

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

Complaint no. :	3249/2019
Date of filing complaint:	09.08.2019
First date of hearing:	18.10.2019
Date of decision :	30.08.2022

1. Mr. Rakesh Kumar Jain 2. Smt. Sanjay Lata Jain R/o: 212 Lakeview Apartment Sector 9 Rohini	Complainants
Versus	
M/s Cosmos Infra Engineering India Limited R/o: 4 Batter Lane Rajpur Road Civil Lines Delhi 110054	Respondent

CORAM:

Dr. KK Khandelwal **Chairman**

Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Sh. Deepanshu Jain (Advocate) **Complainant**

Ms. Pooja Sareen (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 provisions 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 complainants, 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.	Name of the project	Cosmos Express 99 Sector 99, Village Dhankot, Tehsil and Distt., Gurugram
2.	Project area	10.025 acres
3.	Nature of the project	Residential Unit
4.	DTCP License no. & validity status	70 of 2011 dated 22.07.2011 upto 21.07.2024
5.	Name of Licensee	Shivnandan Buildtech Pvt Ltd
6.	RERA Registered / not registered	Registered bearing no. 62 of 2019 dated 14.10.2019 upto 30.09.2021
7.	Unit no.	D-1101 (Annexure 5-page no. 34 of the allotment letter)
8.	Unit admeasuring	1310 sq. ft. (Annexure 5-page no. 34 of the allotment letter)
9.	Preallotment letter	04.10.2011 (Annexure C-4 page 33 of complaint)
10.	Allotment Letter	21.10.2011 (Annexure C-5 page 34 of complaint)

11.	Transfer Form	06.07.2012 (Annexure c-8 page 81)
12.	Endorsement	06.07.2012 (Page 70 of the agreement)
13.	Date of execution of Flat buyer agreement	18.01.2012 (Annexure C-6-page no. 36 of the complaint)
14.	Possession clause	3.1 3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located, in 4 years from the start of construction or execution of this agreement whichever is later (Emphasis supplied).
15.	Date of excavation	01.02.2012 (Annexure c-10 page 84 of complaint)
16.	Due date of delivery of possession	01.02.2016 (Calculated from the date of excavation being later i.e 01.02.2012)
17.	Total sale consideration	Rs 51,73,750. /- (Page no. 12 of the complaint)
18.	Total amount paid by the complainants	Rs 46,53,790/- (Page no. 14 of the complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint:

3. That a unit was booked by the original allottee namely Mr. Vikram Singh in the project of the respondent namely, "Cosmos Express 99 who applied for the provisional allotment in the said project for which a booking amount of Rs. 2,00,000/- was paid on 31.05.2011. An amount of Rs.1,82,250/- and Rs. 3,81,250 /- was paid by them on 23.06.2011 and 08.09.2011 towards installment of the flat.
4. That on 04.10.2011, a pre -allotment letter was issued by the respondent and a unit was allotted namely, D-1101, 11th floor, c type in the project having its super area 1310 sq. ft. for which the allottees has already paid a sum of Rs. 46,53,790 / out of the total sale consideration.
5. That a buyer's agreement was executed between the parties on 18.01.2012 and was to handover the possession of the said flat within 4 years from the start of construction or execution of this agreement whichever is later. Further, the allottee made a payment of Rs. 45,856/-, Rs. 7,33,497 / -, Rs. 1/- and Rs. 1,446 / on 25.05.2012.
6. A transfer form was signed between the original allottee and the complainants. The complainants got all the said flats right transferred through a transfer form dated 06.07.2012 after paying the consideration paid amount to the original allottee and the complainants made a payment of Rs. 4,11,896/- on 07.07.2012 to the respondent.
7. The respondent further demanded a sum of Rs. 9,47,677 / - vide demand letter dated 14.07.2012. A home loan was sanctioned by Axis Bank vide sanction letter dated 18.07.2012 for Rs.21,40,000 /-

8. The home loan agreement was executed between the complainants and the Axis Bank on 30.07.2012. wherein, they availed a total loan for an amount of Rs. 16,20,344/- till date towards the payment of the said flat and till date they are paying the monthly EMIs of Rs. 22,225 /- in every month. Despite that the respondent has not delivered the possession of the said flat till date and even is not in a position to deliver the possession of the said flat.
9. That thereafter various demands letters were issued, and payments were made by the complainants accordingly. All the aforesaid payments were made within the stipulated time. The complainants under compulsion, till date are paying the monthly EMIs towards the total loan disbursement paid by the axis bank.
10. That the complainants have waited for the construction and delivery of the said flat but were astonished to see that till date no offer has been made leading to filing this complaint seeking refund of the deposited amount.

C. Relief sought by the complainants:

11. The complainants have sought the following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 46,53,790/- along with interest.
 - ii. Direct the respondent to pay a sum of Rs. 50,000/- as litigation cost and Rs. 1,0,000/- as harassment and mental agony.
 - iii. Direct the respondent to not take any action which prejudices the complainants and further direct them to secure the substantial investment already made by the complainants.

- iv. Direct the respondent do not divert/utilise the funds collected from the complainants on any other project.

