

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

Complaint no. :	805 of 2021
Date of filing complaint:	17.02.2021
First date of hearing:	13.04.2021
Date of decision :	25.08.2022

	Hari Om Vishwakarma S/o Sh. Poonam Chand Vishwakarma R/O: House no. 208/31A, Gali no. 3, West Rajiv Nagar, Gurugram	Complainant
Versus		
1.	M/s MRG Infrabuild Pvt. Ltd. Registered office: Unit No. 110, 1st Floor, Best Sky Tower, NSP Delhi-110034	Respondents
2.	M/s. Maxworth Infrastructure Pvt. Ltd. Registered office: 1/303, Jaypee CGHS Ltd., Plot No. 02 Sector 22, Dwarka New Delhi	

CORAM:

Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member

APPEARANCE:

Complainant in person	Complainant
Sh. S.K. Goyal (Advocate)- Respondent no.1 None for Respondent no. 2	Respondents

ORDER

- The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 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 complainant, 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.	Name and location of the project	"AASHRAY", Sec 89, Gurugram
2.	Nature of the project	Affordable housing policy
3.	Project area	1.725 acres
4.	DTCP License	23 of 2016 dated 22.11.2016 and valid up to 21.11.2021
5.	Name of the licensee	Vijay Ranjan
6.	RERA registered/ not registered	Registered 245 of 2017 dated 26.09.2017 and valid up to 25.09.2021
7.	Date of allotment	02.07.2018 [Annexure C4 at page no. 51 of the complaint]
8.	Date of execution of buyer's agreement	17.05.2018 [As per the stamp date mentioned on page no. 21 of the complaint]
9.	Approval of building plans	20.05.2017
10.	Environmental clearance	30.08.2019
11.	Unit no.	T10-206, 2nd floor, Tower T10 [Annexure C3 at page no. 23 of the complaint]
12.	Area	592.77 sq. ft. [Annexure C3 at page no. 23 of the complaint]

13.	Payment plan	Time linked payment plan [Page 50 of the complaint]
14.	Total consideration	Rs.24,11,070/- [Annexure C3 at page no. 28 of the complaint]
15.	Total amount paid by the complainant	Rs.1,20,554/- [As per the facts stated by the complainant as per amended CRA on page no. 6]
16.	Possession clause	5.1 The Developer shall offer possession of the said flat to the allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance whichever is later. (emphasis supplied)
17.	Due date of delivery of possession	30.08.2023 [Calculated from the date of Environmental clearance i.e 30.08.2019]
18.	Offer of possession	Not Offered
19.	Occupation certificate	Not Obtained
20.	Tripartite agreement	23.07.2018 [Page 54 of the complaint]
21.	Affidavit with regard to settlement between the parties	15.09.2018 [Annexure R2 of the reply]
22.	Request for Cancellation of unit vide an application and acknowledgement receipt	03.05.2019 [Annexure R1 and R3 with the reply]

B. Facts of the complaint:

- That the complainant made an application to the developer for allotment of flat in the project along with deposit of booking amount of Rs.1,20,554/- vide cheque no. 000034 dated 13-07-2017. But in the acknowledgment, it was mistakenly written 13-07-2014 instead of 13-07-2017.

4. That the developer held a draw of lots on 20-03-2018 in the presence of officials of DGTCPO/DC and the complainant was allotted a flat bearing no. T-10-206 (2nd floor) having carpet area of 592.77 sq. ft. with the balcony area of 79.98 sq. ft. in the project called "Aashray". Consequently, the respondent vide the demand letter dated 02.07.2018 informed the complainant about the allotment of the flat and asked him to deposit an amount of Rs.5,30,435/- on or before 31-07-2018. Accordingly, the complainant applied for a loan from India Bulls Housing Finance Ltd.
5. That an agreement to sell relating to the above said residential flat was executed between the parties and the same was registered on 21.05.2018.
6. That thereafter, the complainant approached the representative of respondent no.2 at its office in connection with payment of the due amount. He was informed that the company has scrapped the said project. The representative of respondents insisted and pressurized the complainant to submit his request for surrender of the flat and take refund of the advance paid by him. The respondent no. 2 with due pressure got signed a paper in this respect that complainant was surrendering his flat at his own free will. It was also informed by the respondent no. 2 that only after making that request, balance amount i.e., booking amount Rs.1,20,554/- would be refunded to the complainant. He visited many times the office of respondent no.2 and was assured verbally that his amount would be refunded soon. More than two years have passed away, but the respondent no.2 has no intention to return the money to the complainant.
7. In this regard, the complainant would like to submit that he has already made payment with regard to bank interest amounting to Rs.38,395/- and Rs.6,000/- respectively towards builder's buyer agreement and Rs.500/- and Rs.1,830/- towards stamp paper and processing fee for taking loan

