

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

Complaint no. :	4344 of 2021
Date of filing complaint:	27.10.2021
First date of hearing:	06.12.2021
Date of decision :	14.09.2022

Rohini Acharya R/o: Vill & P.O, Daultabad, Gurugram	Complainant
Versus	
M/s Jasmine Build mart Private Limited. Registered office at: 406, 4th floor, Elegance Tower 8, Jasola District Centre, New Delhi- 110025	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Vishwadeep Hooda (Advocate)	Complainant
Sh. Aditya Rathee (Advocate)	Respondent

ORDER

1. 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 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 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.	Project name and location	"Provence estate Phase 2" Sector - 2, Gurgaon
2.	Project area	12.318 acres
3.	Nature of the project	Residential project
4.	DTCP license no. and validity status	105 of 2008 dated 15.05.2008 and valid up to 14.05.2020
5.	Name of licensee	Jasmine Build mart Pvt. Ltd.
6.	RERA Registered/ not registered	255 of 2017 dated 03.10.2017
	RERA Registration valid up to	31.12.2018
7.	Unit no.	C - 2202, 22nd floor, Tower C [Page 15 of the complaint]
8.	Unit measuring (super area)	5800 sq. ft. [Page 11 of the complaint]
9.	Date of allotment letter	01.09.2015 [Page 102 of CRA]
10.	Date of execution of builder buyer agreement	No date has been mentioned on the BBA 24.08.2015- Date of booking [Page 12 of the CRA]
11.	Date of construction	Not placed on record
12.	Possession clause	3.1 subject to clause 10 herein or any other circumstances not

		<p>anticipated and beyond the control of the seller and any restraints/restrictions from any courts/authorities and subject to the purchaser(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 having complied with all provisions, formalities, documentations, etc. as prescribed by the seller, whether under this agreement or otherwise, from time to time, the seller proposes to hand over the possession of the apartment to the purchaser(s) within a period of 36 months from the date of commencement of construction or execution of this agreement, whichever is later, subject to force majeure. The purchaser agrees and understands that that he will not be the seller shall be entitled to a grace period of 180 business days. After the expiry of 36 Months for applying and obtaining the occupation certificate in respect of the project from the authority.</p>
13.	Due date of possession	<p>24.08.2018 (Calculated from date mentioned as date of booking in BBA)</p>
14.	Payment plan	<p>Construction linked payment plan [Page 35 of the complaint]</p>
15.	Total sale consideration	<p>Rs. 5,01,90,000/- [Page 39 of the reply]</p>
16.	Total amount paid by the complainant	<p>Rs. 3,58,52,584/- [As admitted by respondent at Page 6 of the reply]</p>
17.	Surrender of unit	<p>30.03.2021 [Page 18 of the reply]</p>

18.	Tripartite agreement	24.09.2015 [Page 26 of the reply]
19.	Occupation Certificate	23.10.2019 (As per page 46 of reply) The DTCP has issued the occupation certificate for Tower A and C as admitted by the respondent in its reply at page no 7 of the reply (The facts mentioned in reply are contrary to the fact mentioned in OC i.e., tower C or 3 is not mentioned in the OC that has been placed on record)
20.	Offer of possession	Not offered

B. Facts of the complaint:

3. That on 24.08.2015, an apartment buyer's agreement was issued to the complainant wherein unit no. 2202 in Tower C on 22nd floor for an amount of Rs. 5,01,90,000/- was allotted to the complainant. According to clause 3.1 of the apartment buyer's agreement, the respondent had to handover the possession of the unit within 36 months + grace period of 180 days to the complainant. The date of handing over the possession of the Unit to the complainant on/ before 23.02.2019.
4. The complainant on booking of the unit paid an advance sum of Rs. 1,55,00,000/- and the same was acknowledged by the respondent by issuing two receipts dated 20.08.2015 and 24.08.2015 amounting to Rs. 1,00,00,000/- and Rs. 55,00,000/- respectively. The true copy of the two receipts dated 20.08.2015 and 24.08.2015 amounting to Rs. 1,00,00,000/- and Rs. 55,00,000/- Thereafter, the respondent issued a provisional

allotment letter dated 01.09.2015 to the complainant for the said Unit.

