

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

Complaint no. :	3030 of 2021
Date of filing complaint:	27.08.2021
First date of hearing:	30.09.2021
Date of decision :	28.10.2022

Shree Mohan Khandelwal s/o Brij Mohan Khandelwal R/O: 30 A , Munro Road, Agra Cantt, Agra (UP)	<b>Complainant</b>
Versus	
1. Haamid Real Estates Private Limited <b>Regd. Office:</b> The Masterpiece, Sector 54, Golf Course Road, Gurugram 2. Advance India Projects Limited <b>Regd. Office:</b> The Masterpiece, Sector 54, Golf Course Road, Gurugram	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Subhash Chander Gupta AR	Complainant
Ms. Tanya Proxy counsel for Shri Harshit Batra Advocate	Respondents

**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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall



be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"The Peaceful Homes" Sector 70A, Gurugram, Haryana
2.	Project Area	8.38 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP License no. & validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA registered / not registered	63 of 2019 dated 22.10.2019 upto 31.12.2019
7.	Allotment of unit	17.06.2013 (As per page no. 31 of complaint)
8.	Unit no.	B-181, 18 <sup>th</sup> floor, Tower- B (As per allotment letter on page no. 31 of complaint)
9.	Unit admeasuring	2150 sq. ft. (As per allotment letter on page no. 31 of complaint)

A





10.	Date of execution of flat buyer agreement	17.04.2015 (As per page no. 63 of the reply)
11.	Possession Clause	<p>As per <b>Clause 11(a)</b> of the said agreement:</p> <p>The company endeavors to hand over the possession of the unit to the allottee within the period of <b>36 (Thirty-Six) months, from the date of commencement of construction of the project</b>, which shall mean the date of commencement of the excavation of the project and this date shall be duly communicated to the Allottee ("<b>Commitment Period</b>"). The allottee further agrees and understands that the Company <b>shall additionally be entitled to a period of 6 months ("Grace Period")</b>, after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining the <b>Occupation Certificate</b> of the project from the governmental authorities.</p> <p>(As per page no. 107 of the complaint)</p>
12.	Date of commencement of construction	21.04.2014 (As per demand letter on page no. 33 of the complaint)
13.	Due date of delivery of possession	21.10.2017 (Calculated from date of commencement of construction i.e. 21.04.2014+ Grace period of 6 months is allowed)
14.	Total sale consideration	Rs.1,56,12,766/-

A



		(As per payment plan on page no. 32 of the complaint)
15.	Total amount paid by the complainant	Amount paid by the complainant towards allotted unit i.e., B-181. Rs.65,26,225/- (consisting 40% of total consideration) (As per statement of account dated 22.11.2021 on page no. 205 of the reply)
16.	Reminder letters	21.04.2014, 12.05.2014, 27.05.2014, 29.05.2014 06.10.2014, 28.10.2014, 29.12.2014 15.01.2015, 28.01.2015, 18.02.2015, 27.04.2015, 22.05.2015 , 24.06.2015 , 29.05.2014 ,03.08.2015 ,04.09.2015 , 22.09.2015 24.09.2015 , 25.09.2015 , 20.01.2016 , 12.02.2016 , 16.03.2016 , 28.05.2016 . 22.06.2016, 18.07.2016, 24.08.2016, 13.09.2016, 15.10.2016 17.11.2016, 01.02.2017 26.04.2017, 26.06.2017
17.	Pre cancellation	16.04.2019 (Page 89 of the complaint)
18.	Cancellation letter	09.07.2019 (Page 179 of reply)
19.	Occupation certificate	29.10.2019 (Page 183 of reply)
20.	Offer of possession	Not Offered

**B. Facts of the complaint:**

3. A project by the name of known as "The Peaceful Homes ", situated at Sector-70 A Gurugram, Haryana, was being developed by the respondent - builder. The complainant coming to know about the same booked a unit in

12





it vide an application dated 07.05.2012 by paying Rs. Rs10,00,000/- for a sale consideration of Rs. 1,56,12,766/-

