13. 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.

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 complainants at a later stage.

F. Objection regarding default in making payments due by the complainant.

14. It is pleaded on behalf of respondents No.1 and 2 that no doubt the complainant is their allottee and was allotted a dwelling unit bearing No. E-53, II Floor, in the project "Woodview Residences" situated at Sector 89-90, Gurugram for a total sum of Rs. 1,69,49,779/- vide allotment letter dated 11.01.2015 but she was a chronic defaulter. She paid a sum of Rs.43,51,079/- upto 21.07.2015 and did not pay the remaining amount due as per the payment schedule and committed default in the same. Due to her default in making payment due as well as by other allottees, the project could not be completed, resulting in delay. But the plea taken in this regard is devoid of merit. No doubt, the allottee failed to make payments by the due date but the respondents were also unable to complete the project and offer possession of the allotted unit by the due date. As per Clause 5.1 of Buyer's Agreement



dated 28.07.2015, the respondents were required to complete the project and hand over possession of the allotted unit within 36 months with grace of six months to the allottees. But the project is neither complete even upto now nor for its occupation certificate/part OC has been applied. Even there is nothing on the record to show that when the complainant failed to make payment of the amount due, the respondents took any action against her as per clause 4.6 and 4.7 of the Buyer's Agreement. It is well settled that a person cannot take benefit of his own wrong. So, the plea of the respondents with regard to non-payment of the amount due against the subject unit by the complainant after July 2015 stands rejected.

G. Objections regarding the complainant being an investor

15. It is pleaded on behalf of respondents that complainant is an investor and not consumer. So, she is not entitled to any protection under the Act and the complaint filed by her under Section 31 of the Act, 2016 is not maintainable. It is pleaded 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 observes that the respondents are 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 preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the 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 the promoter 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 Buyer's agreement, it is revealed that the complainant is a buyer and has paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

"Z(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."

16. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainant is an allottee as the subject unit allotted to her by the respondents/promoters. The concept of investor is not defined or referred in the Act of 2016. As per definition 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.10557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd and anr** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoters that the allottee being an investor is not entitled to protection of this Act also stands rejected.



H. Objection regarding delay in project due to force majeure events

17. The respondent-promoters plead that the completion of the project was delayed due to force majeure conditions, such as, shortage of labour due to implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19, various orders passed by NGT, non-payment of instalments by different allottees of the project, including the complainant, recession in the real estate sector and increase in the cost of raw-materials etc. But all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 28.07.2015 and the events such as implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondents. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Moreover, the factors such as shortage of labour and increase in cost of raw-material are of routine in nature and a promoter is expected to take the same into consideration before launching the project. Then the due date for completion of the project was agreed upon between the parties 36 months from the date of execution of Buyer's agreement and the same expired in January 2019. The country-wide lockdown due to Covid-19 was imposed only in March 2020 and the respondents cannot be given any benefit on that count. Lastly, the complainant may not have adhered to the schedule of payment



against allotted unit but she had a right to do so under clause 9.2 of model agreement framed under rule 8 of The Haryana Real Estate(Regulation and Development) Rules, 2017, providing the conditions under which an allottee can stop from making further payments if the project is not coming up as per the schedule given by the promoter/developer and in that situation, he is liable to refund the entire money paid by the allottee. Even while filing reply, the respondent/promoters have not placed on record any details of the defaulters of the project and the demands raised in this regard from them. Thus, the promoters- respondents cannot be given any benefit on the basis of aforesaid situations. It is also well settled principle that a person cannot take benefit of his own wrongs. So, the plea raised in this regard on behalf of respondents is devoid of merit.

I. Entitlement of the complainant for refund

- (i) Amount paid till now Rs 43,51,079 /- (Including Taxes) as per the cheque dated 28.10.2013, 06.05.2014, 23.04.2015 and 21.07.2015.
- (ii) Refund the entire amount deposited on pro rata basis with interest for every month of delay at prevailing rate of interest from the actual date of deposit of each payment till date of realization.

