

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

Complaint no. : 1793 of 2019
Date of filing complaint: 30.04.2019
First date of hearing : 06.12.2019
Date of decision : 11.05.2022

1. Anirban Bhattacharya S/o sh. Alok Kumar Bhattacharya. 2. Dobariya Bhattacharya W/o Anirban Bhattacharya Both r/o: - Flat no. 220, Tawi AL, Saigh Building, Mankhool Bur Dubai, UAE - 74021.	Complainants
Versus	
1. M/s Standard Farms Pvt. Ltd. 2. Mr. Nayan Navin Raheja D/o M/s Standard Farms Pvt. Ltd. 3. Sarveshwar D/o M/s Standard Farms Pvt. Ltd. Regd. Office at: - 1. W4D, 204/5, Keshav Kunj, Cariappa Marg, Western Avenue, Sainik Farms, New Delhi - 110062 Corporate office at: - 406, 4 th floor rectangle-1, D-4, District Centre, Saket, New Delhi - 110017. 2. & 3. Regd. Office: - 406, 4 th Floor Rectangle-1, D-4, District Centre, Saket, New Delhi - 110017	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Hemant Phogat	Advocate for the complainants



Sh. Dilbaar Singh, proxy counsel for shri
Rahul Bhardwaj

Advocate for
the respondents

EX-PARTE ORDER

- The present complaint has been filed 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) by the complainant/allottees named above seeking refund of Rs.46,43,723 /- deposited for booking of a residential floor in the project known as "Raheja's Ayana" sector 79 -B Gurugram against total sale consideration of Rs.86,72,805 /- besides taxes against the respondent-builders for violation of obligations under sections 11(4) of the Real Estate (Regulation and Development) Act 2016 . Before taking up the case of the complainants, the reproduction of the following details is must, and which are as under.

A. Unit and project related details

- The particulars of project, unit, sale consideration, the amount paid by the complainants, 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	"Raheja Ayana", Sector - 79-B Gurgaon.
2.	Project area	102.70 Acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	137 of 2014 dated 27.08.2014
	License valid up to	26.08.2019



	Name of the licensee	Revital Reality Pvt. Ltd. & Jasmine Megastructure Pvt. Ltd.
5.	RERA registered/not registered	Un-Registered
	HAERA registration no.	-
	Registration valid up to	-
6.	Unit no.	SF- V12 2 ND FLOOR, PLOT NO. C-10 /10 (On page no. 45 of complaint)
7.	Size of unit	1555.66 sq. ft. (On page no. 45 of complaint)
8.	Allotment letter	09.04.2016 (Page 34 of complaint)
9.	Date of execution of apartment buyer's agreement	09.04.2016 (On page no. 38 of complaint)
10.	Total sale consideration	Rs. 86, 72, 805/- (On page no. 45 of complaint)
11.	Total amount paid by the Complainants	Rs.46,43,723/- (AS PER THE FACTS CONTENTED IN THE COMPLAINT APPENDEX-D)
12.	Possession clause	"Clause 5.2- The company shall endeavour to complete the construction of the said built up floor unit within 36 months from the date of the execution of this agreement to sell or receiving of the environment clearance and forest clearance whichever is later.
13.	Due date of delivery of possession	09.04.2019 (In the absence of date of environment clearance due date has been calculated from the date of agreement to sell.)
14.	Occupation certificate	Not obtained

15.	Offer of possession	Not offered
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B. Facts of the complaint: -

3. That after going through the advertisements published by the respondents in the newspapers and as per the broacher/prospectus provided, the complainants on 12.01.2015 provisionally booked a builder floor bearing Unit No. SF-12, Second Floor, Plot No. C10/10, measuring 1555.66 Sq. Ft. (263.71 Sq. Yards) in their upcoming project namely "RAHEJA'S AYANA" situated in Sector-79-B, Gurugram for a total sale consideration of Rs. 1,00,66,483/-. The complainants paid a sum of Rs. 8,99,439/- vide bank transfer from on Punjab National Bank, Branch at Khanpur as booking amount in respect of the above said builder floor to be developed by the respondents and acknowledged by them vide payment receipt No. 3534. Later, the complainants paid different amounts against the booking of the residential unit to the respondents. A total amount of Rs. 46,43,723/- was paid by them to the respondents in respect of the above said unit situated in the project "RAHEJA'S AYANA" to be developed by them in Sector-79-B, Gurugram.
4. That in pursuant to booking of the unit, an agreement to sell dated 09-04-2016 was executed between the parties. That as per clause 5.2 of that agreement, the possession of the allotted unit was to be delivered within 36 months from the date of execution of builder buyer agreement.

