

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

Complaint no. : 241 of 2019
Date of filing complaint : 21.01.2019
First date of hearing : 17.07.2019
Date of decision : 29.08.2022

Pradeep Kapoor R/O: -812, Dr. Mukherjee Nagar, Delhi- 110009.	Complainant
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana-122003	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Geetansh Nagpal	Advocate for the complainant
Sh. CK Sharma and Sh. Dhruv Dutt	Advocates for the 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 28 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
	Name of the project	"The Leaf", Sector -84-85, Gurugram
1	Unit no.	21C, 21 st Floor, Tower-T-3 (BBA on page no. 63 of complaint) Note: The unit number has been advertently recorded wrong in the proceeding of day dated 29.08.2022.
2	Unit admeasuring	1575 sq. ft. (BBA on page no. 63 of complaint) Note: The unit area has been advertently recorded wrong in the proceeding of day dated 29.08.2022.
3	Allotment letter	10.09.2012

		(page no. 48 of the complaint)
4	Date of execution of builder buyer agreement	16.09.2013 (on page no. 61 of complaint)
5	Possession clause	<p>8. Possession</p> <p>8.1: Time of handing over the possession</p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period , for applying and obtaining occupation</p>

		certificate in respect of the Group Housing Complex. (Emphasis supplied).
6	Due date of delivery of possession	16.09.2016 (calculated from the date of signing of buyer agreement)
7	Total sale consideration	Rs. 86,24,250/- (as per BBA on page no. 63 of complaint)
8	Total amount paid by the complainant	Rs. 54,99,036/- (as per CRA)
9	Occupation Certificate	09.05.2022
10	Offer of possession	Not offered
11	Grace period utilization	As per the clause for possession , the developer shall be entitled to a grace period of 90 days, after the expiry of thirty six month(36) months or such extended period for applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for occupation certificate within the time limit prescribed In the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore , the grace period is not allowed

B. Facts of the complaint

3. That the complainant booked a unit on 17.07.2012 in the project of the respondent namely, "The Leaf" located at Sector 84-85, Gurgaon, Haryana under the construction linked plan for a total sale consideration of Rs. 86,24,250/-.
4. That on 10.09.2012, the respondent issued an allotment letter to the complainant wherein he was allotted a "unit No. 21C, 2BHK, having an approximate super area of 1,575 sq. ft. in the Tower -3 of the said project at the basic rate of Rs.4,650.00 per sq.ft. and preferential location charges (PLC) of Rs.150 per sq.ft. external development charges (EDC) of Rs.355/- per sq.ft. infrastructure development charges (IDC) of Rs.35/- per sq.ft (hereinafter referred to as "the said Unit").
5. That the respondent has demanded the hefty amount of Rs. 25,28,056/- before the execution of BBA. Furthermore, as per section 13 of the RERA Act, 2016, a promoter cannot accept/demand more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for time being in force.
6. That finally a flat buyer's agreement was executed between the parties on 16.09.2013. As per the agreement, the possession of the said unit was to be handed-over to the complainant within 36 months from the date of execution of the agreement, that is by, 16.09.2016.
7. It is pertinent to note herein that starting from the year 2014, the complainant being a diligent buyer and consumer made continuous follow ups asking the respondent on the status and update on the project

and asking for pictures as well. For good one year, the complainant received no response from the respondent at all. However, instead the respondent kept asking for payment demands without making any headway on the said project and kept threatening the complainant of dire consequences of interest levied @18% and or cancellation of the said unit, etc. It is only when the complainant took a strict stand on the incomplete project situation, did the respondent admitted to its mistake and also offered a settlement for waiving off the interest on delayed payment vide email dated 04.08.2018. Furthermore, after a delay of over two years already the respondent continues to raise demands towards the unit and has miserably failed to convey to the complainant the actual delivery date of the said unit, which came, has a complete surprise and shock to the complainant.

8. The complainant has paid more than Rs. 50,00,000/- for the said unit worth over Rs. 86,24,250/-. The complainant after paying huge amount still received nothing in return but only threats of cancelling the flat or imposition of heavy penalties.
9. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the said unit but also the benefit of escalation of price of the said unit and the prospective return they could have got had they not invested in the project of the respondent. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.
10. That the complainant has at all times made payments against the demands of the respondent and as per payment schedule of the

agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondents needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

C. Relief sought by the complainant.

11. The complainant has sought following relief:

(i) Direct the respondent to return sale consideration sum of Rs. 54,99,036/- received by it from the complainant till date along with prescribed interest.

