

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

<b>Complaint no.</b>	<b>:</b>	<b>701 of 2019</b>
<b>Date of filing complaint:</b>		<b>06.09.2019</b>
<b>First date of hearing</b>	<b>:</b>	<b>04.09.2019</b>
<b>Date of decision</b>	<b>:</b>	<b>17.05.2022</b>

1. Seema Sankhala W/o Suresh Sankhala 2. Suresh Sankhala S/o Gopal Singh Sankhala <b>both RR/o:</b> H.no: 251, Ashok Vihar, Phase-I, New Delhi-110052	<b>Complainants</b>
Versus	
M/s Bestech India Pvt. Ltd. <b>R/o:</b> Bestech House, plot no-51, Sector 44, Gurugram.	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
<b>APPEARANCE:</b>	
Shri M.S. Sehrawat (Advocate)	Complainants
Sh. J.K. Dang (Advocate)	Respondent

**ORDER**

- 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 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 the project, the details of sale consideration, the amount paid by the complainants, 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	"Park View Ananda", Sector 81, Gurugram, Haryana.
2.	Project area	29.7 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	112 of 2008 dated 31.05.2008 valid till 30.05.2023
		55 of 2009 dated 27.08.2009 valid till 26.08.2024.
5.	Name of licensee	Sh. Braham Parkash-Satya Parkash-Laxmi Narain & 4 others.
		Sh. Bharam Parkesh & Sh. Rati Ram
6.	RERA Registered/ not registered	<b>Not registered</b>
7.	Date of approval of building plans	<b>04.07.2011 (page 210 of reply)</b>
8.	Date of allotment letter	13.02.2012 (page 46 of complaint)
9.	Date of execution of apartment buyer's agreement	15.02.2012 (page 52 of complaint)
8.	Unit no.	C-1403, 13 <sup>th</sup> floor, tower C (page 55 of complaint)



9.	Unit measuring (super area)	1810.32 sq.ft.
10.	Possession clause	<p><b>3. Possession</b></p> <p><b>a) offer of possession</b></p> <p><i>That subject to terms of this clause and subject to the APARTMENT ALLOTTEE (S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to handover the possession of the apartment within a period of thirty(36) months(excluding a grace period of Six (6) months from the date of approval of building plans or date of signing of this agreement. It is however understood between the parties that the possession of various Block/Towers comprised in the Complex as also the various common facilities planned therein shall be ready &amp; completed in phases and will be handed over to the allottees of different Blocks/Towers as and when completed and in a phased manner). (Emphasis supplied)</i></p>
11.	Grace period utilization	The authority allows the grace period keeping in view the fact that this grace period of 6 months in unqualified/unconditional

12.	Due date of possession	15.08.2015 *Note: due date is calculated form the execution of BBA.
13.	Total sale consideration	As per payment plan Rs. 94,17,760/- plus taxes and charges payable at the time of possession page no. 174 of reply
14.	Total amount paid by the complainants	Rs. 77,27,760/- (as per statement dated 27.04.2019, page 229 of reply)
15.	Date of cancellation of apartment	28.06.2014 (page 195 of reply)
16.	Cancellation restored	09.03.2015 (as per averment of respondent at page no. 8 of amended reply)
17.	Pre-cancellation notice dated	21.04.2017 (page 207 of amended reply)
18.	Occupation certificate	07.08.2015 (page 40 of reply)
19.	Offer of possession	19.08.2015 (page 196 of complaint)

**B. Facts of the complaint:**

3. The complainants have submitted that they got lured by publicity blitz launched by M/s Bestech India Pvt. Ltd. On scrutinizing the brochure provided by the respondent for the group housing project, "Park View Ananda", developed in sector 81, Gurugram, the complainants got impressed by its greenery and inherent security in gated colony. They decided to buy an apartment in the aforesaid project and consequently, applied for an apartment in this complex vide application dated 08.02.2012 and paid INR 8,00,000/- as booking amount. Based on the application on 13.02.2012, the respondent confirmed allotment of an apartment to complainants of unit bearing number. 1403, 14<sup>th</sup> floor, block C



admeasuring 1810 sq.ft. The total basic price was Rs. 89,07,010/- inclusive of basic sales price @4410/- per sq.ft. amounting to Rs. 79,82,100/- plus the EDC & IDC charges amount to RS. 65,34,100/- and PLC amount of Rs. 2,71,500/-. An apartment buyer agreement was executed between the parties on 15.02.2012 with regard to the allotted unit. The due date for completion of the project and offering possession of the unit was fixed as 15.08.2015. As per para 1.2(b) of the agreement it was categorically explained to complainants that PLC was being levied on the apartment as it was park facing. It was further provided in para 1.2(e)(ii) of the agreement that respondent would take prior concurrence of complainants in case it change in super area by +/-10%. But no such permission was ever taken by the respondent to decrease super area from the complainants.

