



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

Complaint no. :	3960 of 2019
Date of filing complaint:	11.09.2019
First date of hearing:	10.12.2019
Date of decision :	31.08.2022

Sh. Hamvir Singh R/O: A-702 Ridgeview IFS Apt Opposite Ansal University Sec-54 Gurugram	<b>Complainant</b>
Versus	
M/s Angle Infrastructure Private Limited Regd. office: 406, 4 <sup>th</sup> floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi- 110025	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vinay Kumar (Advocate)	<b>Complainant</b>
Sh. Aditya Rathee (Advocate)	<b>Respondent</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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.	<b>RERA registered/not registered</b>	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
4.	<b>DTPC License no.</b>	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	03.10.2013 [As per page no. 26 of complaint]
6.	Unit no.	E-1802 on 17 <sup>th</sup> floor of tower E [As per page no. 42 of complaint]





7.	Unit area admeasuring	1865 sq. ft. [Super area] [As per page no. 42 of complaint]
8.	Date of apartment buyer agreement	17.01.2014 [As per page no. 39 of complaint]
9.	Payment plan	Construction linked payment plan [As per page no. 26 of complaint]
10.	Total sale consideration	Rs. 1,21,22,500/- (BSP) Calculated as Rs. 6500/- *1865 sq. ft. [As per page no. 45 of complaint]
11.	Amount paid by the complainant	Rs. 1,19,30,705/- [As alleged by complainant in on page no. 17 of complaint]
12.	Possession clause	<b>Clause 3.1</b> <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 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 Purchaser(s) <u>within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of this Agreement or date of obtaining all</u></i>





		<p><i>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.</i></p>
13.	Building approvals	plan Not available on record
14.	Environmental clearance	15.10.2013 [As per page no. 11 of reply]
15.	Start of construction	15.03.2012 [As per project details]
16.	Due date of possession	<b>17.10.2018</b> [Calculated from the date of agreement i.e., 17.01.2014, being later + grace period of 9 months] <b>Grace period of 9 months is allowed.</b>
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered



**B. Facts of the complaint:**

3. That in the year 2013, the respondent published and advertised its project known as "Florence Estate, located at sector-70 Gurugram" wherein it was displayed and stated that the possession of the said apartment would be delivered within 42 months from the signing of apartment buyer agreement dated 17th January 2014.
4. That the assurances were given by the respondent to the complainant that it is in the process of obtaining various licences from the competent authority and the construction would commence shortly. On representation made by the respondent, the complainant booked a residential unit bearing no. 1802 on 17th floor, Tower E having a super area of 1865 square feet in the said project of the respondent in the year 2013 by paying and signing booking application form which was duly acknowledged by it.
5. That the complainant had availed a home loan of Rs. 90,00,000/- from ICICI bank and the tenure of the loan was 15 years on which 10% interest was being charged by the bank.
6. That the complainant had signed an "apartment buyer agreement" dated 17.01.2014 with the respondent. However, the respondent without commencing the construction work raised many demands calling the complainant to pay the consideration amount contending that the delay in payment would attract penal interest.



7. That as per the terms of the agreement, the physical possession of the apartment/unit was to be handed over to the complainant on or before 16.01.2018. But till date, the respondent had failed to give physical possession of the apartment/unit.
8. That the complainant as on 18th March 2019 had paid consideration of Rs. 1,19,30,705/- to the respondent as per payment plan annexed with the "apartment buyer agreement" and never defaulted in respect of his obligation under the terms and condition of the agreement dated 17.01.2014.
9. That the complainant had invested all his hard-earned money in the said apartment/ unit but on account of delay in completion of the apartment/unit, he was not interested in continuing with the project and seeking refund of the paid-up amount of Rs. 1,19,30,705/-.
10. That despite regular follow ups by the complainant either to give the possession or refund the consideration amount, the respondent refused to refund the money on one pretext or the other. Thus, the complainant was left with no other efficacious remedy but to file the present complaint before the authority seeking refund of money invested along with penalty and interest charges for wilful breach of "apartment buyer agreement" dated 17.01.2014 by the respondent.