18. Vide letter dated 11.02.2015, the complainant was allotted the subject unit by respondent No.2 for total sale consideration of Rs.1,69,49,779.20p. in its project "Woodview Residences" Sector 79-80, Gurugram. The complainant paid a sum of Rs.12,00,000/- as booking amount. A Buyer's agreement was subsequently



executed between the parties on 28.07.2015 setting out the terms and conditions of allotment, payment and the area of the allotted unit. The complainant admittedly paid a sum of Rs.43,51,079/- against the above-mentioned total sale consideration up to July 2015. The due date for completion of the project and handing over possession of the allotted unit was fixed as January 2019. It is the case of complainant that since the project was not being developed as per the plan, so she was forced to send a number of reminders and ultimately, withdrew from the project and is seeking refund of the amount deposited with the developers. A reference in this regard has been made to emails dated 21.06.2020 and 13.07.2020 respectively (Annexure A-5 and A-7) on the file. Though, it is pleaded on behalf respondent No.1 and 2 that due to force majeure events such as default in making payment due by the allottee including other allottees, NGT orders, demonetisation, imposition of lock-down due to Covid-19, shortage of labour, raw material and implementation of various social schemes by the Government, the project could not be completed but the plea advanced in this regard is devoid of merit. The due date for completion of the project and offering possession of the allotted unit to the complainant has already expired in the year January 2019. The project is not complete even upto now and it is alleged to be complete upto 70%. But whether an allottee is required to wait endlessly for the completion of the project and offer of possession. The answer is in the negative. As the allottee intends to withdraw from the project under section 18(1) of the Act, 2016, and the authority is



well within its jurisdiction to proceed further in the matter to grant refund to the complainant in view of recent judgment of the Hon'ble Apex court in the case of **Newtech Promoters and Developers Private Limited Vs State of UP and Ors(supra)** and followed by the Hon'ble High Court of Punjab & Haryana in case **Ramprashtha Promoters and Developers Pvt Ltd Vs Union of India and Ors in CWP No.6688 of 2021** decided on 04.03.2022, wherein it was observed as under:

'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 Section 12,14, 18 and 19 other than compensation s envisaged, if extended to the adjudicating officer as prayed that, in 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.

19. So, in view of the authoritative pronouncement of the Hon'ble Apex court and in terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand to return the amount received by him in respect of that unit if the allottee wishes to withdraw from the project. Such a right of an allottee is



specifically made 'without prejudice to any other remedy available to him. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at the rate prescribed. Though the contention raised on behalf respondents is that the project is near completion and the possession of allotted unit would be offered soon, but the same is untenable as the allottee choose to withdraw from the project after the due date. Secondly, even after filing of complaint on 31.01.2021 and upto the date of order, the respondents have not been able to obtain occupation certificate of the project. So, in view of the spirit of the provisions of section 18(1) and as discussed earlier with regard to situations under which an allottee can seek refund, the case of complainant falls in category 'I' and thus she is entitled to refund of paid up amount from the respondents besides interest at the prescribed rate.

20. It is also pleaded by respondent no.3 through its counsel that neither it is a signatory to the buyer's agreement nor was responsible for completion of the project. So, its name be deleted from the array of the parties and is not responsible for any relief to be given to the complainant. But the plea advanced in this regard is devoid of merit. There is mention of collaboration agreement between respondent no. 2 and 3 on 18.05.2013 and the same also finds mention in the development management agreement dated 23.05.2019 entered between respondents no. 1 and 2 So in such a situation, respondent no.3 was added as one of the respondents. Secondly, though the subject unit was allotted to



the complainant by respondent no.2 on 11.02.2015 leading to execution of buyer's agreement on 28.07.2015 but respondent no.1 entered into a development management agreement with respondent no.2 on 23.05.2019. Even an intimation in this regard was received by the complainant from respondents no. 1 and 2 on 03.10.2019 and 21.06.2020 respectively. But that was an internal arrangement with regard to the project, between respondents no. 1 and 2 and the complainant was not a party to it. So, if there was any delay in completion of the project due to those reasons, the complainant can't be held responsible and thus all the respondents are liable for delay, leading to refund of the deposited amount after the expiry of the due date in completion of the project and offering its possession to the complainant.

J. Legal expenses

21. The complainant is also claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

K. Directions of the Authority:

22. 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 respondents /promoters are directed to refund the amount i.e., Rs.43,51,079/-received by them from the complainant along with interest at the rate of 9.40% 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 deposited amount.
- 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.

23. Complaint stands disposed of.

24. File be consigned to the Registry.


(V. K. Goyal)

Member


(Dr. KK. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated 04.05.2022

