

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

Complaint no. :	748 of 2019
Date of filing complaint:	11.03.2019
First date of hearing:	19.08.2019
Date of decision :	25.08.2022

1. Mr Govind Gour		Complainants
2. Mrs Manoj Gour both R/o: house no. 744, 12 Biswa, bada bazaar, Gurgaon-122001		
Versus		
M/s MVN Infrastructures Private Limited Registered office at: 58A/1, First floor, Kalu Sarai, New Delhi-110016		Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Col. M.S. Sehrawat (Advocate)	Complainants
Sh. Manish Kumar Madan proxy counsel	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 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	"MVN Athens Sohna", Sec-5, Village & Tehsil Sohna, Gurgaon
2.	Project area	6.50625 acres
3.	Nature of the project	Affordable group housing (Policy 2013)
4.	DTCP license no. and validity status	49 of 2014 dated 18.06.2014 and valid up to 17.02.2026
5.	Name of the licensee	M.V.N. Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide registration no. 284 of 2017 dated 10.10.2017
	RERA Registration valid up to	09.10.2021
7.	Unit no.	1208 on 12th floor of tower B-2 [Page 54 of complaint] Changed to unit no. 506 tower 5 measuring 478.48 sq. ft vide addendum 24.05.2016
8.	Unit measuring	485.273 sq. ft. [Page 54 of complaint]
9.	Application date	05.10.2014 [Page 54 of complaint]



10.	Date of provisional allotment letter	06.02.2015 [Page no. 26 of promoter details]
11.	Date of execution of builder buyer agreement	25.02.2015 [Page 6 of CRA]
12.	Addendum to buyer's agreement	24.05.2016 [Page 76 of complaint]
13.	Revised unit no, as per addendum	206 on 2nd floor of tower 5 [Page 77 of complaint]
14.	Revised carpet area as per addendum	485.481 sq. ft. [Page 77 of complaint]
15.	Possession clause	Clause 3.1 of buyer's agreement dated 25.02.2015 <i>Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Company and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Company proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later, subject to the Allottee has executed the Flat Buyer's Agreement.</i> [page 58 of complaint]
16.	Building plan approval	05.09.2014 [Page 106 of the reply] *Note: The date of building plan approval has been advertently recorded wrong in the proceeding

		of the day dated 25.08.2022
17.	Environment clearances	05.01.2015 [Page 42 of promoter information by respondent]
18.	Due date of delivery of possession	05.01.2019 [Calculated from date of environment clearances i.e. 05.01.2015, being later]
19.	Total sale consideration	Rs. 17,58,792.86/- [Page 55 of complaint] As per addendum- Rs. 17,56,147/- [Page 77 of complaint]
20.	Total amount paid by the complainants	Rs. 10,97,593/- [As per applicant ledger dated 15.12.2018 on page 85-86 of complaint]
21.	Payment plan	Time linked payment plan [Page 85 of the complaint]
22.	Offer of possession	Not offered
23.	Occupation Certificate	29.05.2019- for towers 5 to 10 [As per promoter information at Page 54 filed by the respondent]

B. Facts of the complaint:

3. A project by the name of "MVN Athens Sohna", Sector 5, Sohna District Gurugram was being developed by the respondent builder. Coming to know about that project, the complainants applied for the allotment of the unit in the same vide application dated 05.10.2014. The application was acknowledged including the receipt of booking amount of Rs. 89,360/-. The complainants being successful in draw were allotted the above mentioned unit for Rs.17,58,729/- vide provisional letter of allotment dated 06.02.2015.