4. That till 14 August 2015, i.e., the scheduled date of handing over possession of the allotted apartment to complainants, an amount of INR 77,27,427/- was paid to the respondent which amounted to paying about 87% of total basic price. The complainants have taken loan of INR 70,00,000/- from SBI bank to finance their dream home and have paid installments for the same. The allotted apartment and the complete project are not fit for occupation even as on date of this complaint as the amenities and facilities for which payments have been charged are nowhere near completion and remain unusable. During March 2017, the complainants became aware through other buyers of apartments in same complex that respondent has altered the building plans resulting in huge

reduction of "Super Area" and no concurrence of the buyers have been taken.

5. The complainants were also informed that the said group housing complex is no longer gated colony and a public "Kacha Rasta" was passing through the complex with uncontrolled movement of general public. It also came to the knowledge of the complainant that "green parks/landscaping shown in brochure haven been cannibalized by the respondent and third-party rights have been created over that for deriving monetary gains at the cost of innocent home buyers. To confirm all this information, a joint inspection of property along with copy of DTCP approved map was sought from the respondent vide e-mail dated 15.03.2017. Though the complainants visited the site on scheduled date and time but the representative of respondent refused to accompany them for joint inspection. Hence, the complainants surveyed the site at their own level and all the above information was found to be correct.
6. That a perusal of DTCP approved plan provided by respondent as annexure-C-11 clearly indicated that DTCP has approved that map on 02.01.2014 as is borne by official stamp and signatures on top right-hand corner of attached map. The approved map clearly indicates that a "6.70 wide rasta" was passing through this group housing complex and third-party rights have been created within the complex on the area which was earlier projected as "park/green landscape'. Moreover, a community hall has been earmarked in the part/green landscape area.



7. That from the email response of the respondent dated 04.04.2017, it is clear that it has sent the DTCP approved map dated 02.01.2014 'by mistake' instead of that of year 2012, and in the mail, the respondent clearly admitted that DTCP approved map is dated 2012 and not 2014. Thus the complainants have been deliberately cheated by the respondent on following counts:
- i. The allotted apartment is no longer a preferential location as there is no park/landscape facing the apartment.
  - ii. The "Park View Ananda" housing complex is no longer "gated complex as 6.70 meters wide "rasta" which divides the hitherto unified complex into two disjointed complexes, thereby principally altering the nature of group housing complex. *The third party land has been included in the project.*
  - iii. Earlier, DTCP approved map which was shown to the complainants was either forged and did not exist in the documents or for pecuniary gains, the respondent has deliberately created third party rights at the back of complainants without even informing them.
  - iv. That they applied for a flat on 14<sup>th</sup> Floor and the same was allotted to them vide allotment letter dated 13.02.2012. However, at the time of execution of buyers' agreement, the respondent has unilaterally changed the location to 13<sup>th</sup> floor.
8. That, on measuring the total super area of the allotted apartment, it got highlighted that super area has been reduced by 300 sq.ft. and instead of agreed 1810 sq.ft. It now stands to 1510 sq.ft. and no information of same was even provided to the complainants. The site visit by the complainants indicated that project is no-

where near completion as on date. Not only that but the respondent has also completely changed the layout and design of the group housing complex and third-party rights and public passage have been created on green areas, to derive huge monetary benefits for himself and amounts to cheating and forgery.

9. Furthermore, the complainants stand cheated on allocation of floor at which their apartment was located. The complainants had applied for a flat on 14<sup>th</sup> floor and same was allotted by the respondent as well. But, at the time to signing of agreement, it was arbitrarily and unilaterally changed to 13<sup>th</sup> floor. On being objected to, it was stated that since allotted unit has already been sold out so, they would need to apply afresh and same would be considered on merit. Moreover, the complainants would lose the booking amount if they cancel the unit and apply afresh. They were caught between two equally detrimental choices i.e., either to accept 13<sup>th</sup> floor which was seriously against the "vastu" and not applied for by them or to go for change and lose INR 8,00,000/-. Forcing a choice on these counts on the complainants was in violation of spirit of law of contract and hence, they wish to withdraw from the project and seek refund of the amount already paid to the respondent along with interest at the prescribed rate.

