

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

Complaint no. :	3964 of 2021
Date of filing complaint:	12.10.2021
First date of hearing:	26.11.2021
Date of decision :	01.12.2022

1. Sh. Vijay Kumar S/o Sh. Dharminder Singh R/O: H. NO. 2357, Sector 46, Nurpur Jharsa (165), Gurugram, Haryana-122003	Complainant
Versus	
1. M/s Angle Infrastructure Private Limited Regd. office: 406, 4 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi-110025 2. M/s Capital Builders Proprietorship Firm Regd. office: J-9, LGF, Kailash Colony, New Delhi-110048	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Ritesh Dhir (Advocate)	Complainant
Sh. Aditya Rathee (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.no.	Particulars	Details
1.	Name of the project	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization

5.	Allotment letter	04.01.2012 [As per page no. 22 of complaint]
6.	Unit no.	1202 on 12 th floor of tower D [As per page no. 29 of complaint]
7.	Unit area admeasuring	1865 sq. ft. [Super area] [As per page no. 29 of complaint]
8.	Date of apartment buyer agreement	30.12.2013 [As per page no. 26 of complaint]
9.	Payment plan	Construction linked plan [As per customer ledger on page no. 23-24 of complaint]
10.	Total sale consideration	Rs. 99,96,400/- (BSP) Rs. 1,11,72,150/- (TSC) [As per page no. 23 of complaint]
11.	Amount paid by the complainant	Rs. 50,65,749.40/- [As per statement of accounts dated 18.06.2021 on page 24 of complaint]
12.	Possession clause	Clause 3.1 <i>3:1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable 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</i>

		<p>provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchasers) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course. The Seller shall give Notice of Offer of Possession in writing to the Purchasers) with regard to the handing over of possession, where after, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment.</p>
13.	Building plan approvals	Not available on record
14.	Environmental clearance	15.10.2013 [As per page no. 14 of rely]
15.	Due date of possession	30.09.2018



		[Calculated from the date of environmental clearance i.e., 30.12.2013 + grace period of 9 months] <i>Grace period of 9 months is allowed.</i>
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Demand letter & reminders	16.09.2015 & 27.11.2015, 21.12.2015 24.12.2015 & 21.01.2016, 04.03.2016, 19.05.2016 [Page no. 57-73 of complaint]
19.	Cancellation letter dated	02.08.2016 [As per page no. 76 of complaint]

B. Facts of the complaint:

3. That the complainant applied for a unit in a group housing complex namely "Florence Estate" and received official allotment letter dated 04.01.2012 a 3BHK apartment bearing flat no. 1202 on 2th floor of tower D of having super area of 1865 sq. ft. (hereinafter referred to as the "flat") and paid booking amount of Rs. 10,00,000/- on 06.08.2012. Part payment of Rs. 5,00,000/- each vide cheque no. 887280 & 000352 and the same was acknowledged by respondents no. 1 vide receipt no. 222 and 223 respectively dated 06.08.2012.



4. That the complainant trusted upon the words and representations of the respondents and keeping the need of family in mind, entered into an agreement on 30.12.2013 to buy with the respondents no. 1 company for a basic selling price of Rs. 99,64,000/- excluding taxes.
5. That as per the annexure D of the agreement, the complainant paid Rs. 50,65,749.4/- to the respondents no.1 on different dates.
6. That the respondents no.1 vide letter dated 19.03.2015 again issued a demand intimation of sixth installment of Rs. 9,17,927/- due after the commencement of 4th floor of tower "D" as per annexure D of the agreement dated 30.12.2013. The complainant enquired about the progress of the flat every time whenever he made payment of his instalment to the opposite party and every time, it was assured by the respondents that the project will be completed on time. Since he was making the payments on a regular basis, the complainant was desirous to know the progress of the project and thereof visited the site and realized that the construction work was nowhere near completion.
7. That the complainant booked the said flat under construction link payment plan and as per said payment plan, the respondents are entitled to raised further demand of installments/ premiums duly completion of certain stages.