4. That vide allotment letter dated 07.06.2013, the complainant was allotted unit no. B181 situated in tower B having a super area of 2150 sq. ft. It led to execution of buyer's agreement between the parties on 17.04.2015 setting out the terms and conditions of allotment, the total sale consideration of the unit, its location, payment schedule, due date for completion of the project and offer of possession of the unit etc.
5. That as per the buyer's agreement, the possession of the allotted unit was to be offered to the complainant within thirty-six months from the date of commencement of construction of the project with a grace period of six months and which comes out to be 21.10.2017 as the excavation commenced in April 2014.
6. That the complainant also booked another unit in the same project in the name of his wife Smt. Sheela Khandelwal and payments against the same were made as per demands till the year 2015.
7. That the complainant made payments against the demands raised against the allotted unit from time to time and paid a total sum of Rs. 65,26,225/- . But there was delay in the construction of the project leading to withholding the remaining payments to be made by him. The continuous delay in completing the project forced the complainant to move for cancellation of booking in the same project in the name of his wife and requesting for transfer of the paid-up amount of that unit against the allotted unit.
8. That the representatives of the respondent agreed to the request of the complainant and got signed transfer papers and that fact was approved by the management of the respondent. But despite that the respondent vide

A



letter dated 16.04.2019 sent a pre termination letter to the complainant and the same was replied by him vide letter dated 25.04.2019. However, on 09.07.2019 , the complainant again received a letter of termination of unit from the respondents. He represented against their that act vide letter dated 08.08.2020.

9. That despite the respondents agreeing for merger of the allotted units , they sent an email dated 30.09.2020 declining to accede to his request and terminating the unit , the same being not available with the respondents.

10. That keeping in view the above-mentioned facts, the complainant wants to withdraw from the project as neither the same is complete nor possession of the allotted unit has been offered to him till date. So, on these broad averments, he filed a complaint seeking refund of the paid up amount besides interest and compensation.

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

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

- i. Direct the respondents to withdraw the intimation of termination dated 09.07.2019 of unit B-181 for which an aggregate amount of Rs. 65,26,225/- has been paid.
- ii. Direct the respondents to accept the request to transfer the funds of Rs. 59,21,966/- towards unit no. B-181 from unit B-091 in this unit from another unit.
- iii. Direct the respondents to handover the possession of the said unit no. B-181.

A



- iv. Direct the respondents to pay interest for delay in handing over the possession from the due date until the actual handover of the possession.
- v. Direct the respondents to refund the principle amount if with interest and cost, in case if no possession can be handed over to the complainant.
- vi. Direct the respondents to pay cost of Rs. 5,00,000/- towards cost of legal and other incidental expenses.

**D. Reply by respondents:**

The respondents by way of written reply made the following submissions: -

12. That a project by the name of "The Peaceful Homes ", situated at Sector-70 A Gurugram, Haryana, was being developed by the respondents. The complainant coming to know about the same booked a unit in it vide an application dated 07.05.2012 for booking of a residential unit no. B181 admeasuring super area 2150 sq. ft. on 18<sup>th</sup> floor in tower B for a sale consideration of Rs. 1,56,12,766/-.
13. That a unit was allotted to the complainant vide allotment letter dated 17.06.2013 leading to execution of buyer's agreement between the parties on 17.04.2015 setting out the terms and conditions of allotment , payment plan the dimensions of the unit and the schedule of completion of the project and offer of possession of the unit etc.
14. That the complainant was obligated to make payments against the allotted unit. The complainant has been in constant default in making the payments. The respondent no. 1 has issued various reminders of first,

12



second and third instance and final notices from the years 2014 to 2017 respectively.