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

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



- i. Direct the respondent to refund sale consideration of Rs. 1,19,30,705/- paid by the complainant to the respondent for violation of section -18 (1) (a) of the RERA Act and interest paid by him to the bank.
- ii. Direct the respondent to pay interest to the complainant as per the RERA rules from the booking of the apartment.

**D. Reply by respondent:**

12. That M/s. Capital Builders executed certain irrevocable development rights agreement 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 respondent.
13. That the respondent 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 respondent. 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 respondent.



15. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached, applied and expressed his interest in purchasing an apartment in the said project being.
16. That vide provisional allotment letter dated 03.10.2013, the complainant was provisionally allotted unit no. 1802 on 17th floor of tower E admeasuring 1865 sq. ft (173.26 sq. metres.) saleable area in for a total basic sale consideration of Rs. 1,21,22,500/-. Thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 17.01.2014 was executed between the parties.
17. That in terms of the clause 3(1) of the agreement, the respondent was 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 17.10.2018 subject to force majeure.
18. That in terms of the clause 3.5 of the agreement, the complainant agreed that, if the respondent failed 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 its control then, the respondent would be entitled to reasonable



extension of time for completion of construction of the said project and the delivery of possession.

19. That the complainant had made a total payment of Rs 1,19,30,705/- to the respondent till date.
20. That in terms of clause 12.1 of the agreement, timely payment of all the amounts was the essence of the agreement. Further, if the complainant failed to make the payment in terms of the agreement, the respondent had the right to cancel /terminate the agreement and forfeit the booking amount.
21. That it is stated that the complainant had failed to make the payments as per the payment plan i.e, Annexure D of the agreement to the respondent.
22. 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 to maintain status-quo with regard to transfer and construction in respect to the said project of the respondent herein. In view of the aforesaid order passed by the Hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still.



23. 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 respondent was forced to keep on hold all the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.
24. That certain disputes arose between M/s. Capital Builders and the respondent. In an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the respondent herein from creating any third-party interest in respect of 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.
25. That this authority has granted registration of the said project under the Act of 2016. The respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advanced stage.
26. That in view of the circumstances beyond its control, the respondent was unable to complete the construction and deliver the possession of the apartment to the complainant within the stipulated period of time and there is no failure on its part in completing the construction and delivering the possession of the apartment.



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 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 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.

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

**F.I Direct to the respondent to refund an amount of Rs. 1,19,30,705/- paid by the complainant to the respondent of violation of section 18(1) of Act of 2016 along with interest.**

29. The project detailed above was launched by the respondent as group housing complex and the complainant was allotted the subject unit in tower E on 03.10.2013 against total sale consideration of Rs. 1,21,22,500/-. It led to execution of builder buyer agreement between the parties on 17.01.2014, 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 a grace period of 9 months was allowed to the respondent for completion of the project and that period has admittedly expired on 17.10.2018. It has come on record that against the total sale consideration of Rs. 1,21,22,500/-, the complainant has paid a sum of Rs. 1,19,30,705/- to the respondent.



30. 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.
31. The due date of possession as per agreement for sale as mentioned in the table above is 17.10.2018 and there is delay of 10 months 25 days on the date of filing of the complaint i.e. 11.09.2019.
32. The occupation 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...."*
33. 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:

*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.*

34. 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 he 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.
35. 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.

**F.II Direct the respondent to pay Rs. 5,00,000/- & Rs. 50,000/- as mental agony and cost of litigation.**

36. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

38. 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 authority hereby directs the promoter to return to the complainant the amount received by him i.e., **Rs.**





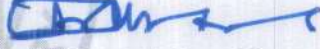
**1,19,30,705/-** with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount received.

- 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.

39. Complaint stands disposed of.

40. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.08.2022

**HARERA**  
**GURUGRAM**