

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

Complaint no. : 5048 of 2019
First date of hearing: 23.01.2020
Date of decision : 01.08.2022

Jasmeet Singh Sahni
R/o: H.no. 2111, Phase 7, Mohali, S.A.S. Nagar,
Punjab - 160059

Complainant

Versus

M/s Prime Time Infraprojects Private Limited
Office: 406, 4th Floor, Elements Mall, Near DCM
Market, Ajmer Road, Jaipur, Rajasthan-302021.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Vikas Bhardwaj (Advocate)
None

**Counsel for the complainant
respondent**

ORDER

1. The present complaint dated 04.11.2019 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:

S.N.	Particulars	Details
1.	Name and location of the project	ABL Prime, Sector 1, Pataudi, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	RERA Registered/ not registered	Not registered
4.	Plot no.	100, block C (page 57 of complaint)
5.	Date of booking	06.03.2014 (page 23 of complaint)
6.	Date of allotment	28.06.2014 (page 27 of complaint)
7.	Unit admeasuring area	344.866 sq. yard [page no. 57 of complaint]
8.	Date of floor buyer agreement executed between original allottees	BBA not executed, although a copy of plot buyer agreement has been placed on the record.
9.	Possession clause	11 (a) The Company shall endeavor to offer possession of the Said Plot, <i>within twenty four months from the date of execution of this Agreement</i> subject to timely payment by the intending Allottee(s) of Sale Price, Stamp Duty, Govt, Charges and any other charges due and payable according to the payment plan attached as Annexure II, and schedule of Government Charges recovery attached as Annexure II (emphasis supplied)
10.	Due date of possession	Due date of possession cannot be ascertained in the absence of BBA but is being taken as 24 months from the date of allotment + 2 months for execution of buyers' agreement and which comes to 28.08.2016
11.	Total sale consideration	Rs. 67,78,686/- (as per clause 1 of BBA, page 57 of complaint)

12.	Total amount paid by the complainant	Rs. 28,42,081/- (as alleged by complainant and confirmed by the counsel during the hearing)
13.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That in November 2013, respondent launched plotted colony in the name of "ABL PRIME" situated at sector 1, Pataudi, Gurugram, Haryana over the land admeasuring 24.95 acres under license no. 84 of 2013 dated 22.10.2013. On 06.03.2014, complainant along with his wife applied for allotment of corner plot no. C-100 having area of 311.22 square yards (approx.) in the said project and paid booking amount of Rs. 8,00,000/-. The total sale consideration Rs. 67,78,686/- and applicable taxes were payable under construction linked payment plan.
- II. That provisional allotment letter dated 28.06.2014 was issued by the respondent in favour of complainant in confirmation of allotment of corner located plot no. C 100 ("Plot") having area of 344.866 square yards (approx.) in the said project. Simultaneously, respondent issued the first demand letter for Rs. 8,13,972/- which was duly paid by the complainant on 09.07.2014. Thereafter, respondent raised the next demand for Rs. 2,78,108.58/- vide demand letter dated 27.11.2014.
- III. That complainant was worried about project development and on time possession of the said plot. He sent an email on 04.08.2015 seeking status of project development & execution of agreement. The complainant also asked whether all mandatory approvals are in place to develop the project and upon getting no revert from, sent reminder emails on 06.08.2015, 10.08.2015 & 13.08.2015. The respondent reverted on 14.08.2015 stating



that all approvals are in place and investment is safe and much appreciated, agreements are in printing and would be shared shortly with complainant for execution purpose. Complainant immediately raised his concerns on 15.08.2015 but no avail.

- IV. That on 26.10.2015, plot buyer's agreement shared with complainant in printed booklet version and in soft copy. Post review of plot buyer's agreement, complainant observed there are many corrections to be made therein by respondent and proper/correct agreement needs to be executed on stamp paper between the parties. The complainant approached respondent for this and got assurance that revised version of plot buyer's agreement would be shared post having necessary corrections. Thereafter, complainant paid a sum of Rs. 2,78,109/- to the respondent on 21.10.2015 & 31.10.2015 through two cheques.
- V. That on 04.04.2016, respondent raised the next demand due on commencement of levelling work at project site of Rs. 9,68,383.73/- and out of which a sum of Rs. 9,50,000/- was paid by the complainant on 16.06.2016 through three cheques, duly encashed by the respondent on 20.06.2016. However, no formal payment receipt of this payment was received by the complainant from respondent.
- VI. That on 11.01.2018, complainant sought information about current status of project development. He also raised concerns about project delay and not showing of project in respondent's website. Upon getting no revert, complainant sent reminder emails on 18.01.2018, 30.01.2018, 08.02.2018, 13.03.2018 and finally asked the official to schedule a meeting with the directors of the respondent company.
- VII. That complainant met with Mr. Vivek Purohit (sales & marketing head) and one of the directors on 13.04.2018. In the meeting, it was conveyed to

