

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

Complaint no.	:	3722/2019
Date of filing complaint:		18.09.2019
First date of hearing:		11.12.2019
Date of decision	:	30.08.2022

1. Madan Mohan Datta 2. Sudhanshu Dutta R/o: M.K Datta Hospital, Crossroad No. 1, Ambala Cantt.	Complainants
Versus	
Homestead Infrastructure Development Private Limited R/o: Plot No. 15, Second Floor, Sector 44 , Gurugram , Haryana	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Prateek Kundu (Advocate)	Complainant
None	Respondent

ORDER

- 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 complainant, 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.	Project name and location	Hometsead
2.	Project area	12.344 acres
3.	RERA Registered/ not registered	Not Registered
4.	Unit no.	Not on record
5.	Unit measuring (carpet area)	400 sq. ft. (Page 8 of complaint)
6.	Expression of Interest	25.11.2014
7.	Date of execution of apartment buyer's agreement	Not Executed
8.	Possession clause	No allotment has been done BBA is not executed between the parties Hence possession clause cannot be ascertained
9.	Due date of possession	Not Ascertained
10.	Total sale consideration	Rs. 16,00,000 (As alleged by the complainant)
11.	Total amount paid by the complainant	Rs 3,20,000 (As alleged by the complainant)
12.	Occupation Certificate	Not received
13.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant No. 1 attended the monthly clinico-social meeting of the Indian Medical Association, which was held at the premises of drive in at Ambala city on 22.11.2014.
4. The respondent gave a presentation in that meeting on 22.11.2014, in collaboration with impression wealth management pvt ltd., for the real estate residential project in Gurugram. The complainant No. 1 got interested in the invitation of offer made by respondent qua 1 BHK apartments having 400 sq. ft area, for a total sale consideration of Rs 16,00,000/-
5. The respondent made the complainants fill the standard form of expression of interest on 25.11.2014. A sum of Rs 1, 00,000/- was paid by the complainants on 15.12.2014 to the respondent on 16.12.2014.
6. A special and unique identity passport was issued by the respondent to the complainants vide email dated 11.03.2015
7. That no buyer's agreement was ever executed between the parties. Since there was a delay in the project of the respondent, so complainant No. 2 vide affidavit dated 31.05.2016, with the consent of complainant no. 1, sought to cancel the allotment given by respondent. The complainants also sought refund of Rs 3,20,000/-
8. On 31.05.2016, the complainants sent the above-mentioned affidavit along with all the documents to respondent as required by it. Consequently on 11.07.2016, respondent sent e-mail, acknowledging receipt of original documents of complainant for the purposes of cancellation of allotment and refund.

9. An email reminder was sent by the complainant to the respondent on 16.12.2016, for effecting refund of the due amount. The complainants sent a letter by e-mail and speed-post to SHO, Sushant Lok, Gurgaon on 26.07.2018 urging him to lodge an FIR against respondent for committing offence of Cheating and breach of trust against the complainants.
10. On 20.12.2018, complainants wrote to authority against the respondent. Thereafter, on 15.03.2019, the complainants registered a complaint with RERA which came to be registered as complaint no. RERA-GRG 1205-2019. However, due to lapse of time and lack of clarity regarding jurisdiction on the issues raised in the complaint, the hard copy of the complaint could not be filed within 30 days of time.
11. The complainants have requested for refund of the amount of the paid-up amount but with no result leading to filing of the present complaint.

C. Relief sought by the complainant:

12. The complainants have sought the following relief(s):
 - i. Direct the respondent to refund the full amount of Rs. 3, 20,000/- along with interest.
13. That neither the respondent has put in appearance nor filed any written reply despite giving several opportunities. So, the authority was left with no option but to proceed based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

14. 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.

D. 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.

D. II Subject matter jurisdiction

15. 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.

16. 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.
17. 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. 2020-2022(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."

18. 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.

E. Findings on the relief sought by the complainant:

E.1 Direct the respondent to refund the amount of Rs.3, 20,000/- along with interest.

19. It is not disputed that the respondent accepted a sum of Rs 3, 20,000/- from the complainants for allotment of unit in its upcoming project on 15.12.2014 and 26.01.2015. The amount in this regard was paid to the respondent by the complainants vide an account pay cheque bearing number 000184 and 000036 dated 15.12.2014 and 26.01.2015 respectively.
20. Thus, there is neither any letter of allotment nor any booking of the unit and so, it is a case of booking at a pre-launch stage. It is evident that the complainant paid a sum of ₹3, 20,000/- to the respondent at that stage on 15.12.2014 and 26.01.2015. But neither any booking of the unit was done in any project leading to allotment of the unit nor there is any other document to prove the continuation of the complainants in the project launched by the developer.
21. Hence, the authority hereby directs the promoter to return the amount received from the complainants along 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 this order till the actual date of refund of the amount.

F. Directions issued the Authority:


22. 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.3,20,000/- received by it from the complainant 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 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.

23. Complaint stands disposed of.

24. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.08.2022