

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

Complaint no. : 350 of 2022
First date of hearing: 21.04.2022
Date of decision : 02.08.2022

Smt. Shila Devi
R/O : A-29, Nanhey Park, Main Matiala
Road, Uttam Nagar, New Delhi - 110059

Complainant

Versus

1. M/s Pyramid Infratech Pvt Ltd
Office: H-38, Ground Floor, M2K White House,
Sector-57, Gurugram - 122002 (Haryana).
2. Realistic One
Office: Unit No. 516-517, Spaze Platinum Tower,
Near Malibu Town, Sector-47, Gurugram - 122002
(Haryana)

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Shila Devi
Sh. Rakesh Kumar (Advocate)
Sh. Kuldeep Kumar

**Complainant in Person
Counsel for Respondent no. 1
Authorized representative for
respondent no. 2**

ORDER

1. The present complaint dated 23.02.2022 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 unit details, 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 and location of the project	Pyramid Square 85, Sector 85, Gurugram, Haryana
2.	Nature of the project	Affordable group housing
3.	RERA Registered/ not registered	Not registered
4.	Unit no.	207B, second floor admeasuring 207.62 sq.ft. (annexure P/7 page 17 of complaint)
5.	Date of allotment	12.11.2021 (annexure P6, page 16 of complaint)
6.	Date of buyer agreement	Not executed
7.	Date of building plan approval	29.03.2019 (annexure P/7, page 17 of complaint)
8.	Date of environment clearance	10.10.2019 (annexure P/7, page 17 of complaint)
10.	Due date of possession	10.10.2023 (calculated from the date of environment clearance)
11.	Total sale consideration	Rs. 19,74,050/- (annexure P/7, page 17 of complaint)
12.	Total amount paid by the complainant	Rs. 5,29,386/-
13.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:



- I. That the complainant through a friend's reference come to know about the project and went to M/s Pyramid Infratech Pvt Ltd (respondent no. 1) to book a shop for her disabled son. However, she was told by respondent no.1 to go to M/s Realistic One (respondent no. 2) saying that it was dealing through respondent no. 2.
- II. Subsequently, she went to respondent no. 2 and submitted cheque no. 437481 dated 28.08.2021 of an amount of Rs. 1,65,000/-. Also, Shri Deepak Khatana insisted to pay Rs. 50,000/- in cash stating that the amount needs to be paid to respondent no. 1 in cash only. However, upon her strong insistence paid through phone pe to one of company's dealing executive (Ms. Dimple).
- III. That respondent no. 2 called the complainant on telephone to convey again that to pay Rs. 3,36,740/- in cash so that they could pass the money in cash to respondent no. 1. However, she visited office of respondent no. 2. When she declined to pay it in cash, after talking to Sh. Deepak Khatana (proprietor) she was told to pay in cheque to M/s Realistic One stating in turn it would pay respondent no. 1 in cash. The complainant paid the amount through cheque no. 308297 dated 10.10.2021. Again on telephonic call from respondent no. 2, a cheque no. 308296 dated 05.11.2021 was drawn on the name of M/s Pyramid Infratech Pvt Ltd (respondent no. 1) and submitted with respondent no. 2. Till this time, the complainant was not provided with either allotment letter or any receipt of her payments and she was insisting to M/s Realistic One for the same. After seeing fresh demand, she went to respondent no. 2 to enquire that

12



once she had paid Rs. 9,16,126/-, why statements of respondent no. 2 was showing it as Rs.5,29,386/- and insisted for a receipt. Respondent no. 2 has provided her a receipt showing Rs. 9,16,126/- as paid.

IV. Subsequently, she contacted many times respondent no. 1 but in vein. Through customer care number it has been told that she must talk to their agent, whereas M/s Pyramid Infratech Pvt Ltd only had sent her to M/s Realistic One for that purchase. Sh. Deepak Khatana, Proprietor and Sh. Ankit, Director of Realistic One have also initially promised to do needful and later stopped attending calls.

V. That the complainant wrote an e-mail to the respondents requesting reconciliation of the accounts and actual payments. A reminder e-mail was sent to Realistic One stating monetary and mental harassment but with no response yet. On telephonic enquiry with Pyramid Infratech Pvt Ltd., it was replied that she should contact her agent.

VI. That an application against monetary fraud and harassment was moved to Police Commissioner, Sohna Road, Gurugram and SHO, Police Station Sector-47, Gurugram. Also, the same application was sent through speed post to SHO, Police Station, Sector-57, Gurugram and SHO, Police Station, Sector-43, Gurugram. Further, upon a call from police station, sector-38, Gurugram, her husband attended a meeting with Sh. Deepak Khatana of M/s Realistic One with the mediation of ASI, police Sh. Kuldeep Singh.