D. Reply by respondent:

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

12. That the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond its control. The following factors caused the delay in the construction of the project and are force majeure events.
13. That since basic infrastructure and facilities like road, water, electricity supply and sewer were not available the respondent could not continue with the construction
14. That the project is located on the Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010-11. But, however due to the unfortunate delay in the construction of the expressway, the construction of the project got delayed as well as there was no road for commuting. The respondent even filed an RTI application with the NHAI in 2017 inquiring about the estimate time of completion of the Dwarka expressway to which no date of completion was informed in the reply given by the authority. The respondent has even filed an RTI with the HUDA asking information on water supply to the project. In reply to which it was stated that it would take another 2-3 years for supplying water to the project which again delayed the project as the respondent could not have handed over the possession without basic amenities like water.

15. That the application for registration was immediately filed with the HRERA by the respondent on 31.07.2017 at the Panchkula Office. However, on 03.01.2018, an order was received by the respondent wherein it was stated that a copy of duly renewed license by the Director Town & Country Planning Haryana, was to be filed for the registration. That on 16.03.2018, the renewed license was submitted with the concerned authority. However, no registration was granted by HARERA for reasons not known to the respondent. Thereafter, the respondent came to the know that Haryana Real Estate (Regulation & Development) Rules 2017 were superseded by Haryana Real Estate regulatory authority Gurgaon (Registration of projects) Regulation 2018 & had to submit a fresh application that required many permissions from TCP Haryana which took up a lot of time of the respondent.
16. Furthermore, the respondent even sent a reminder dated 28.03.2018 to the principal secretary cum DRA to Government of Haryana Chandigarh to register the project as soon as possible as all the conditions under the Act and the application were met. On 15.03.2018, the respondent received a reply to the said reminder, in which it was stated that as per the new regulation of 2018, the Gurgaon office had the authority to register the project rather than the panchkula office and a fresh application to be filed with the gurgaon office. A fresh application was again filed with the gurgaon office on 23.04.2018 and the registration was granted only on 14.10.2019 almost 27 months after the very first application was filed.
17. That the construction of the project was in full swing, and the respondent expected it to be completed within the timeframe

promised to the buyers. But however due to the changes in law, the construction of the project suffered an unfortunate delay. On top of that, when the respondent tried to mobilize the construction of the project after receiving the registration, the world was struck by the pandemic in the year 2020 and a nationwide lockdown was imposed due to which many workers went back to their hometowns and have not returned till date.

18. That the bank accounts of the respondent were blocked due to the RBI circular RBrI2020-21/20DOR.No. BP. BC/7/21.04.048/2020-21 dated 6.08. 2020 and hence, the respondent could not use the funds for the development of the project.
19. That as per the notification dated 26.05.2020, issued by HARERA Gurugram, an extension period of 6 months has been granted to projects expiring in 25.05.2020 or after. Since the date of completion for the subject project is 30.09.2021, thus the extension is available for the respondent as well. Therefore, the construction of the project would be completed well within the time frame.
20. That the delay in the construction of the project due to the force majeure events does not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays caused by the factors beyond the control of the respondent.
21. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

22. 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

23. 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.

24. 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.
25. 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 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."*

26. 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 complainants:

**F.1 Direct the respondent to refund the amount of Rs. 46,53,790/-
along with interest.**

27. It is not disputed that the complainants got the above-mentioned unit in their name through a transfer form dated 06.07.2012 from the original allottee in the above-mentioned project of the respondent leading to execution of buyer's agreement on 18.01.2012. The total sale consideration of the unit was fixed for Rs. 51,73,750/-. The complainants paid a sum of Rs. 46,53,790/- against the total price. The due date of possession as per agreement for sale as mentioned in the table above is 01.02.2016 and there is delay of 3 years 6 months and 8 days on the date of filing of the complaint. Neither the project is complete nor the possession of the allotted unit has been offered to the complainant by the respondent. So, keeping in view the fact that the allottee complainants wish to withdraw from the project and are 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.

28. 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.....”

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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra) and wherein it was observed as under:

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.

29. 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 allottees, as they wish 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.

30. This is without prejudice to any other remedy available to the allottee including compensation for which allottees 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.

31. The authority hereby directs the promoter to return the amount received by him from the complainant i.e., Rs 46,53,790/- 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 a sum of Rs. 50,000/- as litigation cost and Rs. 1,0,000/- as harassment and mental agony.

32. The the complainant are 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. 2021-2022 (1) RCR (c) 357*, 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.

F.3 Direct the respondent to not take any action which prejudices the complainants and further direct them to secure the substantial investment already made by the complainants.

F.4 Direct the respondent do not divert/utilise the funds collected from the complainants on any other project.

33. Keeping in view findings on issue no. 3 and 4, these issues becomes redundant.

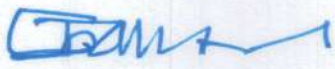
G. Directions issued the Authority:

34. 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 respondent/ promoter is directed to refund the amount of Rs.46,53,790/- received by it from the complainants 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 to comply with the orders of authority and failing which legal consequences would follow.
35. Complaint stands disposed of.
36. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.08.2022


HARERA
GURUGRAM