from bank. It was also assured by the developer that booking amount of Rs.1,20,554/- would be refunded. The complainant made a number of visits to the developer for refund of the said money and it assured that the amount would be refunded soon which was duly admitted by it through email messages.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - i. Direct the respondents to refund the amount of Rs. 1,20,554/- along with interest at the prescribed rate i.e. MCLR+ 2% till the date of filing of the complaint.

D. Reply by respondent no.1:

Though the respondent no. 2 put in appearance through its counsel Sh. Shankar wig but did not file any written reply despite time given in this regard. The respondent no.1 by way of written reply made following submissions:

9. It is submitted that even otherwise, the complainant cannot invoke the jurisdiction of the authority in respect of the unit allotted to him especially when there is an arbitration clause provided in the Flat Buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, are to be settled amicable and failing which the same are to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an Alternative Dispute Redressal Forum, the invoking the jurisdiction of this Authority, is misconceived, erroneous and misplaced. The apartment buyer's agreement dated 17.05.2018 attached by the complainant himself is containing the arbitration clause no.31.

10. The complainant prior into coming into picture of the respondent no.1 already settled his claim of refund of the amount with the respondent no.2 by moving an application dated 03.05.2019 under his signatures and he received a total sum of Rs.6,33,689/- vide DD No.648529 as full and final settlement against the surrender of the Unit/Flat No.T-10-206. The complainant submitted a duly sworn affidavit dated 03.05.2019 with respondent no.2 in this behalf and also signed an acknowledgement receipt dated 03.05.2019. The duly signed copy of pan card and Aadhaar Card were also submitted. The receipt of original demand draft was also given on the photocopy of the draft by the complainant on 03.05.2019 himself. Thereafter the complainant had been left with no right, title or any claim whatsoever in any manner against his booking of unit No. T-10-206. If there had there been any sanctity in the false allegations of the complainant, he would not have kept mum for more than 1.5 year, and he would have immediately moved a complaint with a competent authority in this behalf.
11. It is totally wrong and denied that the representative of the developer insisted or pressurized the complainant to submit his request to surrender of the flat and refund of the advance paid by him. It is denied that the developer got signed any paper under any pressure stating that the complainant is surrendering his flat at his own free will. It is totally wrong and denied that the respondent no.2 informed that only after making the request, the alleged balance amount of Rs.1,20,554/- would be refunded to the complainant as alleged. It is totally wrong, and it was denied that the complainant made number of visits to the developer for refund of the said money or that the developer assured that the balance amount would be refunded soon as pleaded.

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 submission made by the parties.

E. Jurisdiction of the authority:

13. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the

case may be, to the allottee, or the common areas to the association of allottee 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 allottee 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 complainant at a later stage.

F. Findings on the objections raised by the answering respondent:

F.1 Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

14. The respondent has raised an objection that the complainant has not invoked the arbitration proceedings as per provisions of Flat Buyer's Agreement which contain a specific provision regard initiation of arbitration proceedings in case of breach of agreement. The following clause 31 has been incorporated with regard arbitration in the buyer's agreement:

31 All or any disputes arising out or in connection with this Agreement including its existence, interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which, the same shall be referred to and finally resolved by arbitration pursuant to the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The Parties further agree as follows:

(i) the seat and venue of the arbitration shall be New Delhi, India.

(ii) the arbitral tribunal shall consist of 3 (three) arbitrators. The Developer and the Allottee(s) shall appoint 1 (one) arbitrator each, these 2 (two) arbitrators shall in turn appoint the 3rd (third) arbitrator.

(iii) the language of the arbitration shall be English.

(iv) the award of the arbitration panel shall be final and conclusive and binding upon the Parties and non-appealable to the extent permitted by Applicable Law.

(v) the Parties further agree that the arbitration panel shall also have the power to decide on the costs and reasonable expenses (including reasonable fees of its counsel) incurred in the arbitration and award interest up to the date of the payment of the award.

(vi) during the arbitration proceedings, the responsibilities and obligations of the Parties set out in this Agreement shall subsist and the Parties shall perform their respective obligations continuously except for that part which is the concerned matter of dispute in the arbitration.