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

10. The complainants have sought following relief(s):

- i. Direct the respondent to return complete principal amount paid by them i.e., Rs. 77,27,427/- with an interest of 18%



compounded quarterly, from date of first payment made to respondent.

11. 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 respondent**

- i. The complaint is not maintainable before this authority. The complainants have filed the present complaint seeking refund, interest and compensation for alleged delay in delivering possession of the unit booked by them, cheating etc. It is submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Act, 2016 read with rule 29 of the Rules, 2017 and not by the authority. The present complaint is liable to be dismissed on this ground alone.
- ii. The complaint is hopelessly time barred and accordingly not maintainable. The complainants have made last payment on 30.04.2015. The offer of possession of the allotted unit was made to the complainants on 19<sup>th</sup> August 2015 and the present complaint has been filed in March 2019. The so-called cause of action, if any, arose prior to the coming into force of the Act. The complaint is liable to be dismissed on this ground also.
- iii. The complainants are in default of the buyer's agreement dated 15.02.2012. Despite having agreed and undertaken to make timely payment of all amount under the buyer's agreement and despite various notices/reminders, they did not pay the

outstanding dues. The complainants have made last payment on 30.04.2015. The offer of possession was made to the complainants on 19<sup>th</sup> August 2015, and were called upon to take possession of the apartment after payment of outstanding dues and completing the requisite documentation/formalities. However, till date, they have not done the needful and took possession of the unit. It is submitted that the complainants being defaulters are not entitled to any relief from the authority.

- iv. The complaint raises issues of such a nature which cannot be decided by way of summary proceedings contemplated under the Act. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the issues raised in the present complaint are beyond the purview of the Act and cannot be adjudicated by this authority. The present complaint deserves to be dismissed on this ground alone.
- v. The complaint is also bad for non-joinder of necessary parties. The unit in question has been mortgaged with the State Bank of India and the bank has a lien over the unit in question, in terms of the tripartite agreement dated 06.04.2012. In terms of clauses 2 and 4 of the said agreement, in the event of cancellation of the buyer's agreement due to defaults on the part of the complainants, the balance amount after forfeiture of 10% of the sale consideration, is to be paid by the respondent to the bank. The tripartite agreement does not contemplate return of any amount to the complainants.



- vi. The complainants have concealed that they are not only defaulter's vis-a vis the respondent, but they have also defaulted in making payments to State bank of India against the loan taken by them in respect of the unit in question. For defaults of complainants, the State Bank of India has filed O.A. no. 286 of 2017 titled as "**State Bank of India Vs. Smt. Seema Sankhla & others**" before the Debts Recovery Tribunal, Jaipur for recovery of its loan amount along with outstanding interest. It is submitted that the respondent has been unnecessarily harassed by the complainants as it herein has also been arrayed as party in the aforesaid case for their defaults. The respondent is neither in a position to cancel the apartment due to bank loan nor receiving the outstanding dues from the complainants. It is relevant to state that due to default of complainants in making payments, they were asked to take refund as per buyer's agreement by providing NOC from the bank. However, they have failed in this regard also.
- vii. It is submitted that the complainants have paid an amount of Rs. 74,99,339/- towards total consideration against the said unit to the respondent. As per clause 1(g) of the buyer's agreement entered between the parties, 20% of the sale price of the unit was to be considered as earnest money and the respondent has the right to forfeit the earnest money along with brokerage, outstanding interest, taxes and other charges in the event of failure on the part of complainants to perform their obligations or fulfill all the terms and conditions set out in the buyers' agreement. The complainants are investors and not "aggrieved persons" under the Act and as such, the present

complaint is not maintainable at their behest. The complainants never intended to reside in the unit in question but have invested in the same for taking benefits after its resale. However due to recession in the real estate market, the complainants could not get the desired benefits and defaulted in the payments of respondent and bank as well and the same is evident from their emails dated 02.05.2013, 28.06.2013, 20.06.2013, 02.05.2014 and trailing mails, 23.05.2014 respectively. It is further submitted that the complainants have availed of a loan of Rs. 70 lakhs and made total payment of Rs. 77,27,427/- inclusive of service tax to the respondent. In other words, the complainants have made payment of Rs. 7,27,427/- only from their own pocket. Thus, it is evident that the complainants never had sufficient funds to purchase the unit in question and made investment only on basis of the bank loan. However, due to recession in the real estate market, the complainants were unable to locate a suitable purchaser for their unit and have failed to make balance payment.

