

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

Complaint no.	:	3503 of 2021
Date of filing	:	09.09.2021
First date of hearing:		09.11.2021
Date of decision	:	09.09.2022

Sh. Sukhvir S/o Sh. Ram Karan R/o: Dhani Mauji, Churu, Rajasthan- 331023	Complainant
Versus	
Apex Buildwell Private Limited Regd. office: 14A/36, WEA Karol Bagh, New Delhi-110053	Respondent

CORAM:

Dr. KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Shri Mukul Sanwariya (Advocate)	Complainant
Ms. Manita (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) & 17(1) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

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, delay period, if any, have been detailed in the following tabular form:

S.n.	Particulars	Details
1.	Name of the project	Our Bazaar
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low cost group housing project
4.	Allotment letter dated	14.03.2017 (As per page no. 23 of the complaint)
5.	Shop no.	G-39 on ground floor (As per page no. 23 of the complaint)
6.	Unit area admeasuring	288 sq. ft. (carpet area) (As per page no. 23 of the complaint)
7.	Date of shop buyer agreement	14.11.2019 (As per page no. 25 of the complaint)
8.	Date of commencement of construction of the project	CTE-02.12.2013
9.	Possession clause	8.1.1 Expected time for handing over of possession.



		The developer proposes to offer the handing over the physical possession of the shop to the purchaser(s) <i>within a period of sixty (60) months from the commencement date or date of purchase, whichever is later.</i> The date of purchase would be the signing of the present agreement.
10.	Clause relating to execution of conveyance deed	8.2.5 Execution of sale deed/ conveyance deed The allottee undertakes to execute the sale/conveyance deed <i>within 30 (thirty) days from the date of the company issuing the notice offering possession</i> of the said shop to the allottee.
11.	Due date of possession	02.12.2018 (Calculated from the date of the commencement of construction i.e., 02.12.2013) <i>(Inadvertently, mentioned as grace period of 6 months is allowed in proceedings dated 09.09.2022. However, the possession clause under project "Our Bazaar" do not provide any specific grace period to be allowed unlike project "Our Homes")</i>
12.	Total sale consideration	Rs.22,44,927.54/- (As per page no. 33 of the complaint)
13.	Amount paid by the complainant	Rs.27,05,344/- (As per page no. 64 of complaint)

14.	Occupation certificate	<p>i. 29.11.2019</p> <p>Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers)</p> <p>ii. 24.02.2020</p> <p>Type-1 (16 nos. towers) & Commercial</p> <p>(As per page no. 20 & 23 of reply)</p>
15.	Possession letter	<p>23.12.2020</p> <p>(As per page no. 62 of the complaint)</p>
16.	Indemnity-cum-undertaking	<p>10.02.2021</p> <p>(As per page no. 66 of the complaint)</p>
17.	Transfer of commercial unit	<p>10.02.2021</p> <p>(As per page no. 79 of the complaint)</p>
18.	Conveyance deed dated	Not executed

B. Facts of the complaint

3. That in the month of Feb 2012, the respondent published through various mode and showed rosy picture about its project. Relying upon the advertisements, the complainant visited the project site and booked a unit/shop bearing no. 39 on ground floor in the project of the respondent namely "Our Homes", Village Gadauli, Sector 37 C, Tehsil and District Gurugram vide application dated 04.02.2017 and paid booking amount as demanded by the respondent.

4. That the respondent allotted the said unit to the complainant vide letter dated 14.03.2017. Subsequently, a shop buyer's agreement was executed between the parties vide which the respondent agreed to sell, and the complainant agreed to purchase the shop allotted to the complainant admeasuring carpet area of approx. 288 sq. ft. situated on ground floor of the said project. The said agreement was registered on 14.11.2019 before the Sub Registrar, Kadipur.
5. That the said unit was allotted for a total basic sale price of Rs. 22,44,927.54/- along with other additional charges which were duly paid by the complainant. The complainant paid an amount of Rs. 27,05,344/- against said allotted unit from the years 2017 to 2020 and now nothing is due against him.
6. That the respondent handed over the physical possession of the unit allotted to the complainant and issued possession certificate dated 23.12.2020. Since, he suffered huge financial losses and was in dire need of money thus, decided to sell the said shop. He approached the respondent to know the details of terms and conditions for transfer/sale and to obtain the permission of the respondent for the said transfer. The respondent in turn provided check list for transfer which includes list of documents to be executed by the seller and the buyer.