the complainant that the project was cancelled due to poor marketing response and a new project on the same land would be launched under Deen Dayal Awas Yojna in partnership with another real estate company. Respondent refused to make the refund to the complainant and promised/assured two smaller sized plots of 150 sq. yards would be allotted to him in lieu of his existing allotment in the project post registration of new project with RERA. Mr. Vivek Purohit also shared the model zoning of new project by his email dated 13.04.2018. Upon regular follow ups made by the complainant, respondent finally shared new project related documents such as LOI dated 09.05.2017, Migrated License dated 05.09.2017 (for 14 acres) and layout plan by email on 03.05.2018.

- VIII. That on 25.06.2018, complainant sought status of project registration with RERA and its expected timelines vide email dated 23.06.2018. Complainant made follow-ups for the same vide his emails dated 23.08.2018 and 04.09.2018. Upon getting no response, complainant finally conveyed his intention to withdraw the booking application and sought the details about the procedure to be followed for refund of booking amount and subsequent payments made by the complainant.
- IX. In March 2019, respondent conveyed that new project got registered with RERA on 21.11.2018 to launch and sell the new project in the name of "Maruti Kunj" on the same land parcel wherein said project was situated. Respondent asked the complainant to make an application for change of his booking from "ABL Prime Project to Maruti Kunj Project" and the same was made by the complainant on 09.05.2019, which was duly acknowledged by the respondent on same day. Thereafter, neither new plots were allotted nor agreement were executed by respondent or new developer. That since 09.05.2019, complainant is regularly following up



with the respondent. Respondent shut down its office in Gurugram and moved to Jaipur. None of the respondent's official is attending the complainant's phone calls in Jaipur office. Respondent neither issued the allotment letter/ agreement of new plots in MARUTI KUNJ nor refunded the money to the complainant. It is evident that unfair trade practices are being carried out by the respondent without any fear of law as no law exists for the same. Respondent has to refund the entire amount paid by the complainant with interest.

- X. That till date, the project is not ready for occupation. By delaying tactics, respondent deferred the money outflow payable to the complainant as refund and used the complainant's money without any interest. Complaint is regularly following up with the respondent but of no avail. Complainant is frustrated and aggrieved by respondent's acts, actions, omissions, which caused financial losses to him.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund the entire paid-up amount to the respondent.
 - II. Litigation expenses of Rs. 70,000/-.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
6. Despite giving ample opportunities for filing reply, the respondent failed to filed reply in stipulated period. Hence, the defence of the respondent was struck off. Thus, the authority is proceeding the matter as per pleadings and documents on the record.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. 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.

D.II Subject-matter jurisdiction

9. 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.

10. 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.

11. 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 followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 complainants.

E. I Direct the respondent to refund the entire paid-up amount to the respondent.

E. II Litigation expenses of Rs. 70,000/-.

13. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project is 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 plot 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 is calculated from the date of allotment letter i.e., 28.08.2016, as a BBA is not executed. The due date is calculated as per clause 10(a) of unexecuted BBA. Therefore, the due date comes out 28.08.2016 and there is delay of 3 year 2 months and 16 days on the date of filing of the complaint.
14. 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....."*
15. 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”

16. 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.
17. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
18. The authority hereby directs the promoter to return the amount received by him with interest at the rate of 9.80% (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*.

E II. Litigation expenses of Rs. 70,000/-.

19. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the authority

20. 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. 28,42,081/- paid by the complainant along with prescribed rate of interest @ 9.80% 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.



HARERA
GURUGRAM

Complaint No. 5048 of 2019

- 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.

21. Complaint stands disposed of.
22. File be consigned to registry.

v.1 - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2022


(Dr. K.K. Khandelwal)
Chairman



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