5. It is submitted here that for the purpose of payment of the booked unit, the complainant approached SBI Bank RACPC Delhi for a loan and the same was sanctioned vide sanction letter dated 11.09.2015 issued by SBI Bank RACPC Delhi.
6. On 24.09.2015, a tripartite agreement was executed amongst the complainant, the respondent and SBI RACPC Delhi wherein, the respondent requested SBI to disburse the loan amount of Rs. 2 crores to the respondent for the unit booked by the complainant. Thus, the complainant has paid Rs. 3,58,52,584/- till date which is more than 50% of the consideration of the unit. The complainant has been servicing the said loan for more than 5 years and has paid more than INR 1 crore in interest and part principal payment over the last 5 years.
7. That due to above mentioned reason, the complainant having no hope of being handed over the possession of the unit, approached the respondent and intended to surrender the unit subject to the repayment of the entire amount paid by the complainant.
8. On acceptance to the above mentioned request, the respondent thereafter issued an email dated 27.03.2021 wherein it was agreed by the respondent to refund the amount paid by the complainant against the said unit within a period of six (6) months from 01.04.2021 and the date of the final repayment shall be consider as the date of surrendering the unit.
9. On the receipt of the email dated 27.03.2021, the complainant replied to the said email vide dated 30.03.2021 averring all the

details of the dispute and listed the repayment plan. As per the repayment plan, the entire amount had to be refunded by the respondent to the complainant by 11.10.2021.

10. That the repayment plan as informed by the complainant was acknowledged and agreed by the respondent vide email dated 31.03.2021.
11. That the respondent made the payment against the first instalment amounting to Rs. 40,00,000/- on 05.04.2021 and thereafter the payment of Rs. 1,21,00,000/- However, after the payment of the said instalments, the Respondent has failed to adhere to repayment schedule and has ignored all requests to repay the amount.
12. As the respondent has not adhered to the terms of the repayment, therefore, the surrender of the said unit also stands cancelled and the respondent is liable to repay the entire amount paid by the complainant. Since the respondent has repaid Rs. 40,00,000/- , the liability against the respondent stands at Rs.3,15,00,000/- along with an interest on delay of 12% as per clause 2.10 of the apartment buyers agreement dated 24.08.2015 which shall be calculated from 23.02.2019 till the date of handing over of the possession of the unit.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the amount paid by the complainant (Rs.3,58,52,584-1,61,00,000/-) i.e. Rs. 1,97,52,584/- along with an interest of 12% p.a. from

23.02.2019 till the date of actual repayment of the amount paid by the complainant.

D. Reply by respondent:

14. That the respondent vide provisional allotment letter dated 01.09.2015 provisionally allotted apartment no. C-2202, 22nd floor, Tower-C to the complainant. That, thereafter an apartment buyer's agreement dated 23.09.2015 was executed between the complainant and the respondent. The respondent allotted a residential apartment C-2202, 22nd Floor, Tower-C, admeasuring 538.83 sq. mtrs. in province estate, the said project, to the complainant for a total consideration of Rs.5,37,70,344.00
15. The respondent even though under no obligation to grant time or to allow the unjustified and inexcusable demands of the complainant but as a gesture of goodwill kept the transaction subsisting and chose not to cancel the allotment endorsed in favour of the complainant.
16. That due to the persistent defaults of the complainant, the respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by the complainant.
17. It is submitted that the complainant consciously and maliciously chose to ignore the demand letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. furthermore, when the allottees default in their payments as per schedule agreed upon,

the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially while inflicts immense business loss to the respondent. the complainant chose to ignore all these aspects and wilfully defaulted in making timely payments.

18. That the respondent has already completed the construction of the apartment of the complainant. It is stated that the respondent vide application dated 03.07.2019 applied to the Directorate of Town & Country Planning, Haryana for Tower A and Tower B of the said residential project of the respondent. The Town & Country Planning Department, Haryana has issued occupation certificate dated 29.10.2019 to the respondent for the Tower A (As per Occupation Certificate Tower 1) and Tower C (As per Occupation Certificate Tower 3) of the said project of the Respondent. The apartment of the complainant is situated at the Tower No. C.
19. The complainant paid a total sum of Rs.3,58,52,584.00 to the respondent. As on date the complainant is liable to pay a sum of Rs.1, 89, 29,009.00 to the respondent. The respondent has vide letter dated 25.06.2020 informed the complainant that the construction of the apartment allotted to the complainant is ready for registration and the concerned authority has granted occupation permission for the same. The respondent requested the complainant to pay the balance consideration amount and complete all the formalities, necessary documentations, certifications and attestations etc. on or before 17.07.2020 and take possession of the apartment.

