

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

Complaint no. :	1657 of 2021
Date of filing complaint:	05.04.2021
First date of hearing:	04.05.2021
Date of decision :	31.08.2022

1. Ketineni Pratibha Rao W/o Ketineni Sayaji Rao 2. Suchita Rao D/o W/o Ketineni Sayaji Rao <b>R/O: V.P.O Gijarodh</b>	<b>Complainants</b>
Versus	
Fantasy Buildwell Pvt. Ltd. <b>Regd. office:</b> Room No. 205, Welcome Plaza S-551 School Block -II Shakarpur , Delhi-110092	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Ankur Sharma Proxy Counsel (Advocate)	Complainant
Ms. Pooja Sareen (Advocate)	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 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Paras Quartier", Sector-2, at Village Gwal Pahari, District- Gurugram
2.	Project Area	10.096875 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP License no. & validity status	74 of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of licensee	Maxicon Traders Pvt. Ltd. and 2 others
6.	Date of environment clearances	12.07.2013 [Page 62 of reply]
7.	Date of building plans	20.12.2012 [Page 47 of reply]
8.	RERA registered / not registered	Registered vide no. 164 of 2017 dated 29.08.2017
9.	RERA registration valid up to	28.08.2022
10.	Unit no.	PL-3/01, 20 <sup>th</sup> floor, Tower/block- Iconic (Page no. 20 of complaint)
11.	Unit area admeasuring	6000 sq. ft. (Page no. 20 of complaint)



12.	Date of execution of apartment buyer agreement	01.05.2013 (Page no. 17 of the complaint)
13.	Possession clause	<b>3. Possession</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 restrain/restriction from any courts/authority and subject to the purchaser 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 the provisions, formalities, documentations, etc. as prescribed by th 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 with in a period of 42 (Fourty-two) months within additional grace period of 6 (six) months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to force majeure. The purchaser(s) agrees and understands the seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, 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 purchaser with regard to the handing over the possession, whereafter, within 30 (thirty) days, the purchaser shall clear its outstanding dues when complete</i>

		<i>documentary formalities and take physical possession of the apartment.</i> (Page 27 of the complaint).
14.	Due date of possession	12.08.2017  [Note: Grace period of 6 months allowed being unconditional and unqualified due date calculated from date of ec being later]
15.	Total sale consideration	Rs.6,12,20,000/-  (As per payment plan page no. 51 of complaint)
16.	Amount paid by the complainants	Rs.3,88,32,688 /-  (As per statement of account dated 19.11.2020 page no. 54 of complaint)
17.	Occupation certificate	22.06.2020  [Page 32 of reply]
18.	Offer of possession	19.11.2020  [Page 52 of the complaint]

### B. Facts of the complaint:

3. That the project of the respondent was advertised in the year 2013, called 'Paras Quartier', in Sector-2, Gwal Pahari Gurugram, Haryana. So, believing the representations of the respondent the complainants agreed to purchase an apartment unit no.3/PL-3, 20th floor, Sector-2, Gwal Pahari, Gurugram from the respondent. The buyer's agreement was executed between the parties on 01.05.2013.

4. That the complainant started paying the number of instalments as per the demand of the respondent on time. According to the buyer's agreement, the possession of the unit was to be handed over with in a period of 42 months within additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement

of construction, whichever is later. But the respondent failed to deliver the possession of the unit on time. Even till date, the respondent has been miserably failed to handover the possession of the unit.

5. That the complainants have paid a sum of Rs.3,88,32,688/- out of the total sale consideration. The respondent offered the possession of the apartment to the complainants vide letter dated 19.11.2020 stating that it has received the occupation certificate for the aforesaid project on 22.06.2020 and is ready to begin the possession process.

6. That the complainants remained in dilemma and tremendous pressure of not having any definite and timely delivery of possession of the apartment and all their plans to shift to Gurugram from their native place were frustrated.

7. That the complainants booked the apartment keeping in view the fact and believing that the respondent would hand over the possession of the said apartment within the time as per the builder buyer agreement dated 01.05.2013 and they would shift in the said apartment from Secundrabad. However, the inordinate delay committed by the respondent in completion of the apartment has diminished all their hopes of shifting and they are no more interested in retaining the apartment.

8. That the conduct of the respondent has resulted in wrongful loss to the complainants and wrongful gain to the respondent .

9. That the complainants want to withdraw from the project as they have not got the possession within the due date. Hence, the complainants were left with no other alternative but to file the present complaint seeking refund of the paid-up amount besides.

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

10. The complainants have sought following relief(s):

i. Direct the respondent to refund the amount of Rs.3,8,32,688/- with interest.

ii. Cost of proceedings may also be awarded

**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

11. That the complainants themselves have been guilty of not adhering to the payment schedule and have made most of the payment after passing of the respective due dates.

12. The respondent has already obtained the occupation certificate for towers PL-3 on 22.06.2020. The complainants have paid till date consideration of Rs. 3,88,32,688/- The buyer's agreement was signed on 01.05.2013 and the environmental clearance (EC) was on 12.07.2013.

13. The complainants have been offered the possession of their unit on 19.11.2020. But then also, the complainant has failed to take over possession of their unit by clearing their pending instalments despite the same having been offered to them long back by the respondent.

14. All the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014. It is reiterated that the complainants have failed to make timely payment of their dues.