8. That the complainant initially trusted the words of the respondents and always paid each and every installment on time as and when demanded by the respondents, without confirming the construction stage but the complainant felt cheated to know that it raised their demands arbitrary against the terms and conditions of the buyer's agreement. The respondents vide demand letter dated 19.03.2015, 26.05.2015, 16.09.2015, 24.12.2015, raised arbitrary demands which were supposed to be raised after the commencement of construction of 12th floor, 16th floor and 20th floor slab, but the complainant still found the project nowhere near commencement of Tower "D".
9. That the respondents no. 1 vide letter dated 17.05.2016 demanded dues from the complainant and informed the complainant that "we take great pleasure in informing you that construction work at site is going on in full swing and we have planned to offer possession of Tower A, B and C tentatively in May 2017 and tower D and E in December 2017". The respondents play the whole game just to grab the money from the innocent complainant fraudulently. However, the reality is the construction of tower D has not even started till date.
10. That the respondents no. 1 instead of discharging its obligations as per the agreement dated 30.12.2013, vide letter dated 02.08.2016 terminated the allotment of the flat on the ground that the



complainant has failed to pay total outstanding amount of Rs. 49,13,908.09/- and forfeited the earnest money of the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondents to refund full amount of Rs. 50,65,749.40/- paid by the complainant along with interest as per RERA.
- ii. Direct to the respondents to withdraw the demand for any increased amount from the date of apartment buyer agreement till present date, as the same being not in accordance with law.
- iii. Direct the respondents to pay an amount of Rs. 4,00,000/- on account of litigation cost and other sufferings faced by him.

D. Reply by respondent:

The respondent no. 2 i.e. M/s Capital Builders Proprietorship Firm, neither put in appearance nor filed any written reply. The respondent no. 1 by way of written reply made following submissions

12. That M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondents and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said project land to the respondents.

13. That the respondents proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project").
14. That initially Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a license bearing No. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said project on the said project land. M/s. Capital Builders subsequently transferred the license to the respondents. DTCP sanctioned the site plan on 14.05.2013 and State Environment Impact Assessment Authority, Haryana issued the environment clearance certificate dated 15.10.2013 to the respondents.
15. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached and expressed his interest in purchasing an apartment in the said project being.
16. That vide provisional allotment letter dated 04.01.2012, the complainant was provisionally allotted unit no. D 1202 on 12th floor admeasuring 1865 sq. ft. (173.26 sq. mtrs.) saleable area in for a total basic sale consideration of Rs.1,11,72,150/- and thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 30.12.2013 was executed between the parties.

17. That as per clause 3(1) of the agreement, the respondents was under obligation is to hand over the actual, vacant, physical possession of the apartment to the complainant within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of the agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later i.e. on or before 30.07.2021, subject to force majeure.
18. That in terms of the clause 3.5 of the agreement, the complainant agreed that, if the respondents fails to complete the construction of the apartment within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond the control of the respondents then the complainant agreed that the respondents shall be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession.
19. That the complainant made a total payment of Rs. 50,65,749/- to the respondents till date and in terms of clause 12.1 of the agreement, timely payment of all the amounts is the essence of the agreement. Further, if the complainant fails to make the payment in terms of the agreement, the respondents has the right to cancel /terminate the agreement and forfeit the booking amount. The complainant always



failed to make the payments to the respondents as per the payment plan i.e. annexure D of the agreement. The respondents repeatedly on various occasions requested him to pay the due amounts and also informed that failing to pay the due amounts, it would terminate/cancel the allotment and apartment buyer's agreement.

20. That however, even after repeated requests, the complainant failed to pay the due amounts to the respondents, as such, with no other option left, the respondents vide cancellation letter dated 02.08.2016 cancelled the allotment of the apartment no. D-1202 and terminated the apartment buyer's agreement dated 30.12.2013.
21. That sometime in the year 2013, one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said project of the respondents herein. In view of the aforesaid order passed by the Hon'ble High Court of Punjab and Haryana, the respondents failed to continue with any kind of construction at the project site. All the construction work at the project came to stand still.

22. That the Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition. In view of the said order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the respondents was forced to keep in hold all the construction work at the project site. The respondents was unable to do any kind of construction work at the project site for about fifteen (15) months.
23. That certain disputes arose between M/s. Capital Builders and the Respondents. In an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondents before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the respondents herein from creating any third-party interest in respect unsold flats. The Hon'ble High Court vide order dated 08.05.2019 modified the earlier order dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order.
24. That this authority has granted registration of the said project under the Act of 2016. The respondents has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
25. That as per terms of clause 3.5 of the agreement, if the respondents fails to complete the construction of the apartment within the period as mentioned in the agreement due to force majeure circumstances or



for other reasons as stated in the agreement or some other circumstances beyond the control of the respondents, then it is entitled to reasonable extension of time for completion of construction of the project and delivery of the possession of the apartment to the complainant. Further as per the said clause 3.5, the complainant is not entitled to any compensation, penalty and holding charges of any nature.