15. That upon non-payment of monies, the complainant was first served with a pre-termination letter dated 16.04.2019 following which the unit was terminated vide letter dated 09.07.2019. The respondent no. 1 has a right to terminate the unit in such circumstances as per clause 56 of the buyer's agreement.
16. That the complainant has paid an amount of Rs. 65,26,225 against the allotted unit. Thus upon termination of the unit, the respondents were obligated to deduct the earnest money including the non-refundable amount.
17. That moreover, with respect to the GST amount, it is submitted that the deduction has been made in accordance with the sections 13(1) and 2(a) & (b) of the GST, Act, 2017 for the advance tax paid to the government, according to which, it is the duty of the respondent no. 1 to deposit the advance amounts of GST Charge as and when the demand is raised on the allottee for the payment of due amount for allotted/sold units in under construction projects, irrespective of the fact whether the allottee makes payments or not. It is again imperative to mention that there is no provision in the GST Act, 2017 under which the respondent no. 1 could claim refund of the deposited GST amount, upon cancellation of the Units on a future date. Once the service has been completed, no refund of the GST submitted against that unit can be collected. That being an indirect tax, this cost has to be borne by the allottee himself.
18. That it must be categorically noted that the construction activities of the project has been rightly completed. The application for occupancy





certificate of the project was made on 18.03.2019 which was consequently attained on 29.10.2019.

19. That the complainant's wife booked another unit B091 in the project of the respondents. That the complainant requested to cancel that unit and transfer the remaining funds in the unit, in which was approved vide email dated 10.10.2019 and the calculations were explained to the complainant, as is evident from e-mail dated 16.10.2019, agreed and accepted by him .. On a meeting held on 22.10.2019, the complainant was informed that the approval was subject to fulfilment of the merger documentation formalities.

20. That thereafter, the complainant was required to submit the merger documents but he miserably failed to do so. Thus due to incomplete documentation, the same was returned back to him. After a delay of almost a year, Ms. Sheela Khandelwal (w/o the complainant) again sent the documents along with a letter dated 01.07.2020. However, he was duly informed vide email dated 08.07.2020, that the unit of the complainant had already been cancelled. However, it needs to be categorically noted that the country was affected by the adverse effects of the corona virus only in March 2020, and the merger discussions had been long pending.

21. That the respondent no. 2 sent incomplete documents back to the complainant. It needs to be categorically noted that with incomplete merger documentation, the request of the complainant could not be processed and hence, due to the fault solely on his part the merger could not be processed. The respondent no. 2 categorically communicated the same to the complainant and that the "had the documents being submitted in totality, they could have raise the case for approval" vide email dated 14.08.2020. It was due to the lackadaisical conduct of the complainant himself that the his

12

request could not be processed, as was communicated vide email dated 19.09.2020.

22. That after having waited for a substantial amount of time, the unit of the complainant could not be kept unallotted. Thus the *bona fide* approach of the respondents needs to be noted at this juncture. Even after waiting for over a year for the complainant to process the completed documents the respondents again attempted to process his request as is evident from email dated 19.09.2020. However, the same could not be processed as the unit was no longer available, as was communicated vide email dated 03.10.2020.

23. All other avernments made in the complaint were denied in toto.

24. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of those undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the authority:**

25. The plea of the respondents 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.1 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.

*Ra*





Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

## E.II Subject matter jurisdiction

26. 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.*

27. 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.

28. 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*

A

*and 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* wherein it has been laid down 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."*

29. 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. Entitlement of the complainant for refund:**

**F. I** Direct the respondents to withdraw the intimation of termination dated 09.07.2019 of unit B-181 for which an aggregate amount of Rs. 65,26,225/- has been paid. issued by the respondent.

**F.II** Direct the respondents to accept the request to transfer the funds of Rs. 59,21,966/- towards unit no. B-181 from unit B-091 in this unit from another unit.