5. That the respondents have failed to develop and cancelled the project and there has been no construction at the site since the date of booking.
 6. That the complainants on several occasions, through email or telephonic conversation have conveyed the respondents to refund their amount along with interest as they have failed to fulfil their obligations in developing the project and handing over the possession of the floor booked by them on 12-01-2015 and as per sale agreement dated 09-04- 2016. However, the respondents lingered on the matter on one pretext or the other and did not pay any heed to the just and genuine requests of the complainants. That vide email communication dated 15-03-2018, the developers again assured the complainants that their amount of Rs. 57,35,866/- (including interest on principle amount) is under process for refund and shall be initiated within a month. But till date, there has been no progress of refund from the side of the respondent/developers. That finally, after several follow-ups and losing all hopes, the complainants sent a legal notice dated 08-01-2019 to the respondents through their counsel and asked to refund the deposited amount of Rs. 46,43,723/- along with interest, but they have failed to refund the same, leading to the filing of the present complaint.
- C. Relief sought by the complainants: -**
7. The complainants have sought following reliefs:
 - i. Direct the respondents to refund the amount of Rs. 46,43,723/- besides interest paid by the complainants to

them in respect of the above said unit bearing No. SF-12, Second Floor, Plot No. C10/10, measuring 1555.66 Sq. Ft. (263.71 Sq. Yards) in the project named "RAHEJA'S AYANA" situated in Sector-79-B, Gurugram

- ii. Direct the respondents to pay litigation charges Rs. 50,000/-

8. Though the respondents put in appearance through their counsel but failed to file written reply despite giving several opportunities and imposing of cost. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file

D. Jurisdiction of the authority

9. 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.

D.I Territorial jurisdiction

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 completed territorial jurisdiction to deal with the present complaint.

D. 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 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.

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.

E. Findings regarding relief sought by the complainant:

E.1 Direct the respondents to refund Rs. 46,43,723 deposited by the complainants

10. As per the observations of authority, the total consideration of the unit is Rs. 86,72,805/- The complainants have paid Rs.46,43,723 / including taxes. As per clause 4.9 of builder buyer agreement, it is the obligation of an allottee to make timely payments for the total sale consideration and which is reproduced as under:



"4.9. FAILURE / DELAY IN PAYMENT:

(I) in the event of any delay or default in making the payment of instalment by the allottee, then allottee shall be liable to pay to the company interest which shall be charged @18 % per annum from the due date of payment of instalment on monthly compounded basis.

However, if the payment is not received within 90 day from the due date or in the event of fulfilment /breach of any of the terms and conditions of this allotment , agreement to sell by allottee including withdrawal of the application , in the event of failure by the Allottee to sign and return to the Company, Agreement to sell on Company's format within thirty(30) days from the date of Its dispatch by the Company, the booking shall stand cancelled at the discretion of the Company and earnest money paid to the Company by the Allottee along with Interest on delayed payments and brokerage paid, If any shall stand forfeited.

(li) However, the Company alternatively, In Its sole discretion, instead may decide not to cancel the unit to enforce the payment of all dues from the Allottee by seeking specific performance of this Agreement.

(ill) Further, in such an event the Allottee shall be left with no right, title, Interest, lien or claim of whatsoever nature on the said Built-up Floor Unit. Upon cancellation of Built- up Floor Unit, the total amount paid by the Allottee shall be refunded after deduction of 'Earnest Money, Interests paid/payable by the Allottee on delayed payments, brokerage charges pal for that unlit plus other applicable charges as per Company policy, only after sale of that unit to new prospective purchaser and after receiving sale consideration from new purchaser. The balance amount after above deductions shall be refundable to the Allottee without any interest through cheque. The dispatch of said cheque by registered post/speed-post to the last available address of Allottee, with the Company as filled up in application form/this Agreement shall be full and final discharge of all the obligations on the part of the Company or its employees and the Allottee will not raise any objection or claim on the Company afterwards In this regard. It Is made clear and so agreed by the Allottee that exercise of discretion by the Company In the case of one Allottee(s) shall not be construed to be a precedent and/or binding on the Company to exercise such discretion In the case of other Allottee(s).

