

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

<b>Complaint no.</b>	:	<b>2504 of 2020</b>
<b>Date of filing complaint:</b>		<b>01.09.2020</b>
<b>First date of hearing:</b>		<b>30.09.2020</b>
<b>Date of decision</b>	:	<b>14.09.2022</b>

Poonam Bhatia <b>R/o:</b> 397,399, Sadar Bazaar, Agra, Uttar Pradesh-282004	<b>Complainant</b>
Versus	
M/s Jasmine Build mart Private Limited. <b>Registered office at:</b> 406, 4th floor, Elegance Tower 8, Jasola District Centre, New Delhi-110025	<b>Respondents</b>
M/s Ambawatta Build mart Private Limited. <b>Registered office at:</b> Kh no. 267, First floor, Opposite Syndicate Bank, Chatterpur Enclave, Mehrauli	

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Sukanya Paul (Advocate)	Complainant
Sh. Aditya Rathee (Advocate)	Respondent no. 1
Ms. Pooja (Advocate)	Respondent no. 2

**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.	D - 702, 7th floor, Tower D [Page 5 of the BBA]
8.	Unit measuring	5800 sq. ft. [Page 5 of the BBA]
9.	Date of booking	03.10.2011 [Ann P3 of the complaint]
10.	Date of execution of apartment buyer agreement	02.05.2012 [Page 2 of BBA]
11.	Date of construction	Not placed on record
12.	Possession clause	3.1 subject to clause 10 herein or any



		<p>other circumstances not 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) <b>within a period of 36 months from the date of commencement of construction or execution of this agreement, whichever is later</b>, 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	02.05.2015 (inadvertently mentioned as 02.04.2015 in proceedings dated 14.09.2022 and the same stands corrected by this order) (Calculated from date of BBA i.e. 02.05.2012)
14.	Payment plan	Construction linked payment plan [Page 32 of the complaint]
15.	Total sale consideration	Rs.4,20,50,000/- [As admit by the respondent at page no 3 of the reply]
16.	Total amount paid by the complainant	Rs. 3,52,43,094/- [As admitted by the respondent at page no. 4 of the reply]

17.	Occupation Certificate	23.10.2019 [Page 25 of the reply] The DTCP has issued the occupation certificate for Tower A and C as admitted by the respondent in its reply at page no 4 of the reply but the unit of the complainant is in Tower D
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. On satisfaction of the project planning the applicant/complainant had booked flat no. D-702 in the proposed project and given the token/advance money of Rs. 10,00,000 /- vide cheque no. 501252 dated 17.09.2011. The booking of above flat was confirmed by the respondent (Being a promoter) by issuing the letter KG/KPE/COM/Receipt/2011-12 dated 21.09.2011.
4. Further the respondent issued the allotment letter KG/KPE/COM/AL/2012-13/944 dated 07.05.2012, where the price for the said flat was fixed @ Rs.7,105/- per sq. ft plus other charges and service tax was payable over and above the basic sale price. The respondent has not clearly stated the details of other charges in the allotment letter but it was verbally informed to the applicant/complainant that the other charges will be for registration charges, stamp duty and other relevant charges for execution/registration of conveyance/sale deed.
5. At the time of booking the respondent had assured the applicant/complainant that possession of the flat unit will be handed over within a period of 3 years ie, on or before September, 2014, however when the promoter has executed the apartment agreement ("agreement") dated

02.05.2012, time period to handover the possession was changed to 3 years plus grace period of 180 business days:

6. As per the clause 3.1 of the agreement, the respondent has promised that possession of the apartment/flat will be handed over within 36 months from the date of commencement of construction and/or execution of this agreement, whichever is later. Further, it was stated that the respondent would be entitled for grace period of 180 business days for applying and obtaining the occupancy certificate in respect of the project from the authority.
7. The respondent with mala fide intention and to delay the possession of flat included such frivolous clauses in the agreement. Furthermore, even as per the promise made by the respondent to deliver the possession within 3 years from the date of booking, the clause in the agreement was changed as "time period to give the possession will start from the date of construction and agreement to sale whichever is later" and further grace period of 180 business days was added,
8. As per the allotment letter KG/KPE/COM/AL/2012-13/944 dated 07.05.2012 flat price was fixed Rs. 4,14,70,000/- i.e. Rs. 7150 per sq ft for 5800 sq ft area plus other charges (ie. registration charge stamp duty) and service tax. However, when the agreement was signed the price increased by the respondent -1 and the following price was mentioned in the agreement
9. As per terms and conditions of the agreement dated 02.05.2012, the payment way to be done as per construction linked payment plan and the construction of the said flat was to be completed within 36 months plus grace period of 180 for approval of occupancy certificate.

10. As per the terms and conditions of the agreement, the applicant complainant was regular in making payments according to demand raised by the respondent. it is pertinent to mention that within 30 months (i.e. till January, 2014) from the date of Booking, the applicant had made a payment of Rs. 3,52,43,093/- which stands at approximately 80% of the total consideration value. However, when the applicant complainant visited the site during the fourth quarter of 2015 to see the construction progress she noticed that the construction work against which the demands had been raised had not even been started for block D of the said project,
11. It is pertinent to mention that the respondents claimed to have started all of the above mentioned works against its demand letter dated 22.09.2015, accordingly, an addition amount of Rs.30,90,675.00/- was demanded for construction activity as per construction link plan highlighting that there were no pending dues from the petitioner's
12. A letter was received by the petitioner from the promoter for reminder of due payment amounting to Rs.32,20,482.07/-. Thereafter another reminder for payment was sent by the promoter to the petitioner dated 16.12.2015 for the same amount.
13. It is imperative to note that over the last six years, hardly any of these works have been executed and hardly any finishing is present on-site. The project continues to be a naked civil structure with no finishing whatsoever to the present day, which is ascertained by a physical inspection of the site of the project by the petitioner as on 20.06.2020
14. Even though the applicant/complainant has made the regular payment, as mentioned above, against the said flat since 2011 with the hope that the flat would be delivered on time but the construction work was not done as per