When the matter of unaccounted amount of Rs. 3,86,740/- was discussed, initially Sh. Khatana told that this amount was given to M/s Pyramid Infratech Pvt Ltd. in cash. But when she requested to get this endorsed in



the accounting documents of M/s Pyramid Infratech, then he told that it can't be done. Further during course of discussion, Sh. Khatana told that if this matter goes to civil court then he will show this amount as his commission. Then she informed that even commission can't be more than 1% and why there was difference in the cost shown by M/s Pyramid Infratech Pvt Ltd and M/s Realistic One. But received no response.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. The cost of the shop may be considered as Rs. 19,74,050/- as per allotment letter issued by M/s Pyramid Infratech Pvt. Ltd.
- II. M/S Realistic One may be allowed not more than 1% commission, which is usually accepted in the prevailing market and as per rule 10 of Haryana Govt. Gazette (Extra) notification dated 13.10.2008 on the Haryana Regulation of property Dealers and Consultants Act 2008 (Haryana Act 38 of 2008).
- III. The amount of Rs. 3,86,740/- which has been paid to M/s Realistic One for onward payment to M/s Pyramid Infratech is to be accounted for.
- IV. After deducting 1% commission for M/s Realistic One, the total payment made will be Rs. 8,96,385/- which is 45.40% of total cost and thus the shop may be registered on my name as per given terms and conditions in the allotment letter.
- V. If the above points are not admitted favourably by both m/s Pyramid Infratech Pvt. Ltd. and M/s Realistic One, then both the companies may be instructed to pay back the amounts with interest (standard bank rate) paid to them since beginning and cancel the instant allotment without any penalty or deductions on any account within a stipulated



time period, reasonability of which may be decided by honourable RERA.

VI. Also, it may kindly be considered that as the instant complaint is under submission for kind decision for the above stated anomaly, she has not paid the amount demanded by M/s Pyramid Infratech Pvt. Ltd.

5. 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

6. The respondent has contested the complaint on the following grounds.

a. That it is respectfully submitted that the present complaint is not maintainable before this hon'ble authority as the complainant does not disclose any cause of action against respondent No.1. The complainant has filed the present complaint seeking wavier of interest from the respondent No. 1 and recovery of amount from respondent no. 2.

b. That there is no cause of action arises in favour of the complainant and against the respondent no.1 as it has nothing to do with the complainant. What happened between the complainant and respondent no. 2 is not having any concern with respondent no.1. It is further relevant to mention herein that there was no negligence on the part of the respondent no.1. Hence the petition is liable to be dismissed against respondent no.1.

c. That it is further submitted that the complainant has nothing to do with the respondent no. 1 and all the allegations leveled only against



the respondent no. 2 and there is no specific relief sought by her from the answering respondent.

- d. That the complainant had applied for allotment of a shop/ unit in the commercial complex known as "Pyramid Square 85" located at Sector-85, Gurugram and a unit no. 207-B, was provisionally allotted to her. The complainant further undertook to be bound by the terms and conditions of the application form and allotment letter.
- e. That therefore, it is evident that the complainant has no legal and valid claim against the respondent no.1. The allegations levelled by the complainant are result of afterthought and have been advanced merely in order to bias the mind of this honorable authority.
- f. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent no.1, it is submitted that it has been wrongly made a party by the complainant i.e. misjoinder of party.
- g. That the contentions put forth by the complainant alleging various irregularities are purportedly on the part of the respondent no.2. It is further submitted that respondent no.1 has no concern or is liable to the respondent no. 2 for its conduct, therefore, the same are unsustainable both in law and on facts. The complainant is misusing the process of law in order to needlessly victimize and harass the respondent no.1. The instant complaint warrants dismissal and name of the respondent no.1 should be deleted at the moment.



h. That therefore, no default or lapse can be attributed to the respondent no.1. It is evident from the entire sequence of events that no illegality can be attributed to the respondent no.1. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

i. That it is submitted that the complainant had defaulted in remittance of installments on time. However, the complainant despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent. Statement of account correctly maintained by respondent no.1 in due course of its business reflecting the delay in remittance of instalments on the part of the complainant.

7. 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for

all purposes. 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

10. 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) The promoter shall-

(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.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1) RCR(C), 357 and followed in case *M/s Sana Realtors Private Limited & other. Versus Union of India*

and others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 observed as under:

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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F. I The cost of the shop may be considered as Rs. 19,74,050/- as per allotment letter issued by M/s Pyramid Infratech Pvt. Ltd.

II. M/S Realistic One may be allowed not more than 1% commission, which is usually accepted in the prevailing market and as per rule 10 of Haryana Govt. Gazette (Extra) notification dated 13.10.2008 on the Haryana Regulation of property Dealers and Consultants Act 2008 (Haryana Act 38 of 2008).



III. The amount of Rs. 3,86,740/- which has been paid to M/s Realistic One for onward payment to M/s Pyramid Infratech is to be accounted for.

IV. After deducting 1% commission for M/s Realistic One, the total payment made will be Rs. 8,96,385/- which is 45.40% of total cost and thus the shop may be registered on my name as per given terms and conditions in the allotment letter.