viii. That it is also pertinent to mention herein that the issues raised by the complainants with regard to the so-called deficiencies/shortcomings in the project have already been raised by the association of apartment owners of the project, i.e., the Park View Ananda Residents Welfare Association. The RWA has already filed a complaint against the respondent on similar allegations before hon'ble National Consumer Dispute Redressal Commission Delhi being complaint no. 2034 of 2017 and before this hon'ble HRERA authority Gurugram as wellbeing complaint no. 1492 of 2018. It is submitted that the



next date of hearing in the complaint filed before hon'ble NCDRC is 12.07.2019 while w.r.t. the complaint filed before this hon'ble authority, the same has been dismissed as withdrawn in view of similar complaint pending before NCDRC vide order dated 24.04.2019.

ix. That complainants applied vide duly signed application form for allotment of unit and accordingly vide allotment letter dated 13.02.2012, an apartment bearing number 1403, block/tower C, admeasuring 1810 sq.ft. super area approx., situated in "Park View Ananda" Sector 81, Gurgaon was provisionally allotted to them. They had opted for instalments cum construction linked payment plan and had agreed and undertook to make payment in accordance therewith. The construction of the project was progressing at a fast pace and accordingly, the demands were raised as per stage of construction and as per the payment plan. However, the complainants being unable to cope up with demands requested the respondent for a revised payment plan. So, acceding to their request and as a gesture of goodwill, the respondent revised the payment plan and sent the same to the complainants vide e-mail dated 06.03.2012.

x. The complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon them to make payment of outstanding amounts payable by them under the payment plan. The demand notices and pre-cancellation notices dated 09.02.2012, 25.02.2012, 28.03.2012, 09.05.2012, 17.05.2012, 18.05.2012 03.09.2012, 16.02.2013, 19.03.2013, 11.04.2013, 20.07.2013, 28.09.2013, 12.10.2013, 05.12.2013,

13.02.2014, 03.05.2014 & 22.05.2014 respectively issued to the complainants are being attached.

- xi. Since the complainants failed to make the payments on time, hence the allotment was cancelled vide letter dated 19<sup>th</sup> June 2013. However, the same was later on restored on their request as they undertook to make future payments in a timely manner and made part payment of Rs. 10 lakhs on 29.06.2013 vide postdated cheque dated 05.07.2013. But again, they failed to make payment as per their obligation of buyer's agreement leading to cancellation of the unit vide letter dated 28.06.2014. However, that cancellation was again restored on 09.03.2015 on the request of complainants as they made part payments of Rs. 10 lakhs and Rs. 5lakhs on 09.03.2015 & 30.04.2015 respectively. The construction of the project was completed on 05.01.2015 and the respondent made an application to the competent authority for issuance of occupation certificate in respect of the same. Vide letter dated 19.08.2015, the complainants were offered possession of the unit after clearance of outstanding dues as set-out in the statement of account enclosed therewith and also after completing the necessary documentation and formalities specified therein.
- xii. The complainants failed to come forward to take possession of the unit and to remit the outstanding dues, leading to issuance of reminder dated 20.10.2015, final notice for possession cum demand notice dated 21.12.2015, final demand notices dated 30.05.2016, 07.09.2016, 01.10.2016, pre-cancellation notice dated 15.10.2016, VAT demand notice dated 06.12.2016, & pre cancellation notice dated 21.04.2017 to them for payment of



outstanding dues and to take possession. From the facts and circumstances set out in the proceeding paras, it is evident that the respondent has acted strictly in accordance with the terms and conditions of the buyer's agreement executed between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint that the respondent has failed to complete construction of the project and deliver possession of the unit within the stipulated time period, are manifestly false and baseless.