(ii) That this Hon'ble Authority may direct the respondent to pay litigation cost @Rs. 50,000/- to the complainant.

(iii) That this, Hon'ble Authority may direct the respondent to pay mental agony and harassment @Rs. 5,00,000/- to the complainant.

D. Reply by the respondent.

12. That on 10.09.2012, the complainant was allotted unit no. 21C, 2BHK having an approximate super area of 1575 sq. ft. in the Tower-3 of the project "The Leaf" at the basic rate of Rs. 4650/- per sq. ft. and preferential location charges (PLC) of Rs. 150/- per sq. ft. external development charges (EDC) of Rs. 355/- per sq. ft., infrastructure development charges (IDC) of Rs. 35/- per sq. ft. to be payable as per the payment plan. It is submitted that the total sale consideration of the flat booked by the complainant was Rs. 86,24,250/-. However, it is submitted that the total sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainant at the applicable stage. The complainant

agreed that the payment will be made as per the payment plan (construction linked payment plan) annexed with the allotment letter and the copy of same was read over to the complainant at the time of advance registration of the flat. It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the flat from the very initial and the last payment was made by the complainant on 09.11.2016. since then no payment has been made by the complainant. It is submitted that upon failure of the complainant to make payment of outstanding instalment, the respondent was constrained to issue e-mails dated 07.04.2018, 07.06.2018, 23.07.2018, 31.07.2018 and 02.07.2019, Demand Letters dated 19.03.2018 and 29.06.2019 and reminder letters dated 16.11.2012 and 18.09.2018 to the complainant to make the outstanding payment but the respondent's request fell on deaf ears of the complainant and the complainant did not pay the outstanding dues pending against the said unit. the complainant always gave false promises and assurances regarding payment of installment but deliberately withheld the due payment payable to the respondent as per the agreed payment plan.

13. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and flat buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the total consideration of Rs. 86,24,250/- of the flat, the amount actually paid by the complainant is Rs. 54,99,036/- i.e. around 73% of the total consideration of the flat. It is further submitted that there is an outstanding amount of Rs. 10,73,221/- including interest payable by the complainant as on 22.11.2019 as per the construction linked plan opted by him. The complainant is a real

estate investor who has made the booking with the respondent only with an intention to make profit in a short span of time. However, it appears that his calculations has gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. The complainant after defaulting in complying with the terms and conditions of the flat buyer's agreement, now wants to shift the burden on the part of the respondent whereas it has suffered a lot financially due to such defaulters like the present complainant.

14. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the hands of developer / builder in proceeding towards timely completion of the project. That the respondent has

incurred Rs. 214.41 Crores towards expenses in the construction of the project "The Leaf" as on 31.03.2019.

15. Copies of all the relevant do have been filed and placed on the 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

The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 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.

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. Findings on the relief sought by the complainant.

F.I Direct the respondent to return sale consideration sum of Rs. 54,99,036/-received by them from the complainant.

16. In the present complaint, the counsel for the 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 due date of possession as per agreement for sale as mentioned in the table above is 16.09.2016 and there is delay of 2 years 4 months 5 days on the date of filing of the complaint. The matter is covered under section 18(1) of the Act of 2016.
17. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the

agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

18. 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:

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

19. 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 the allottee 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.

20. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoters on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoters as the promoters fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoters are liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. 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.
21. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 54,99,036/- 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.II That this Hon'ble Authority may direct the respondent to pay litigation cost @Rs. 50,000/- to the complainant.

F.III That this, Hon'ble Authority may direct the respondent to pay mental agony and harassment @Rs. 5,00,000/- to the complainant.

22. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has 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 is advised to approach the adjudicating officer for seeking the relief of compensation

G. Directions of the authority

23. 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 function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to refund the entire amount of Rs. 54,99,036/- paid by the complainant along with prescribed rate of interest @ 10% p.a. from the date of each payment till the actual date of refund of the deposited amount within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- 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

24. Complaint stands disposed of.

25. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2022