4. That a buyer's agreement with regard to allotted unit was executed between the parties setting out the terms and conditions of allotment, the sale consideration, the payment plan, dimensions of the allotted unit, the due date of possession and other conditions of allotment. The complainants were also required to deposit Rs. 357450/- within 10 days and that amount was deposited before execution of buyer's agreement dated 25.02.2015.
5. That the due date of possession for completion of the project and offer of possession of the allotted unit was fixed as 05.01.2019 to be counted from the date of environmental clearance dated 05.01.2015.
6. That the payment against the allotted unit was to be made by the complainants under time linked payment plan. They started depositing various amounts on demands being raised from time to time and paid a total sum of Rs.10,97,593/- in all.
7. That on 24.05.2016, an addendum to the buyer's agreement was executed wherein the allotment of the complainant was changed to flat no.206, tower 5 and having carpet area of 478.48 sq. ft. Though the complainants objected to that change but were threatened with cancellation and having no other option accepted the same and signed on the dotted lines. Moreover, they had also fear in mind to loose the paid up amount, leading to agree to the terms and conditions mentioned in the addendum.

8. That total cost of the flat was Rs. 17,58,792.86/- as given in clause 2.1 of buyer's agreement. That, clause 2.6 of the buyer's agreement lays down that in the event of default of payment on part of complainants, an interest @ 15% per annum was to be charged from the date of default. That, it further says that permitted default is only for 15 days and further failure of making payment, the allotment would stand cancelled.
9. That, fearing their money would be lost forever complainants stopped making any further payment to respondent. That, thereafter, a final demand notice was received by the complainants on 11.11.2017. The complainants made a verbal request of seeking refund of their money as well as vide letter 24.02.2018. The respondent did not respond to that letter. The complainants again wrote a letter to respondent on 03.03.2018 but again, there is no response from it leading to filing of the present complaint seeking refund as prayed above.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s):
- The complainants be permitted to withdraw from the said buyer's agreement as respondent have cheated them out rightly as narrated in brief facts above, as per section 19(4) the Act as withdrawal is for an act of omission or commission on the part of the respondent and not on account on their part.
 - Direct the respondent to return complete principal amount paid by complainants i.e. Rs.10,97,583/- with interest @ 15%

p.a., from date of first payment made to it, as is given in clause 3(c) (vii)(b) of buyer's agreement on reciprocal terms as per Act, Section 2(za) explanation (ii) thereof to the tune of Rs. 5,64,133/- as per calculation provided.

iii. Direct the respondent to pay compensation on account of physical harassment and mental agony caused to the complainants due to deficiency in service on its part and the cost of litigation.

D. Reply by respondent:

The respondent by way of written reply has made the following submissions:

11. That the complainants were allotted a unit on the basis of draw of lots for the amount detailed above and the same was changed later on due to revision of building plans by the director Town and Country planning Haryana dated 16.05.2016
12. That in pursuance to allotment of the unit to the complainants, a buyer's agreement was executed between the parties on 25.02.2015 and the due date for completion of the project and offer of possession of the allotted unit was agreed upon 05.01.2019.
13. That though initially the building plans of the project were approved on 05.09.2014 but certain works were to be carried out at the land near the project i.e. for erection of two electrical poles and the same coming in the way of building to be constructed over the project land. Though the respondent represented in this

regard with HVPNL but with no positive response leading to filling of writ petition bearing no. 18929 of 2014 before the Hon'ble Punjab and Haryana High Court. The factum of creating an obstruction in the construction due to existence of electrical poles in the project land was admitted by the DTCP, Haryana and the respondent was advised to move for revised zoning as well as building plans of the project. So in pursuant to that, the respondent applied for revision of zoning as well as building plans and the same were approved on 16.05.2016. Thus the period w.e.f.05.09.2014 to 16.05.2016 be treated as Zero period for the purpose of commencement of the project and extension in the period of license.

14. That though after allotment the complainants started depositing various amounts but were bad paymasters, leading to issuance of final notice of demand dated 11.11.2017. Even they were also informed of charge of interest at the rate of 15% per annum in case of delayed payments but the same was not having any effect.
15. That the due date for completion of the project and offer of possession of the allotted unit was to be calculated from 05.01.2015 and the same comes to 04.01.2019. However, in between the respondent could not start construction of the project w.e.f 05.09.2014 to 16.05.2016 and treating that period as zero period, the complaint filed seeking refund for the paid up amount is premature and is liable to be rejected.
16. All other averments made in the complaint were denied in toto.

