

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

Complaint no.	:	3644 of 2021
Date of filing complaint:		21.09.2021
First date of hearing	:	13.10.2021
Date of decision	:	31.05.2022

1. Mrs. Priti Sayal W/o Mr. Ravi Sayal 2. Mr. Samay Sayal S/o Mr. Ravi Sayal Both RR/o: - House No. B25F, Block - B, Sushant Lok - 1, Gurugram - 122002	Complainants
Versus	
M/s YB Builders Pvt. Ltd. Regd. Office at: - 48, Basant Lok, Vasant Vihar, New Delhi - 110070 Also, at: SCO - 304, 2nd Floor, Sector - 29, Gurugram - 122002	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ms. Megha Gupta (Advocate)	Complainants
Shri. Avinash proxy counsel for Sh. Nikhil Bhari (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of project, unit, sale consideration, the amount paid by the respondent, 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	"NIMAI PLACE" , sector - 114 Gurgaon .
2.	Project area	3.0125 Acres
3.	Nature of the project	Studio apartment
4.	DTCP license no.	126 OF 2012 ; DATED 20.12.2012
	License valid up to	19.12.2022
	Name of the licensee	Y.B.Builders Pvt. Ltd.
5.	RERA registered/not registered	REGISTERED
	HARERA registration no.	GGM/275/2018/07
	Registration valid up to	13.09.2019
6.	Unit no.	717, 7 th floor , (BBA, annexure1)
7.	Size of unit	811 sq. ft. (on page no. 21 of complaint, annexure1)

8.	Application for allotment	01.11.2013
9.	Date of execution of buyer's agreement	04.07.2014 (on page no. 20 of complaint, annexure 1)
10.	Total sale consideration	Rs. 69,66,949/- (on page no. 21 of complaint)
11.	Total amount paid by the complainant	Rs.66,15,444/- (on page no. 9 of complaint)
12.	Possession clause	<p>"Clause 26.</p> <p>The developers shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of buyers agreement whichever is later, subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riots, explosion terrorist acts, sabotage, or general shortage of energy labor equipment facilities material or supplies failure of transportation, strike , lock outs , action of labor union , any dispute with any contractor, construction agency appointed by the developers, change of law or any notice, order, rule or notification issued by any court /tribunal and/or authorities, delay in grant of part/full completion(occupancy certificate by the government and /or any other public or competent authority or intervention of statutory authorities, or any other reason beyond the control of the</p>

		developer. The allottee shall not be entitled to any compensation on the grounds of delay in offering possession due to reason beyond the control of the developers.
13.	Due date of delivery of possession	04.07.2017 (calculated as per BBA executed dated 04.07.2014 , page 20)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint: -

3. That the complainants booked a studio apartment (fully furnished) bearing unit no. 717, 7th floor under the project name "Nimai Place" situated at Sector 114 of Gurugram, Haryana. The complainants were provided with the buyers agreement dated 04.07.2014.
4. That the complainant, Sh. Samay Sayal is at present in Hong Kong for business purposes and often travels abroad. In light of the frequent travel, Samay Sayal executed a general power of attorney in favour of his mother Ms. Priti Sayal to pursue the present case.
5. "The unit was allotted to the complainants for the consideration of Rs. 61,63,540/- plus one car parking for Rs. 3,50,000/- and a sum of Rs. 66,15,444/- has been paid .
6. That as per the clause 26 of the said agreement, the possession of the said unit was expected to be delivered to the complainants within a period of 36 months i.e., on 03.07.2017. But the said period of 36 months has already expired. However, the respondent has failed to deliver the possession of the said unit.

7. That complainants visited the respondent's office number of times to know the status of the project and the date of delivery of the said unit. However, the respondent failed to provide any positive answer to the complainants
8. That in view, of the constant failure on the respondent's part to deliver the said unit, the complainants are constrained to withdraw from the project, without prejudice to any other remedy available, and demand return of the amount of Rs. 66,15,444/- with interest at the rate of 24% p.a. starting from the date of payment .

C. Relief sought by the complainants: -

9. The complainants have sought following relief:
 - i. Direct the respondent to return the amount of Rs. 66,15,444/- paid by the complainants along with interest .
 - ii. Direct the respondent to pay Rs. 20,00,000/- as compensation for hardship and inconvenience faced by the complainants due to failure on the part of the respondent in handing over the possession of the allotted unit .
10. Though respondent put an appearance through its counsel shri Nikhil Bhari but failed to file written reply despite time given in this regard. So, the authority was left with no alternative but to struck off its defence and proceed on the basis of pleadings of the complainants and the documents placed on the file.

D. Jurisdiction of the authority

11. 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 complete 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 of the authority

E.I Direct the respondent to return the amount of Rs. 66,15,444/-paid by the Complainant along with interest .

12. As per the observations of authority, the total consideration of the unit was Rs. 69,66,949/- and the complainants/allottees have already paid a sum of Rs.66,15,444/- including tax. The due date for completion of the project and offer of possession of the allotted unit was 04.07.2017 which has already expired.

Keeping in view the fact that the allottees/complainants 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 failure of the promoter 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 04.07.2017 and there is delay of approx. 5 years on the date of filing of the complaint.

13. 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 paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in case of ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021 as under :***

“ ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees 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.....”

Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** 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, it was 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

14. 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 allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
15. This is without prejudice to any other remedy available to the allottees 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.66,15,444/- with interest at the rate of 9.50% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

E.II Cost of litigation


16. The complainants are claiming compensation 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 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 issued by the Authority

17. 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 promoter as per the functions entrusted to the authority under section 34(f):-
- i. The respondent/ promoter is directed to refund the amount of Rs. 66,15,444/- received by it from the complainants along with interest at the rate of 9.50% 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.
18. Complaint stands disposed of.
19. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K.
Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 31.05.2022

HARERA
GURUGRAM