(lv) The Company may at its sole discretion condone the breach of payment by the Allottee and may revoke cancellation of the allotment provided the Built-up floor Unit has not been re-allotted to some other person and the Allottee agrees to pay the up to date Interest and the unearned profits (difference between the booking price and prevailing sales price) in proportion to total amount



outstanding on the date of restoration and subject to such additional conditions/undertaking as may be decided by the Company. Further If any Applicant(s)/Intending allottee(s) at any stage wants to withdraw his/her/its application for booking for any reason whatsoever, it shall be deemed as cancellation by the Allottee and In that eventuality Company In its sole, absolute and unfettered discretion be entitled to forfeit earnest money paid by the Allottee and cancel the allotment letter and terminate the allotment thereof. Company will Issue a cancellation/ termination letter without any further notice to the Allottee(s). The balance amount (after deducting the earnest money, outstanding Interest for delayed payments, brokerage/ commissions already paid etc. If any) shall be refundable to the Allottee without any Interest, only after sale of that unit to new prospective purchaser and after receiving sale consideration from new purchaser.

(v) The Allottee also agrees that the Company shall adjust all the amounts received from the Allottee first towards Interest of overdue Instalments and only thereafter towards the previous instalment or any other outstanding demand and finally balance, if any, would be adjusted towards the current instalment or current dues towards which the payment have been tendered."

11. It is not proved that due to non-payment of the amount due, the respondent builders took any action against the complainants and cancelled their unit. Even it is also not proved as to what is the stage of construction of the project in which the allotted unit is situated. So, no benefit of this provision can be given to the respondents.
12. The complainants have sought the refund of the amount deposited with the respondent against the allotted unit. The booking of the unit was made by them on 12.01.2015 and a builder buyer agreement was executed between the parties on 09.04.2016. As per clause 5.2 of that agreement, the possession of the allotted unit was to be offered to the complainants within 36 months and which comes to 09.04.2019. That date has already expired, and the project is still not ready. Moreover, the complainants withdrew from the project as evident from email dated 15.03.2018 (annexure p/h) followed by legal notice dated 08.01.2019 (annexure p/1). It is

pertinent to mention over here that even after a passage of approximately 3 years, 1 month, 2 days neither the construction is complete nor the offer of possession of the allotted unit has been made over to the allottees by the builder.

13. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. As the allottees intend 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 complainants in view of the recent judgement of the Hon'ble Apex court in the case of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (11.11.2021) MANU/SC/1056/2021** and wherein it was observing asunder:

"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.

14. While constituting the view based on the aforesaid reasonings, the authority elucidated the above facts and establishes the entitlement of the allottees for refund as the respondent-promoters have defaulted in fulfilling their obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Keeping in view the facts of the present matter, the authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. 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 respondents is established. Therefore, taking note of all the circumstances, the authority holds its view that the complainants-allottees are entitled for refund and hereby, directs the respondents to return the amount received by them from the complainants- allottees along with interest at the rate of 9.40% p.a. from the from the date of deposit till the date of recovery of the amount within 90 days from the date of this order as per rule 16 of the Haryana Rules, 2017.

E.2 Cost of litigation

15. The complainants are claiming cost of litigation in 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 can claim. For claiming compensation and cost under sections 12, 14, 18 and

section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:


16. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the as per the functions entrusted to the authority under section 34(f): -

- i. The respondents/ promoters are directed to refund the amount of Rs. 46,43,723 /- received by them from the complainants 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.

17. Complaint stands disposed of.

18. File be consigned to the registry.

V.I - 
(Vijay Kumar Goyal)
Member


(Dr. K.K.
Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 11.05.2022