7. That the complainant executed the indemnity bond in favour of respondent on 22.01.2021 wherein he mentioned that he has transferred the said unit bearing no. 39 on ground floor by way of assignment in favour of Mr. Shiv Kumar S/o sh. Girdhari Lal & Priyanka Sharma W/o Sh. Shiv Kumar Sharma (the assignees) and undertakes to indemnify the respondent against any loss or damage that it may sustain at present or in future, in transfer of unit.
8. That Mr. Shiv Kumar S/o Sh. Girdhari Lal & Priyanka Sharma W/o Sh. Shiv Kumar Sharma (the assignees) also executed the indemnity bond in favour of the respondent whereby the original allottee/assignor and the assignees undertook to indemnify the respondent against any loss or damage that it may sustain for transfer of shop. The complainant also executed an affidavit of assignment on 11.02.2021.
9. That Mr. Shiv Kumar and Mrs. Priyanka Sharma also gave an undertaking by way of an affidavit that the terms and conditions of the application form dated 04.02.2017 and of buyer's agreement executed between the parties would be abided by them and pending dues, if any, would be paid by them.
10. That both the complainant and the transferees i.e. Mr. Shiv Kumar & Priyanka Sharma requested the respondent to transfer the shop allotted to him in favour of Mr. Shiv Kumar & Priyanka Sharma as all the

essential documents for the purpose of such transfer were already submitted and all other terms & conditions of transfer were also fulfilled. It is pertinent to mention here that the complainant also issued a NOC in favour of the transferees i.e. Mr. Shiv Kumar & Priyanka Sharma wherein the complainant intimated his no objection in transfer of unit/shop no. 39, ground floor in favour of transferees. Further, an agreement to sell was executed between the complainant and transferees on 11.02.2021. They have applied for prior written approval of the respondent for transfer/ subsequent sale and also requested it to for bring the corresponding change in its records. However, the respondent is not ready for the said transfer and execution of conveyance deed in favour of them for the reasons best known to the respondent. It has cheated the complainant, which qualifies for unfair trade practice and fraud.

11. That the complainant paid each and every penny as per the demand raised by the respondent from 2017 to 2020 and paid an amount of Rs. 27,05,344/- and nothing is due against him. The said amount has also been requested to be transferred in favour of transferees who also undertook to pay transfer charges. Even then, the respondent is harassing the complainant by denying executing the conveyance deed in favour of the transferees against the principles of law and justice. He approached the respondent several times from February 2021 till date

to execute the conveyance deed in favour of the transferees and expressed the problem arising due to non-execution of the conveyance deed. However, the respondent is not inclined to take into consideration the bonafide requests of the complainant and has denied to execute the conveyance deed that compelled him to file the present him against the respondent.

12. That the complainant fulfilled his liability in respect of the payment of amount for the said unit and also complied all the terms and conditions of transfer/subsequent sale. However, the respondent still refused to execute the conveyance deed, and breached its obligation which were contractually assumed, under the terms of the shop buyer agreement i.e. clause 8.2 of the said agreement. Moreover, it has not mentioned even a single reason to justify the grounds for not executing the conveyance deed despite the fact that he has been continuously requesting the respondent for the same, which is against the principles of justice by any standard of law. He suffered loss and damages due to denial of the respondent to execute the conveyance deed in favour of the transferees without any valid reason.

C. Relief sought by the complainant:

13. The complainant have sought following relief:
- i. Direct the respondent to get the conveyance deed executed in favour of the transferees.