20. It is stated that instead of paying the due amounts and completing all the formalities, necessary documentations, certifications and attestations etc. on or before 17.07.2020.
21. It is stated that respondent had from time to time obtained various licenses and approvals and sanctions along with permits including extensions. Evidently respondent had to obtain all licenses and permits in time before starting construction of the project.
22. That as there was an inordinate delay on part of government department/ authorities in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition as anticipated in clause 11 of apartment buyers agreement, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent had been very prompt in making applications and replying to objections, if any raised for obtaining such permissions.
23. It was not only on account of the abovementioned reasons but among others as stated above that the project got delayed and proposed possession timelines could not be completed in addition to above there were several others reasons also as stated below for delay in the project:
 - i. That unavailability of construction workers in NCR region. That the projects of not only the respondent but also of all the other developers/builders have been suffering due to such shortage of construction workers and has resulted in delays in the projects beyond the control of any of the developers.

- ii. That in addition the respondent states that this further resulted in increasing the cost of construction to a great extent.
- iii. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, the migrant construction workers left the NCR Region.
- iv. That the said fact of shortage of construction workers can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in the NCR region. That this was certainly never foreseen or imagined by the Respondent while scheduling the construction activities. That it is submitted that even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of shortage construction workers due to lockdown and the pandemic of COVID-19, on which the whole construction industry so largely depends and on which the Respondent had no control whatsoever.
- v. That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.

- vi. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- vii. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining department imposed serious restrictions against manufacturing of sand from Aravali region.
- viii. That this acute shortage of sand not only delayed the project of the respondent but also shot up the prices of sand by more than hundred percent causing huge losses to respondent.
- ix. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on respondent, which has never been transferred to complainant or any other customers of project.
- x. That in addition the demonetization declared by the Govt. on 8th Nov. 2016 severely impacted the operations and project execution on the site as the construction workers in absence of having bank accounts were only being paid via cash by the sub-contractors of the respondent and on the declaration of the demonetization, there was a huge chaos due to unavailability of cash with the company and sum-contractors to pay wages to the construction workers.
- xi. That further due to introduction of new regime of taxation under the Goods and Service Tax in the month of July 2017 by the Govt. of India further created chaos and confusion owing



to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

24. That from the perusal of the above clause, it is clear that as per clause 3.1 the respondent was supposed to complete the construction of the said project within 36 months (3 years) from the date of signing of the agreement i.e. 23.05.2019 (excluding the grace period) unless there was delay due to a force majeure condition or due to other reasons mentioned in clause 3.1. It is worth mentioning here that there was a stay on construction in furtherance to the direction passed by the Hon'ble National Green Tribunal. In furtherance of the above-mentioned order passed by the Hon'ble National Green Tribunal, the construction activities at the project site was also delayed for several other reasons as stated in the abovementioned paragraphs and which were clearly prescribed under clause 3.1 of the agreement.
25. 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:

26. 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

27. 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

28. 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.

29. 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 complainant:

F.1 Direct the respondent to refund the amount paid by the complainant (Rs. 3,58,52,584-Rs. 1,61,00,000/-) - Rs. 1,97,52,584/- along with an interest of 12 % p.a. from 23.02.2019 till date of actual repayment of the amount paid by the complainant.

30. The complainant was allotted the subject unit NO. C-2202, 22nd floor IN Tower C having a super area of 5800 sq. ft. against total sale consideration of Rs. 5,01,90,000/-. It led to execution of builder buyer agreement between the parties, but no date has been mentioned on buyer's agreement. The due date of possession of the subject unit was calculated as per clause 3.1 where the possession has to be handover within 36 months of commencement of construction or execution of this agreement which comes out to be 24.08.2018 which is calculated from the date mentioned as date of booking i.e. 24.08.2015 in builder buyer's agreement. After signing of buyer's agreement, the complainants started depositing various amounts against the

allotted unit and paid a sum of Rs. 3,58,52,584/- as admitted by respondent at page 6 of the reply.

31. Both the counsel for the parties agreed that in continuation to BBA a settlement has been arrived at between the parties and an email communication dated 31.03.2021 is available on record as Annexure R3 page 20 of the reply and also email dated 27.03.2021 Annexure-7 page 110 of the complaint. In this communication, M/s Krrish Group has confirmed the repayment of Rs.3.55 crore within a period of 6-8 months' time. Further it is mentioned that he shall refund the same on monthly basis, however, if any short fall comes in a month, the same shall be made up in the next month. The respondent should have refunded the amount as committed on surrender of the unit. The respondent has still to pay Rs.1,97,52,584/- which are due at least from 01.12.2021. The respondent is directed to refund the amount alongwith prescribed rate of interest from 01.12.2021.
32. The authority hereby directs the promoters to return the balance amount received by him i.e., Rs.1,97,52,584/- 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 01.12.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority:

33. Hence, the authority hereby passes this order and issue 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 /promoters are directed to refund the amount i.e. **1,97,52,584/-** 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 01.12.2021 till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

34. Complaint stands disposed of.

35. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022