A





30. In the present case, the subject unit was booked by the complainant in the year 2012 under the construction linked payment plan for a basic sale price of Rs. 1,56,12,766/-. He paid a sum of Rs. 65,26,225/- towards total consideration of allotted unit. The complainant approached the authority seeking possession, delayed possession charges, and refund if no possession can be handed over of the paid-up amount on the ground that he has not got the possession of the allotted unit till date and the unit has been cancelled by the respondents.
31. The complainant many times requested the respondents to merge the two units booked by him i.e. one unit booked by his wife in the same project. But despite of many requests made by the complainant, the respondents did not accept the merger request. No doubt, the complainant requested the respondents to merge the two units, but they were not obligate to accede to his request. Since the complainant had defaulted in making payments, so the respondents had a right to cancel the unit and therefore cancellation of the unit vide letter dated 09.07.2019 is valid in law. Moreover the respondents sent reminder letters on 21.04.2014, 12.05.2014, 27.05.2014, 29.05.2014, 06.10.2014, 28.10.2014, , 29.12.2014, 15.01.2015, 28.01.2015, 18.02.2015, 27.04.2015, 22.05.2015, 24.06.2015, 29.05.2014, 03.08.2015, 04.09.2015, 22.09.2015, 24.09.2015, 25.09.2015, 20.01.2016, 12.02.2016, 16.03.2016, 28.05.2016, 22.06.2016, 18.07.2016, 24.08.2016, 13.09.2016, 15.10.2016, 17.11.2016, 01.02.2017, 26.04.2017, 26.06.2017 to the complainant to make payment of the due instalments. When nothing materialised and had a effect on the complainant, the respondents sent a letter of cancellation of the unit on 09.07.2019.
32. It is an admitted fact that a buyer's agreement with regard to the allotted unit was executed between the parties on 17.04.2015. The due date for

A





completion of the project and offer of possession of the allotted unit comes to be 21.10.2017. There is nothing on the record that the remaining amount after forfeiting earnest money was ever sent to the complainant by the respondents. Though the cancellation of the allotted unit made by the respondents as per the terms and conditions of buyer's agreement but they did not return the amount due after retaining the earnest money. As per clause 4 of the buyer's agreement, the promoter could have forfeit 15% earnest money on cancellation and return the remaining paid up amount but that was not done. A reference in this regard maybe made to the principles laid down in cases of *Maula Bux Vs. Union Of India 1970* (1) SCR 928 and *Sirdar KB Ramchandra Raj Urs Vs. Sarah C Urs* (215) 4 SCC 136 wherein it was observed that only a reasonable amount can be forfeited as earnest money in the event of default on the part of purchaser. It is not permissible in law to forfeit any amount beyond reasonable amount unless, it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Thus, deduction of 10% of the sale consideration of the unit was held to be reasonable on cancellation.

33. Keeping in view such type of situations, the Haryana Real Estate Regulatory Authority, Gurugram also framed regulation 11 in the year 2018 providing deduction of 10% of sale consideration as earnest money and sending the remaining amount to the allottee immediately. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and*

A



*taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

34. Keeping in view the above-mentioned facts and since the respondents cancelled the allotment of the unit on 09.07.2019 , so the authority hereby directs the promoter to return the amount after forfeiture of 10% of sale consideration with interest at the rate of 10.25% (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 cancellation i.e 09.07.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**F.III Direct the respondents to handover the possession of the said unit no. B-181.**

**F.IV Direct the respondents to pay interest for delay in handing over the possession from the due date until the actual handover of the possession.**

**F.V Direct the respondents to refund the principle amount if with interest and cost , in case if no possession can be handed over to the complainant.**

35. Keeping in view findings on issues no. 1 and 2 , these issues become redundant.

A

**F.VI Direct the respondent to pay cost of Rs. 5,00,000/- towards cost of legal and other incidental expenses.**

36. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (Supra)* 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, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the Authority:**

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoters are directed to refund the paid up amount of Rs. 65,26,225/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation 11 of Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 with interest @

A






10.25% p.a. on the refundable from the date of cancellation i.e., 09.07.2019 till the actual date of refund of the amount.

ii) A period of 90 days given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

38. Complaint stands disposed of.

39. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)  
Chairman

**Dated: 28.10.2022**