17. 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 submission made by the parties.

E. Jurisdiction of the authority:

18. The plea of the respondent 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.

E. I Territorial jurisdiction

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.

E. 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.

F. Findings regarding relief sought by the complainants:

- F.1 The complainants be permitted to withdraw from the said buyer's agreement as respondent have cheated them out rightly as narrated in brief facts above, as per section 19(4) the Act as withdrawal is for an act of omission or commission on the part of the respondent and not on account of any fault of the complainants.**
- F.2. Direct the respondent to return complete principal amount paid by complainants i.e. Rs.10,97,583/- with interest @ 15% p.a., from date of first payment made to the respondent, as is given in clause 3(c) (vii)(b) of buyer's agreement on reciprocal terms as per Act, Section 2(za) explanation (ii) thereof to the tune of Rs. 5,64,133/- as per calculation provided.**

Both the reliefs being interconnected are being taken together.

19. The complainants were allotted the subject unit by the respondent for a total sale consideration of Rs.17,58,792.86/-

under the Affordable Group Housing Policy, 2013. An apartment buyer's agreement dated 25.02.2015 was executed between the parties with regard to that unit. The due date of possession of the subject unit was calculated as per clause 3.1 where the company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later. The date of approval of building plan of the project is 05.09.2014 (page 106 of the reply) and environmental clearance is 05.01.2015 (as per page 42 of promoter information by the respondent). So, the possession of the booked unit was to be delivered on or before 05.01.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 25.02.2015 executed between the parties. After execution of buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs.10,97,593/- as evident from applicant ledger dated 15.12.2018 at page 85-86 of complaint. The due date of possession has already expired. The complainants pleaded that the project is not complete and placed certain photographs (status 26.02.2019) on page no. 87-90 of complaint. The respondent on the other hand pleaded that the project is 100% complete and it had applied for obtaining occupation certificate and the same has been obtained from the competent authority for tower 5-10 on 29.05.2019. Secondly, it is pleaded that it could not carry out

construction of the project in between the period 05.09.2014 to 16.05.2016 and by including that period or treating the same to be zero period, the due date for completion of project did not come when the complaint seeking refund was filed. But the plea advanced in this regard is devoid of merit. For claiming zero period of the above-mentioned period, the respondent was required to move the competent authority and obtain an order in this regard. But it failed to move in that direction and the authority can't declare the above-mentioned period to be zero period seeking extension in completion of the project. Moreover, there is nothing on record by which we can ascertain that after receipt of occupation certificate of project, the offer of possession of the allotted unit has been made to the complainants or not.

20. Keeping in view the fact that the allottee- complainants wish to withdraw from the project and 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 05.01.2019 and there is delay of 2 months** on the date of filing of the complaint. The occupation certificate for towers 5 to 10 has been obtained by the respondent from the competent authority on 29.05.2019 after filling of the complaint on 11.03.2019.

21. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainants is situated was received after filing of application by them for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainants-allottees have already wished to withdraw from the project and the allottees have become entitled to their right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottees in respect of that unit with interest at the prescribed rate

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. 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

22. 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 him in respect of the unit with interest at such rate as may be prescribed.
23. 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 section 71 read with section 31(1) of the Act of 2016. The authority hereby directs the promoter to return to the complainants the amount received by him i.e. Rs. 10,97,593/-with interest at the rate of 10% (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*.

F.3 Direct the respondent to pay compensation on account of physical harassment and mental agony caused to the complainant due to deficiency in services on the part of the respondent and the cost of litigation.

The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority:

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent /promoter is directed to refund the amount i.e., **Rs. 10,97,593/-** received by it from the complainants along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till 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.
25. Complaint stands disposed of.
26. File be consigned to registry.

V.I. - 
(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2022

HARERA
GURUGRAM