- xiii. As a matter of fact, there has been no delay in so far as the construction of the project is concerned. On the contrary, the respondent has completed the construction of the project and has already obtained the occupation certificate in respect of the same from the competent authority. It is submitted that in terms of clause 3 of the buyer's agreement executed by the parties, the possession of the unit was proposed to be handed over within a period of 36 months plus grace period of 6 months, from the due date of approval of building plans or date of execution of the buyer's agreement and whichever was later and subject to timely compliances by the complainants and of all the terms and conditions of the agreement. The time period for delivery of possession automatically stood extended on account of delay in payment by the complainants or on account of any delay cause by statutory authorities in according to approvals, permissions and sanctions. The buyer's agreement was executed on 15.02.2012 and construction of the unit was completed on 05.01.2015 i.e., within the time stipulated in the buyer's agreement, occupation certificate was received on

- 07.08.2015 and offer of possession was made to the complainants vide letter dated 19.08.2015. Hence there was no delay the incompleteness of the project by the respondent.
- xiv. The respondent has further submitted that as per clause 1.2(b) of the buyer's agreement, preferential location charges are payable for apartments which are park/landscape facing, corner apartments, apartments on ground floor and/or on first to sixth floor. It is submitted that apartment of the complainants is park facing.
- xv. It is further submitted that common passage/revenue rasta through complex and a land parcel in possession of a third party had been clearly demarcated and depicted in the zoning plan duly approved and sanctioned by the competent authority. The said zoning plan was made available to and duly inspected by the complainants at the time of booking of the apartment. Furthermore, the complainants have inspected building plans at the time of booking of their apartment wherein the revenue "rasta" and third party land parcel was clearly earmarked and the same is evident by complainants own admission in the complaint that they were shown the approved plan.
- xvi. That without prejudice to the pleas of the respondent, the complainants have always been aware of the existence of the revenue "rasta" and land parcel in possession of a third party. It is submitted, that the respondent got the building plans revised in the year 20.03.2012 and for that purpose, the respondent issued advertisements in leading newspapers for inviting objections of the respective allottees. However, no allottee including the complainants advanced any objection





regarding the proposed revision of the building plans. Therefore, the allegations of the complainants in this regard are wrong, malicious, frivolous and a result of after-thoughts. Copy of Memo dated 03.05.2010 vide which zoning plans were approved, the approved zoning plan dated 03.05.2010, memo dated 04.07.2011 vide which building plans were approved, approved building plan, memo dated 20.03.2012 vide which revised building plan were approved and the revised building plans clearly indicating the revenue "rasta" as well as the land parcel in possession of a third-party are annexed hereto as annexure R46 to R51 respectively. The copy of advertisements inviting objections, in the circumstances stated above, issued in several newspapers is appended herewith as annexure R52 (colly). It is further submitted that the project in question is a gated complex to the extent as provided in approved zoning plan/building plan and has a 3-tier security and all the gates are continuously guarded by security personnel 24 hours a day, 7 days a week. Furthermore, CCTV cameras have been installed in the complex and thus there is no threat to the security of the residents. The ingress and egress of persons in the complex is strictly monitored at all times.

- xvii. The respondent emphatically denied that any forged or non-existent map was shown to the complainants, acted illegally or unethically for any so-called pecuniary gains and created any third-party rights in the complex at the back of the complainants as alleged. The revenue "rasta" and third-party land have been in existence since the time of issuance of licence for development of the project as the competent authority does

not grant licence to develop land unless the applicant is the owner of the land holding sought to be developed.

xviii. The respondent denied that there is any reduction in the super area of the apartment. It was submitted that super area is the same as has been mentioned in the allotment letter/buyer's agreement. The so-called calculations put forward by the complainants are absolutely wrong and emphatically denied. The complainants have not provided any details as regards how they have arrived at the imaginary figure of 1510 sq. ft super area and the super area of the apartment stands reduced by 300 sq. ft. It was pleaded that the super area of the apartment allotted to the complainants continues to be 1810 sq.ft. i.e. f13th floor the same as allotted.

xix. The respondent has further submitted that the apartment no 1403 has always been situated on the 13th floor and has been wrongly mentioned as being situated on the 14th floor in the allotment letter, due to a bonafide clerical error. It is submitted that all flats situated on 13th floor, have been numbered in 1400 series while all flats situated on 14th floor, have been numbered in 1500 series. It is submitted that the complainants are needlessly trying to derive undue advantage from a clerical/typographical error in the allotment letter. It is submitted that apartment no 1403 situated on the 13th floor of tower C of the complex was allotted to the complainants. The correct description of the apartment has been given in the buyer's agreement executed two days after the allotment letter and which has been duly accepted by the complainants. It is pertinent to mention herein that no objection has been raised



