



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

Complaint no. :	2407 of 2018
Date of filing complaint:	26.12.2018
First date of hearing:	10.09.2019
Date of decision :	29.08.2022

1. Sh. Surender Singh 2. Smt. Savita Devo W/o Sh. Surender Singh Both R/O: B6, Staff Colony Govt. Polytechnic Manesar, Gurugram	Complainants
Versus	
M/s Akme Projects Limited Regd. office: A-27, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi- 110044	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rajan Gupta (Advocate)	Complainants
None	Respondent

EX- PARTE ORDER

1. The present complaint has been filed by the complainants/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 allottees as per the agreement for sale executed inter se.

2. The present complaint was originally filed as CRN/2407/2018 on 26.12.2018. A fresh complaint CRN/939/2021 was filed by the complainants on 16.03.2021 which was rejected by the authority.

A. Unit and project related details

3. 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.n.	Heads	Information
1.	Project name and location	"Akme Raaga", Sector- M1D, Village- Lakhaula, Tehsil- Manesar, Gurugram, Haryana
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	120 of 2008 dated 13.06.2008 Valid up to 12.06.2010
5.	Name of licensee	M/s Subros Limited
6.	HRERA registered/ not registered	Not Registered
7.	Booking dated	29.03.2012 (As per page no. 16 of complainants)
8.	Allotment dated	Not provided on record
9.	Flat buyer's agreement	01.06.2012 (As per page no. 13 of complaint)

10.	Unit no.	002 on ground floor, tower C (As per page no. 17 of complaint)
11.	Super area admeasuring	1412 sq. ft. (As per page no. 17 of complaint)
12.	Payment plan	Construction linked payment plan (As per demand letter on page 51 of complaint)
13.	Total consideration	Rs. 64,95,200/- (As per article 2 of FBA on page no. 21 of complaint)
14.	Total amount paid by the complainants	Rs. 57,07,625/- (As alleged by the complainants on page no. 02 of complaint)
15.	Possession Clause	As per Clause 4.1 , <i>The Company shall endeavour to give possession of the flat to the purchaser within 6 months after the expiry of 36 months from the date of sanction /re-sanction of the maps /plans of the residential complex or the date of execution of this agreement , whichever is later and after providing of necessary external infrastructure by the government but subject to force majeure circumstances and reasons beyond the control of the company.....</i>
16.	Building plan approvals	Cannot be ascertained
17.	Due date of possession	01.12.2015 (Calculated from date of agreement dated 01.06.2012 + grace period of 6

		months)	
		<i>Grace- period is allowed</i>	
18.	Occupation certificate	Not obtained	
19.	Offer of possession	Not offered	

B. Facts of the complaint:

4. That respondent proposed to develop a residential group housing complex under the name "Akme Raaga" located at Sector M1D, village Lakhaula, Tehsil Manesar Gurugram in the year 2008 and spent huge amount of money for its launch and assured the interested buyers that it would be a dream project for investors.
5. That the complainants, being a simple person, believed the promise of the respondent, invested their savings in the said project. The complainants booked a residential space in the said project and paid booking amount of Rs. 6,00,000/- vide cheque no. 963856 dated 31.03.2012 drawn on Punjab National Bank.
6. That the respondent allotted one flat bearing No. 002 on ground floor of tower C, having super area admeasuring 1412 sq. ft. for total sale consideration of Rs. 84,43,760/-.
7. That a flat buyer's agreement was executed between the parties on 01.06.2012. As per clause 4.1 of the said agreement, it was assured that the possession of the said unit would be handed over to the complainants

within 6 months after the expiry of 36 months i.e. by 01.01.2016 and in case of delay, the respondent would pay late possession charges.

8. That the complainants have already made a payment of Rs. 57,07,625/- but there is no work carried out at site as per the terms of the agreement. They have gone through immense mental agony, stress, harassment and constantly raising the issue of huge delay with respondents' officials. But unfortunately, no satisfactory response or any concrete information or the reasons of long delay has come forth from respondent's end.
9. That the respondent is very well aware that complainants had taken a loan from HDFC Bank on the above suit property and suffered financial liability. But still the respondent is not complying with the terms of the agreement and failed to deliver the project in time.
10. That since the respondent failed to fulfil its promise to deliver the project by 01.01.2016, they are no more interested in the same and want refund of their money invested in the above project along with interest @ 24 % per annum from the date of payment till realization. It is also liable to compensate the complainants for the cheating and harassment done to them.

C. Relief sought by the complainants:

11. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the amount paid by them along with interest @ 24%.

12. The authority issued a notice dated 29.12.2018, 11.01.2019 & 21.01.2019 of the complaint to the respondent by speed post and also on the given email address at info@akmeprojects.com. The delivery reports have been placed in the file. Thereafter, reminders dated 08.08.2019, 08.01.2021, 06.03.2021, 15.12.2021 & 10.07.2022 for filing reply were sent to the respondent on email address at info@akmeprojects.com. Despite service of notice through email, the respondent preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
13. 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.

D. Jurisdiction of the authority:

14. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

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

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Entitlement of the complainants for refund:

- E.1 Direct the respondent to refund the amount paid by them along with interest @ 24%.**
15. The project detailed above was launched by the respondent as group housing project and agreement dated 01.06.2012 was executed between

the parties detaining terms and conditions of allotment, total sale consideration, provision regarding due date of handing over of possession, etc. As per article 2 of said agreement, the total sale consideration of allotted unit is Rs. 64,95,200/-. As per clause 4.1 of the said agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months plus 6 months from date of sanction of plans or execution of agreement, whichever is later. As details of building plan approvals are not available on record, the due date of handing over of possession is calculated from date of agreement i.e. 01.06.2012 and that period has admittedly expired on 01.12.2015. It has come on record that against the total sale consideration of Rs. 64,95,200/- ,the complainants paid a sum of Rs. 57,07,625/- to the respondent.

16. Due to delay in handing over of possession by the respondent-promoter, the complainants-allottees' wish to withdraw from the project of the respondent. Thus, keeping in view the fact that the allottees-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 his failure 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. The due date of possession as per agreement for sale as mentioned in the table above is **01.12.2015** and there is delay of more than 3 years 25 days on the date of filing of the complaint i.e. 26.12.2018.

17. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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....."

18. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)** 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 observed as under:

25. The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees

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

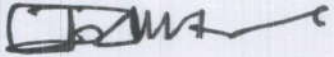
The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession 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.

19. This is without prejudice to any other remedy available to the allottees including compensation for which they 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.
20. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 57,07,625/- 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. Directions of the Authority:

21. 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 i.e. **Rs. 57,07,625/-** 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 amount.
 - ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
22. Complaint stands disposed of.
23. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2022