the schedule therefore the applicant/complainant has requested the respondent to speed up the construction work and to deliver the possession on time. However, instead of speeding up the construction work respondent threatened to cancel and forfeit the money, through its letter dated 15.11.2018 and levy on the complainant an interest of 24% pa as per the apartment no/buyer's agreement if the payment is not made as per demand raised. The conduct of the respondents' is prima facie vexatious, unlawful, unethical and mala fide, which borders 4GRA at fraud and criminal misappropriation. The applicant/complainant did not make the payment demanded since it came to her knowledge that the stage on which the payment was to become due was not reached on the actual site of the project, which was ascertained by a physical visit of the complainant on the site of construction. Therefore the applicant/complainant thought that the respondents are in no mood to complete the project and did not make the payment since the promoter/respondent 1 was not fulfilling its obligations as per schedule.

**C. Relief sought by the complainant:**

15. The complainant has sought following relief(s):

- i. Direct the respondent to refund the entire money along with interest as per the relevant provisions.
- ii. Direct the respondent to pay Rs. 5,00,000/- for compensation and mental agony and Rs. 3,00,000/- for legal costs incurred.

**D. Reply by respondent:**

16. That, an apartment buyer's agreement dated 02.05.2012 was executed between the complainant and the respondent no.1. The respondent no.1 allotted a residential apartment D-702 in Tower D, 7<sup>th</sup> Floor, and

admeasuring 538.83 sq. mtr. ('apartment') in province estate, the said project, to the complainant for a basic sale price of Rs.4,20,50,000/-

17. That the complainant was were extremely irregular as far as the payment of installments in terms of the apartment buyer's agreement. The respondent no.1 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.
18. It is submitted that the complainant consciously and maliciously chose to ignore the demand letters and reminders issued by the respondent no.1 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 no.1. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments.
19. 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 no.1, for very reason that respondent no.1 had been very prompt in making applications and replying to objections, if any raised for obtaining such permissions.



20. It is pertinent to note here that despite the best efforts by respondent no.1 to hand over timely possession within the proposed time period of said apartment booked by complainant, the respondent no.1 could not do so due to reasons beyond control of respondent no.1.
21. Without prejudice to the above submissions with respect to the certificate of registration under the Real Estate (Regulation and Development) Act, 2016. That despite exercising diligence and continuous pursuance of project to be completed, project of Respondent No.1 could not be completed as prescribed for the following reasons:
- i. That on 19.02.2013 the office of the executive engineer, HUDA Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.
  - ii. That the NGT, time and again, passed various orders staying the construction.
  - iii. The orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. That however there was no sewage treatment plant available which led to scarcity of water and further delayed the project. That said order coincided with launch of project and caused a huge delay in starting project itself.

iv. That evidently there was lot of delay on part of government agencies 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 delay caused in these permissions cannot be attributed to respondent no.1, for the very reason that respondent no.1 has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

22. 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 no.1 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 no.1 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 No.1 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 no.1 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 no.1 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 no.1 but also shot up the prices of sand by more than hundred percent causing huge losses to respondent no.1.
- ix. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent no.1 had to redo, the said work causing huge financial burden on respondent no. 1, 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 no.1 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.

23. That it is further submitted that respondent no.1 has acted in accordance with the terms and conditions of the apartment buyer's agreement. That the complainant was duly informed about the schedule of possession as per clauses 3.1 of the apartment buyers agreement entered into between the parties
24. It is clear that as per clause 3.1 the respondent no.1 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. 02.05.2021 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**

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 complainant:**

**F.1 Direct the respondent to refund the entire money along with interest as per the relevant provisions.**

27. The complainant was allotted the subject unit NO. D-702, 7th floor in Tower D having a super area of 5800 sq. ft. against total sale consideration of Rs. 4,20,50,000/-. It led to execution of builder buyer agreement between the parties on 02.05.2012. 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 02.04.2015 as date of construction has not been placed on record. After signing of buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs. 3,52,43,094/- as admitted by respondent at page 4 of the reply.
28. Keeping in view the fact that the allottee complainant wishes 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.
29. The due date of possession as per agreement for sale as mentioned in the table above is 02.04.2015 and there is delay of more than 5 years on the date of filing of the complaint.

30. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

“ ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

31. 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. it was observed-

*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*

32. 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 allottee, as the allottee wishes 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.

33. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
34. The authority hereby directs the promoter to return the amount received by him i.e., **Rs. 3,52,43,094/-** 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.2 Direct the respondent to pay Rs. 5,00,000/- for compensation and mental agony and Rs. 3,00,000/- for legal costs incurred.**

The complainants are claiming compensation in the present relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority:**

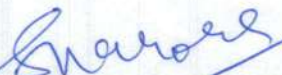
35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act of 2016 to ensure compliance of

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 received by it i.e., **Rs. 3,52,43,094/-** from the complainant 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 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.
- iii. The respondent is further directed not to create any third-party rights in respect of subject unit before compliance of the directions contained in para 35(i) above.

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: 14.09.2022