15. It is contended on behalf of respondent that as per terms and conditions of the agreement duly executed between the parties, it was specifically mentioned that in the eventuality of any dispute, the same shall be settled by arbitration proceedings. However, the Authority is of the view that its jurisdiction cannot be fettered by the existence of any arbitration clause in Buyer's agreement. It may be noted that section 79 of the Act, 2016 bars the jurisdiction of civil courts about any matter falling within the purview of the Authority or the Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the Act says that the provisions of this Act shall be in addition to and no in derogation of the provision of any other law for the time being in force. Further, the Authority places reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited Vs M. Madhusudhan Reddy & Anr(2012) 2 CC 506, Emmar MGF Land and Ors Vs Aftab Singh and Ors in Civil Appeal 23512/23513 of 2017 decided on 10.12.2018*** and wherein it was held that the remedies provided under the Consumer Protection Act, 1986 are in addition to and not in derogation of other laws in force. It was also held that under Article 141 of the Constitution of India, the law declared the Supreme Court shall

be binding on all the courts within the territory of India. So, in view of law laid down in these cases, the Authority is bound by the same and cannot refer the parties to arbitration, even if the agreement between the parties had an arbitration clause. Thus, the Authority has no hesitation in holding that it has the jurisdiction to entertain the complaint and the dispute does not require to be referred to arbitration.

G. Findings on relief sought by the complainant:

G.1 Direct the respondents to refund the amount of Rs. 1,20,554/- along with interest at the prescribed rate i.e., MCLR+ 2% till the date of filing of the complaint.

A project by the name "Aashray" situated in Sec 89 being a Group Housing colony under the Affordable Housing policy 2013 was launched by the respondent builder no. 2. The complainant being a successful allottee was allotted unit detailed above on his paying Rs.1,20,554/- on 13.07.2017 for a sum of Rs.24,11,070/- A buyer's agreement was executed between the parties with regard to the allotted unit on 17.05.2018. The promoter builder started raising various demands against the allotted unit and the complainant paid different amounts besides initial booking amount. He was also sanctioned a loan of Rs.23,51,549/- by India bulls Housing Finance Limited on the basis of Tripartite agreement dated 23.07.2018 entered into between the parties and the financier. There were certain disputes between the parties and the same ended into a settlement on 03.05.2019. The complainant moved an application in this regard to respondent no. 2 on that day accompanied by a dully attested affidavit dated 15.09.2018 settling the dispute with regard to the payment and finally accepting a sum of Rs. 6,33,689/- vide acknowledgement receipt R3. It is pleaded by the complainant that the settlement is not legally valid as the booking amount was not refunded to him. Secondly the alleged settlement is result of undue

pressure and is not binding on him. So, his claim with regard to booking amount of Rs.1,20,554/- be accepted and the respondents be directed to pay that amount with interest. But the pleas advanced in this regard are devoid of merit. No doubt respondent no.2 did not file any response to the averments made by the complainant but there are certain facts which could not be rebutted by him. There are three documents placed on the file by the answering respondent clinching the matter in issue the complainant filed an application dated 03.05.2019 with respondent no. 2 with regard to cancellation of the allotted unit due to some personal problems and the same was accompanied by an affidavit dated 15.09.2018 and acknowledgement receipt dated 03.05.2019. A perusal of all these documents leaves no one in doubt with regard to settlement entered into between the parties with regard to the allotted unit and the amount received by the complainant through an account payee cheque for the financier i.e., India bulls Housing Finance Limited. After that settlement no amount whatsoever remained due against the builder. So now, the plea of the complainant with regard to settlement under duress or coercion can't be accepted and the same operates as estoppel and is a bar for further proceedings before any forum. Secondly the settlement between the parties on 03.05.2019 and the complaint for the refund of the initial paid up amount was filed on the 17.02.2021 i.e., after a gap of about 2 years. There is nothing on record that during the intervening period, the complainant moved any authority challenging the validity of settlement dated 03.05.2019. So, now his plea that the settlement is not binding on him and the same is result of duress or coercion can't be accepted. Lastly by way of settlement, all the claims of the allottee with regard to allotted unit were settled and he admitted that fact while signing an affidavit dated

15.09.2018. So, keeping in view all these facts, the claimant has neither any locus standi to file this complaint nor the same is maintainable for refund of any amount as averred by him. Hence, no directions as sought by the complainant to the respondents can be issued.

16. Complaint stands disposed of.
17. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman

Dated: 25.08.2022

HARERA
GURUGRAM