15. The respondent after getting all the requisite approvals started its construction activities. However, the Respondent was forced to stop the construction activities for some time due to various reasons which were not in their control. Some of these reasons are:

a. The Director of Tower and Country Planning, Haryana has issued directions to stop work at towers of the Project "Paras Quartier" till further order vide

Order dated 28.07.2015. Further, the Director of Town and Country Planning, Haryana considering the report of the Commissioner Municipal Corporation, Gurgaon dated 20/04/2016 directed to de-freeze the construction on the site of Project "Paras Quarter" vide order dated 29/04/2016. The construction at the site of the Project "Paras Quartier" was stopped from 28/07/2015 to 29/04/2016, i.e., for the period of months and 2 days.

b. That it is a matter of record that in the year 2015-16, the Hon'ble National Green Tribunal (NGT) in the matter of Vikrant Kumar Tongad vs. Union of India & Ar had banned the extraction of ground water in the N.C.R including Gwal Pahari, Gurugram where the project of the respondent is situated. On account of this banning, the period of 2 months and 10 days is taken which was also one of the reasons of delay in the project.

16. That it is stated that in the year of 2019, the Hon'ble Apex Court has banned construction activity on the recommendations of Central Pollution Control Board (CPCB) in Delhi NC region from 4/11/2019, which was partially lifted on 09.12.2019. Even on the said date, the ban was partially lifted, and construction activities were allowed between 6 AM to 6 PM, in daytime only. It is further stated that the respondent/ builder took up construction activities at the site seeing the situation and accordingly, increased its pace by devoting more time on daily basis and as well as by infusing more work force. It is stated that the total construction was banned in the Delhi NC region was from 04.11.2019 to 09.12.2019, i.e for the period of 1 month and 5 days. Even thereafter, full-fledged activities were not allowed at the construction site.

17. It is stated that the project has faced these instances which are of the nature of act of God and force majeure, which forced the respondent to stop construction activities at the site for the period more than 12 months and 17 days and in turn delayed completion of project.

18. That as per 11.1 of the buyer's agreement, respondent would not be responsible for non- performance of any of its obligations under the agreement if such performance is prevented due to force majeure reasons, outside its control.

19. That the respondent is entitled to demand holding charges from the complainants on account of their failure to take over possession of the unit despite the same being offered to them on 19.11.2020 itself.

20. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the part

**E. Jurisdiction of the authority:**

21. 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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**



22. 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.*

23. 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.

24. 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. 2020-2021 (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."*

25. 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.

#### **F. Objections raised by the respondent:**

**F.I Objections regarding force majeure circumstances and the respondent was forced to stop construction due to various reasons beyond its control.**

26. The respondent is claiming that the Director of Tower and Country Planning, Haryana has issued directions to stop work of some towers of the project, as a result the promoter was not able to complete the project within the stipulated time. The authority is of the considered view that if there is any restriction by any competent authority concerned and that the respondent was not at fault in then the respondent should approach the competent authority for getting this time period i.e., 28.07.2015 till 29.04.2016 be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period

as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

27. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Hon'ble Apex Court has banned the construction activity on the recommendations of Central Pollution Control Board in Delhi NCR Region which was partially lifted. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 3 of the buyer's agreement. Though there have been various orders issued but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

**G. Entitlement of the complainants for refund:**

**G. I Direct the respondent to refund the amount of Rs. 3,88,32,688/- with interest.**

28. The complainants agreed to purchase the unit in the project of the respondent. They paid a sum of Rs. 3,88,32,688/- towards the allotted unit of total sale consideration. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has delayed in handing over the possession to them.

29. It is an admitted fact that buyer's agreement was executed between the parties on 01.05.2013. So, the due date for completion of the project and handing over possession of the allotted unit comes to be 12.08.2017. There is a delay in handing over the possession as due date of possession was 12.08.2017 whereas the offer of possession was made on 19.11.2020 and this becomes a case to grant delay possession charges. But now the peculiar situation is that the complainants want to surrender the unit. They stated this

in the course of arguments that they want to surrender the unit on 31.08.2022 and want refund.

30. The cancellation of any allotted unit by the respondent / builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately. Clause 2.21 specifies about the earnest money.

31. Keeping in view the above-mentioned facts and since the allottees requested for cancellation of the allotment on 31.08.2022 and even withdrew from the project by filing the complaint, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount of Rs. 3,88,32,688 after forfeiture of 10% of total sale consideration 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 surrender i.e., 31.08.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

32. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

***"5. AMOUNT OF EARNEST MONEY***

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement*

*containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

### **G.II Cost of proceedings may also be awarded**

33. The the complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357***, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

### **G.III Admissibility of refund at prescribed rate of interest.**

34. The complainant is seeking refund at the prescribed rate of interest on the amount already paid by her. However, proviso to section 19(4) provides that where an allottee intends to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by*

*such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

35. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

36. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

37. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondents/promoters which is the same as is being granted to the complainant in case of refund.

#### **H. Directions of the Authority:**

39. Hence, the authority hereby passes this order and issue 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. Rs.3,88,32,688 /- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 with interest @ 10% p.a. on the refundable from the date of cancellation i.e., 31.08.2022 till the actual date of refund of the amount.

ii) A period of 90 days given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

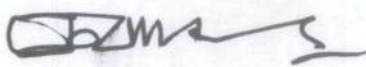
iii) The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

40. Complaint stands disposed of.

41. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

**Dated: 31.08.2022**