- by the complainants , from the date of execution of the buyer's agreement, till the filing of the present false and frivolous complaint, with regard to the floor of the apartment.
- xx. It is further submitted that in terms of clause 3 of the buyer's agreement executed by the parties, possession of the apartment was proposed to be handed over within a period of 36 months plus grace period of 6 months, from the date of approval of building plans or date of execution of the buyer's agreement, whichever was later, subject to timely compliance by the complainants, of all the terms and conditions of the agreement. The time period for delivery of possession automatically stood extended on account of delay in payment by the complainants or on account of any delay caused by statutory/competent authorities in according approvals, permissions and sanctions. The buyer's agreement was executed on 15.2.2012 and construction of the apartment was completed on 05.01.2015 i.e. within the time stipulated in the buyer's agreement and occupation certificate was received on 07.08.2015 and offer of possession was made vide letter date 19.08.2015. Hence, there is no delay in the implementation of the project by the respondent.
- xxi. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The delay, if any, in taking over possession of the unit is solely attributable to the complainants. The allegations levelled by them qua the respondent regarding common passage in the project, third party land in it, reduction in super area are totally baseless and do not merit for consideration by this authority.

12. 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 these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

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**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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**

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.***" 2021-22(I) RCR (civil), 355

*"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"*

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 the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the complainants**

**F.I Direct the respondent to return complete principal amount paid by them i.e., Rs. 77,27,427/- with an interest of 18% compounded quarterly, from date of first payment made to respondent.**

15. Some of the admitted facts of the case are that on the basis of an application duly signed by the complainants with the respondent, they were provisionally allotted the subject unit vide letter of allotment 13.02.2012 in the project "Park View Ananda, Sector 81, Gurgaon (HR). The total sale consideration of the allotted unit was fixed as Rs. 94,17,760/- (plus applicable taxes and charges payable at the time of offer of possession). The subject unit was allotted to the complainants under construction linked payment plan and

they agreed and undertook to make payments in accordance therewith. It is also a fact that the complainants took a loan of Rs. 70 lakhs from State Bank of India to finance the allotted unit and which also led to execution of a tripartite agreement between the parties and the financial institution on 06.04.2012. The allotted unit was admittedly mortgaged with State Bank of India and who has a lien over the same. Though the complainants paid a sum of Rs. 74,99,339/- against the total sale consideration of the allotted unit but committed default in making remaining payments leading to issuance of various reminders through emails dated 02.05.2013, 20.06.2013, 28.06.2013, 02.05.2014 & 23.05.2014 respectively. It is also not disputed that the complainants also failed to make payment against the loan taken from the bank and which led to filing of a case bearing no. **286 of 2017** titled as **State Bank of India VS. Smt. Seema Sankhla and Anr.** before the Debts Recovery Tribunal, Jaipur pending for adjudication. It is also a fact that a RWA's complaint with regard to the project alleging certain deficiencies/ short comings has also been filed before NCDRC and is pending for adjudication. Though the complainants were chronic defaulters in making various payments as per the schedule of payment leading to cancellation of their unit, getting restored the same on 09.03.2015 but were again issued pre-cancellation notice vide letter 21.04.2017. It has come on record that after completion of the project, the respondent applied for its occupation certificate



which was received on 07.08.2015. So, in pursuant to that the complainants were offered possession of the allotted unit vide offer of possession on 19.08.2015 followed by reminder vide letter dated 20.10.2015 and final demand notices cum possession letter dated 21.12.2015, 30.05.2016, 07.09.2016, 01.10.2016, pre-cancellation notices dated 15.10.2016 & 21.04.2017 respectively. Thus, in such a situation, it is to be seen as to which of the party is at fault.