V. If the above points are not admitted favourably by both m/s Pyramid Infratech Pvt. Ltd. and M/s Realistic One, then both the companies may be instructed to pay back the amounts with interest (standard bank rate) paid to them since beginning and cancel the instant allotment without any penalty or deductions on any account within a stipulated time period, reasonability of which may be decided by honourable RERA.

VI. Also, it may kindly be considered that as the instant complaint is under submission for kind decision for the above stated anomaly I have not paid the amount demanded by M/s Pyramid Infratech Pvt. Ltd.

14. A project by the name of "Pyramid Square 85" was being developed by the respondent-builder on the basis of license bearing no. 85 of 2018 in sector 85, Gurugram. The complainant coming to know about the same approached the respondent-builder who asked her to come through respondent no.2. An application in this regard was filled on 22.08.2021 and which led to issuance of letter of allotment dated 12.11.2021, for unit in question for a basic sale price of Rs. 17,64,770/-. It is the case of complainant that not only she was cheated but was also deprived of her hard-earned money of Rs. 9,16,126 and whereas the payment made was shown as Rs. 5,29,386/-. Through emails in

this regard were issued to both the respondents but with no positive results., A complaint dated 17.01.2022 was also made to the local police but with no positive results ultimately leading to filing of the complaint. Determining the cost of the unit, refund of excess amount received by respondent no. 2 as commission, restraining the respondent-builder from cancelling the allotted unit and in the alternative seeking refund of the paid-up amount besides interest was sought. But the case of respondent-builder is that though the complainant is its allottee of the subject unit but is a chronic defaulter and failed to pay the remaining amount despite a number of reminders. It was denied that the answering respondent has any concern with respondent no. 2 and is not responsible for anything that happened between the complainant and that respondent.

15. It was further pleaded that on the basis of allotment in the above-mentioned unit, the complainant paid a sum of Rs. 1,65,000/-, Rs. 3,64,386/- on 05.11.2021 and 10.11.2021 respectively and failed to pay the remaining amount after issuance of demand on 12.11.2021. Though, the complainant has sought certain relief against respondent no. 2 i.e., w.r.t payment of sum amount in cash and charges on account of commission for the deal of the subject unit but the same can be dealt with only when that respondent puts an appearance. Even otherwise in the application form dated 22.08.2021 for allotment of the subject unit, there is no mention of any commission agent / property dealer. There are some documents annexure P/2, P/3 showing payment of Rs. 50,000/- each and Rs. 3,36,740/- on 10.10.2021 but that does not show that the amount of Rs. 3,86,740/- so mentioned was received by the respondent/builder.

16. Secondly as per terms and conditions of allotment of the unit, it was allotted for Rs. 19,74,050/-. There is payment plan annexed with that document at page 6, showing the payment schedule against the total amount i.e., on

booking Rs.1,85,301/- by 10.11.2021, Rs. 5,55,903/- within thirty days from the date of issuance of allotment letter by 10.12.2021, and thirdly, on offer of possession Rs.12,32,846/-. The complainant has already paid Rs. 1,65,000/-, Rs. 3,64,386/- on 05.11.2021 and 10.11.2021 respectively and which comes out to be Rs. 5,29,386/-. As per payment plan attached with the letter of allotment, the complainant was required to pay Rs. 7,41,204/- but paid only 5,29,386/- more than 10% of the cost of the unit. So, the demands raised beyond 10% of the cost of the unit without entering into BBA are against the provision of section 13 of the Act, 2016 providing as under:

"(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

17. Keeping in view of the abovementioned provision, the demands raised by the respondent/builder against the allotted unit vide letters dated 10.11.2021 and 12.11.2021 are not sustainable in the eyes of law. Though there is letter dated 12.11.2021 annexure P-15 w.r.t intimation for registration of apartment buyer agreement, but unless BBA is executed between the parties, no demand beyond 10% of the cost of unit can be raised. On behalf of Realistic one i.e. respondent no.2, the excess amount charged as brokerage over and above prescribed by law, a cheque bearing No.000142 dated 28.07.2022 amounting to Rs.2,11,000/- has been handed over to the complainant that settles the issue.

F. Directions of the authority

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



i. The respondent- builder is directed to execute buyers' agreement of the allotted unit in favour of the complainant as per terms and conditions of allotment within period of 30 days. Similarly, the complainant is also directed to execute buyers' agreement of the allotted unit within that period and failing which the respondent-builder would be free to proceed for cancellation of the unit as per the provisions of allotment. The payment of outstanding amount shall also be made as per allotment/buyers' agreement.

ii. The respondent no. 2 has already paid a sum of Rs. 2,11,000/- to the complainant by way of account payee cheque bearing no. 000142 dated 28.07.2022 i.e., the excess amount charged as brokerage. So, no action against that respondent to the complainant survives.

19. Complaint stands disposed of.

20. File be consigned to registry.

v.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)
Chairman

Dated: 02.08.2022