- ii. Direct the respondent to pay the cost of present litigation.
14. 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 the respondent:

15. That the possession of the shop bearing no. G-39, Ground floor, Our Bazaar, Our Homes project, Sector 37C, Gurugram has already been taken over by the complainant upon having the unit transferred from G45 to G39, but just after taking over of the possession, another complaint bearing no. *HRR/GGM/CRN/571/2021 titled as Somveer v. Apex Buildwell Private Limited.* was filed at the behest of one Somveer against the answering respondent claiming refund of the price which was paid against the above noted shop and now the complainant has come before the authority seeking direction of registration of the conveyance deed in favour of transferees named Shiv Kumar & Priyanka Sharma.
16. That it seems he and his accomplices are playing a fraud upon the respondent and the court for wrongful objects and creating multiple rights in the shop and hence, the complaint is nothing but false and frivolous and liable to be dismissed. He also deserves to be prosecuted

and punished for initiating a false, frivolous and wrongful complaint of the sort.

17. That the complaint is neither tenable nor maintainable and has been filed with an oblique motive and in any case, the respondent in all its bona fides have already delivered the possession of the shop to the complainant and was ready to execute the conveyance deed in his favour only and not in favour of any further transferees. The matter is further complicated with the filing of another **complaint titled as Somveer vs Apex Buildwell Private Limited** wherein the complainant is seeking refund of money paid against the shop which was taken over by the present complainant and has already been agreed to be sold to someone else. Since the matter is sub-judice before the authority, it shall be in the fitness of things that both complaints be heard and disposed of together. The respondent shall be obliged to abide by any directions given by the authority in the light of the facts of the case.
18. That initially the complainant was allotted unit no. G-45 and later due to change in size of the shop, his unit was transferred to G-39 which still happens to be in his name and is in his possession.
19. That the complainant somehow got the said person named Somveer interested in the shop and got paid part of the sale consideration but

always held the shop in his own name and has now got the shop sold some third party.

20. That he failed to make any such request regarding alleged transferees. It is worth noting that neither have the alleged transferees made party to the present nor any affidavit supporting the complaint has been filed by the complainant. It is stated that the complainant does not have any cause or locus standi to file the present complaint.
21. That neither the respondent is obliged to transfer the said shop in favour of the alleged transferees nor has any such application formally made to the respondent. Further, no such claim has been made by the said transferees.
22. That the development of the shop is complete, possession handed over and the respondent is ready to execute the conveyance deed in favour of the complainant upon decision of the case titled as *Somveer v. Apex Buildwell Private Limited*.
23. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents.

E. Jurisdiction of the authority

24. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes

that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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.

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per Section

11(4)(a), 11(4)(f) and 17(1) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer. So, in view of the provisions of the Act of 2016 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 respondent:

F.I Objection regarding maintainability of complainant in view of case bearing no. 571 of 2021 titled as Somveer v. Apex Buildwell Private Limited.

25. The respondent-promoter raised an objection that the present complaint is not maintainable as a complaint with regard to subject unit of the present case was also filed on 01.02.2021 seeking refund of amount paid towards consideration of allotted unit i.e. G-39, Ground floor, Our Bazaar.
26. In view of aforesaid circumstances, the authority on request of respondent vide orders dated 12.01.2022, clubbed both the complaints to brought up light on the complete facts of the complaint and further directed to provide complete details and documents with regards to such transfer of unit and the respondent is also directed to provide documentary details and written submission with regards to timeline of such transfer along with the reason on record as to why the

conveyance deed was not executed in favour of the complainant even after handing over of the possession of unit.

27. The respondent took a plea that a case bearing complaint no. 571 of 2021 with regard to similar unit is pending before authority for refund. On perusal of records, it is concluded that the said complaint no. 571 of 2021 is with regards to shop no. 45 on ground floor whereas the present complaint i.e. 3503 of 2021 before authority is with regards to shop no. 39 on ground floor of similar project. The respondent contended in his pleadings that the possession of the said unit i.e. G39 was taken over by the complainant after changing the same from G45. It is evident from the documents placed on record that the complainant was allotted shop no. G39 vide allotment letter dated 14.09.2017 annexed on page no. 23 of complaint and subsequently executed a shop buyer's agreement dated 14.11.2019 for the allotted unit i.e. G39 and the same is evident from page no. 28 of complaint.
28. As per facts of the complaint, the complainant has taken the possession of the said commercial unit and the same is evident by possession letter dated 23.12.2020. Due to financial crisis, the complainant after signing the indemnity bond with the respondent builder, transferred the unit to Mr. Shiv Kumar Sharma & Priyanka Sharma vide agreement to sell dated 10.02.2021 and vide transfer letter dated 11.02.2021, intimated the respondent-builder about such transfer. However, the authority

observes that there is no document on record to show that the respondent has considered the transfer of said unit in favour of any 3rd person. However, no documents in this regard was filed by either of the party. So, the authority is of considered view that both the complainants to be tried separately.