16. It is contended on behalf of complainants that despite paying a sum of Rs. 77,27,760/- upto 30.04.2015 to the respondent, it failed to complete the project and offer possession of the allotted unit to them. Moreover, the complainants have been cheated by the respondent on the following counts:
- i. The allotted apartment is no longer a preferential location as there is no park/landscape facing the apartment.
  - ii. The "Park View Ananda" housing complex is no longer "gated complex as 6.70 meters wide "rasta" divides the hitherto unified complex into two disjointed complexes, thereby principally altering the nature of group housing complex. That third party land has also been included in the project.
  - iii. Earlier, DTCP approved map which was shown to the complainants was either forged and did not exist in the documents or for pecuniary gains, the respondent has deliberately created third party rights at the back of complainants without even informing them.

- iv. The Super area of the subject unit has been reduced by 300 sq.ft. The area of the unit now stands to 1510 sq.ft. instead of 1810 sq.ft.
- v. That they had applied for a flat on 14<sup>th</sup> Floor and the same was allotted to them vide allotment letter dated 13.02.2012. However, at the time of execution of buyer's agreement the respondent has unilaterally changed the location of the floor to 13<sup>th</sup> floor.
17. But all these pleas have been denied by the respondent and who reiterated its version as given in the written reply.
18. The unit in question was allotted to the complainants under the construction linked payment plan on 13.02.2012 for a sale consideration of Rs. 94,17,760/-. It led to execution of a buyer's agreement between the parties on 15.02.2012 and wherein the terms and conditions of allotment, payment plan, the area of allotted unit and due date of possession etc. were mentioned. The complainants paid a sum of Rs. 7,27,427/- and obtained Rs. 70 lakhs as loan from State Bank of India by mortgaging the allotted unit in favour of the later. Thus, in all, the complainants paid a sum of Rs. 77,27,760/- to the respondent upto 30.04.2015 and did not pay the remaining amount despite issuance of various reminders issued vide emails dated 02.05.2013, 20.06.2013, 28.06.2013, 02.05.2014 & 23.05.2014 respectively. It is also not disputed that the complainants failed to make payment against the loan taken from the bank and which lead to filing of case bearing no. 286 of 2017 titled as **State Bank of India VS. Smt. Seema Sankhla and anr.** before the Debts Recovery Tribunal, Jaipur which is pending



for adjudication. The due date for completion of the project as per clause 3(a) of the buyer's agreement was fixed 15.08.2015 inclusive of grace period of 6 months being unqualified one. After the project was completed, the respondent obtained its occupation certificate on 07.08.2015 i.e., before the due date and offered possession of the allotted unit to the complainants on 19.08.2015. So, the plea of the complainants that the project was not completed by the due date and offer of possession of the allotted unit was not made consequently is untenable. Despite the complainants being in default after issuance of various reminders, the respondent completed the project and offered possession of the allotted unit. So, the respondent cannot be held liable on that count in any manner.

19. It is pleaded by the complainants that neither the unit allotted to them is having preferential location nor located at the floor agreed upon at the time allotment. So, due to these facts, they are no longer interested to take its possession and are seeking refund of the amount deposited with the respondent. But both the pleas advanced in this regard are devoid of merit. While making allotment of the subject unit to the complainants vide letter dated 13.02.2012, they were liable to pay Rs. 2,71,500/- as PLC to the respondent. That fact was also mentioned in buyer's agreement dated 15.02.2012 under clause 1.2 (b) as preferential location charges. The same fact also finds mention in the offer of possession issued vide letter dated 19.08.2015 in annexure 1 at serial 2. During the course of proceedings, the respondent placed on file two photographs of the subject unit bearing no. C-1403 depicting the location of the same i.e., park facing. So, the version of

complainants in this regard is belied from the facts detailed above and is after thought.

20. The complainants have submitted that they had applied for a flat on 14th Floor and the same was allotted to them vide allotment letter dated 13.02.2012. However, at the time of execution of buyers' agreement, the respondent has unilaterally changed the floor to 13th floor. It was clarified by the respondent that actually, apartment no 1403 had always been situated on the 13th floor and had been wrongly mentioned as being situated on the 14th floor in the allotment letter, due to a bonafide clerical error. It has been argued out that all flats situated on 13th floor, had been numbered in 1400 series while all flats situated on 14th floor, had been numbered in 1500 series. It is submitted that apartment no 1403 situated on the 13th floor of tower C of the complex was allotted to the complainants and they did not raise any objection about the location of the apartment or that they had been informed by the respondent that the unit allotted to them has already been sold and they need to apply afresh and the fresh request would be considered on merits. Keeping in view of the submissions, the authority observed that the plea of location of the apartment on 13th floor being against "vastu" or not applied for by the complainants is the result of after thought. Even otherwise the correct description of the apartment had been given in the buyer's agreement executed two days after the allotment letter, which has been duly accepted by the complainants. It needs to be noticed that no objection has been raised by the complainants, from the date of execution of the buyer's agreement with regard to the floor of the apartment before the present complaint.