26. That there is no failure on the part of the respondents in completing the construction and delivering the possession of the apartment. The complainant has failed to make the due amounts as per the agreement to the respondents. The respondents has already cancelled the allotment of the complainant. In terms of clause 12.1, respondents is ready and willing to refund a sum of Rs. 35,43,194/- after deducting a sum of Rs. 15,22,555/- as 10% of BSP, EDC& IDC and service tax from the total amount of Rs. 50, 65,749/- paid by the him to the respondents.
27. 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:

28. 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. 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 promoter, the allottee 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 complainant at a later stage.

29. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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, is 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."

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on the objections raised by the respondent no. 1:

F.I Objection regarding force majeure conditions:

31. The respondent-promoter alleged that there was no delay on its part and the delay in completing the project and handing over the possession of the allotted unit was on account of force majeure circumstances such as stay on construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013) and due to a dispute arising between M/s. Capital Builders and the respondent, in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against it before the Hon'ble High Court of Punjab and Haryana vide order dated 10.09.2015 restraining creation of any third-party interest in respect unsold flats modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order.
32. The respondent also took a plea that the construction of the said project was stopped due to orders of Hon'ble High Court of Punjab &



Haryana in writ petition (CWP No. 17737 of 2013) challenging grant of license no. 170 of 2008 issued by DTCP and ban on creating third party rights vide order of Hon'ble High Court of Punjab and Haryana in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent. The respondent pleaded that such period should not be considered vide calculating the delay in completion of the subject unit. The authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling his obligation. The respondent should approach the competent/deciding authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act.

G. Entitlement of the complainant for refund:

G.I Direct to the respondent to refund full amount of Rs. 50,65,749.40/- paid by the complainant along with interest as per RERA.

33. The project detailed above was launched by the respondents as group housing complex and the complainant were allotted the subject unit in tower D on 04.01.2012 against total sale consideration of Rs. 1,11,72,150/-. It led to execution of builder buyer agreement between the parties on 30.12.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. A period of 4 years along with grace period

of 9 months was allowed to the respondents for completion of the project and that period has admittedly expired on 30.09.2018. It has come on record that against the total sale consideration of Rs. 1,11,72,150/- the complainant have paid a sum of Rs. 50,65,750/- to the respondents which constitutes 45.35 % of total consideration i.e. Rs. 1,11,72,150/-.

34. On account of non-payment of demand of amount of Rs. 27,73,169.51/- raised vide demand letter dated 16.09.2015 & 24.12.2015. Reminder letters dated 27.11.2015., 21.12.2015 & 21.01.2016, 04.03.2016, 19.05.2016 were issued in this regard followed termination letter dated 02.08.2016. It is pertinent to note that the complainant has paid an amount of Rs. 50,65,749/- towards total consideration of allotted unit which constitutes 45.35 % of total consideration i.e. Rs. 1,11,72,150/-. Due to default in payment dated 16.09.2015 & 24.12.2015, the subject unit of the complainant was cancelled vide letter dated 02.08.2016. The complainant has failed to fulfil the obligation conferred upon him vide Section 19(6) & (7) of Act., to make payment of due consideration towards allotted unit.
35. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

"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 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"

36. There is nothing on record to shown that the amount of the complainant has been refunded to him after deduction of 10% of total consideration as per clause h of said application form.
37. Hence, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.35 % p.a. on the refundable amount, from the date of cancellation i.e. 02.08.2016 till the date of realization of payment.

G.II Direct to the respondent to withdraw the demand for any increased amount from the date of apartment buyer agreement till present date, as the same being not in accordance with law.

38. The complainant is withdrawing from the project of the respondent and after dealing with relief no. 1, the above-mentioned reliefs became redundant.

G.III Direct the respondent to pay an amount of Rs. 4,00,000/-on account of litigation cost and other sufferings faced by him.

39. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. 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:

40. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondents/promoters are directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.35 % p.a. on the refundable amount, from the date of cancellation i.e. 02.08.2016 till the date of realization of payment.
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

41. Complaint stands disposed of.

42. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2022