29. Since no documents in this regard were filed by either of the parties and no link can be established by the arguments of the parties as, as per the facts of the instant complaint the subject unit i.e. G-39 was allotted to the complainant from the very beginning and the same was transferred to some Mr. Shiv Kumar and Mrs. Priyanka Sharma whereas the complainant bearing no. 571 of 2021 was filed by some Somveer seeking relief of refund. Therefore, the present complaint shall be decided as per facts and averments of parties in the instant case.

G. Findings regarding relief sought by the complainant.

Relief sought by the complainant:

G. I Direct the respondent to get the conveyance deed executed in favour of the transferees.

30. In the present complaint, the complainant intends to continue with the project and is seeking relief under the section 17(1) of the Act. Sec. 17(1) & proviso reads as under.

"Section 17: - Transfer of Title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottee or the competent

authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottee and the common areas to the association of the allottee or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottee or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

31. Clause 8.2 of said agreement dated 14.09.2019 (in short, agreement) provides execution of sale/conveyance deed and is reproduced below:

"8.2 EXECUTION OF SALE/CONVEYANCE DEED

Clause 8.2.2.:

"The allottee acknowledges and agrees that subject to the terms of this agreement and applicable laws the company shall cost to execute and registered the sale /conveyance deed for the said shop in favour of the allottee within a reasonable time after completion of construction and after received from the allottee of the pool sale consideration and /or other dues and charges and the miscellaneous expenses mentioned in the agreement by issuing a notice (in the form provided by the company)offering position of the shop to the allottee"

The authority has gone through the clause covering execution of conveyance of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters.

32. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent are in contravention of the section 11(4)(a), 11(4)(f) of the Act by not executing a registered conveyance deed in favour of allottee along with the undivided proportionate title in the common areas to the association of allottee or competent authority. By virtue of clause 8.2 of the agreement executed between the parties on 14.11.2019, respondent is under an obligation to execute a registered conveyance deed in favour of the complainant. Accordingly, the non-compliance of the mandate contained in section 11(4)(f) read with section 17(1) of the Act on the part of the respondent is established.
33. However, in the present case, the complainant has approached the authority for getting the conveyance deed executed in favour of transferees i.e. to Mr. Shiv Kumar Sharma & Priyanka Sharma to whom the subject unit was transferred vide agreement to sell dated 10.02.2021 and vide transfer letter dated 11.02.2021, such transfer was intimated to the respondent-builder. The authority is of considered view that the promoter is under an obligation to execute conveyance deed as per section 17(1) of Act in favour of the allottee and not in favour of any 3rd person as being sought by him. Therefore, in view of aforesaid circumstances, the promoter is directed to get the conveyance

deed in favour of allottee of shop no. 39 i.e. in favour of Sh. Sukhvir in whose name the allotment as well as BBA were executed within 30 days of date of this order.

G.II Direct the respondent to pay cost of present litigation.

34. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority:

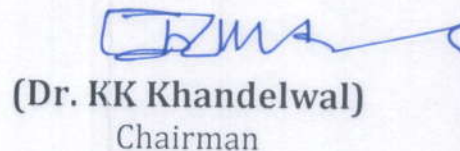
35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation

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 get the conveyance deed in favour of allottee of shop no. 39 i.e. Sh. Sukhvir in whose name the allotment as well as BBA were executed, within 30 days of date of this order.
 - ii. The respondent is directed to fulfil its obligations conferred upon it vide section 17(1), 11(4)(a), 11(4)(f) of Act.
 - iii. The 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 no. 3864-3889/2020.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.09.2022