21. The complainants have pleaded that the "Park View Ananda" housing complex is no longer "gated complex as 6.70 meters wide "rasta" divides the hitherto unified complex into two disjointed complexes, thereby principally altering the nature of group housing complex. They have claimed that third party land has been included in the project. But the plea of respondent is that common passage/revenue "rasta" passing through the complex and the land parcel in possession of a third party had been clearly demarcated and depicted in the zoning plan duly approved and sanctioned by the competent authority. It is also contended that the said zoning plan was made available and was duly inspected by the complainants at the time of booking of the apartment. The zoning plan has been produced on case file as annexure R47 and similarly, the duly approved building plans have been produced on case file as annexure R48. Both were approved in the year 2010 & 2011 respectively. Even thereafter, the building plans were revised in the year 2012 and therein also, the revenue rasta as well as land parcel in possession of third party were clearly indicated. The buyer's agreement (annexure R14) was executed on 15.02.2012. In the preamble of the said agreement also (clause E on page no.156) there is clear reference of the approval of zoning plan got approved by the respondent from DTCP vide memo dated 03.05.2010, a copy of which has been produced as annexure R46 on page no. 208. The counsel for the respondent has contended that the complainants have not challenged the legality of the aforesaid So, in view of the authority the aforesaid unrebutted covenants incorporated in buyer's agreement dated 15th of February 2012 and statutory

- record, it cannot be claimed by the complainants that they were oblivious of existence of revenue passage and land of third parties.
22. The complainants have also pleaded that earlier, DTCP approved map which was shown to them was either forged and did not exist in the documents or for pecuniary gains, and the respondent has deliberately created third party rights at their back without even informing them. The authority observes that the alleged forged map has not been produced on case file by the complainants. The initial duly sanctioned zoning plan and building plan and the subsequent the revised building plans specifically contradict this allegation of the complainants.
23. It is further pleaded on behalf of the complainants while making out a ground for refund that the super area of the allotted unit has been reduced by 300 sq.ft. They were allotted a unit admeasuring 1810 sq.ft. as evident from apartment buyers' agreement as per clause 1.1. But while offering possession, the area of the allotted unit was reduced by 300 sq.ft. making it to 1510 sq.ft. But again, the plea taking in this regard is devoid of merit. There are only oral allegations in this regard not supported by any measurements/calculations of the super area of the allotted unit. So, in the absence of any cogent evidence w.r.t reduction in the super area of the unit by 300 sq.ft., no reliance on the same can be taken. Thus, the plea advanced in this regard does not hold ground.
24. Thus, taking into consideration all the facts mentioned above no case for refund of the deposited amount by the complainants with the respondent w.r.t the allotted unit is made out. The respondent after completing the project despite defaults committed by the complainants offered possession of the allotted units to them. So,



now, they cannot come up with a plea that they no longer require the allotted unit and the amount paid by them to the respondent be refunded.

**G. Directions of the authority**

26. 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 plea of complainants seeking refund of the deposited amount with interest from the respondent is declined. However, they are directed to take possession of the allotted unit after paying the outstanding dues besides interest at the prescribed rate of 9.50% p.a. within a period of 2 months from the date of this order after adjusting the amount of DPC due from 15.08.2015 to 19.10.2015 (after adding a period of two months from the date of offer of possession).
- ii. The respondent/builder would be entitled to charge interest at the prescribed rates from the complainants on the delayed payments from the dates the same became due upto the rate of actual payment.
- iii. In case of failure of complainants to pay the amount due within the time period as mentioned above, the respondent would be at liberty to proceed against them as per law.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement. However, holding charges shall not be charged by the promoter

at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3899/2020.

v. The maintenance charges of the allotted unit would be payable by the complainants from 19.10.2015 upto the date of actual handing over of possession.

27. The complaint stands disposed of

28. File be consigned to the registry.

v.l -   
(Vijay Kumar Goyal)  
Member

  
(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2022

  
**HARERA**  
**GURUGRAM**