

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

Complaint no. :	1792/2019
Date of filing complaint:	25.04.2019
First date of hearing:	04.10.2019
Date of decision :	31.08.2022

Sanjeev Kumar Sarin R/o: D-50, First Floor, Hauz Khas, New Delhi	<b>Complainant</b>
Versus	
M/s Fantasy Buildwell Pvt. Ltd. R/o: 11 <sup>th</sup> Floor, Paras Twin Tower, Tower B, Golf Course Road , Sector 54 , Gurgaon	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sushil Yadav (Advocate)	Complainant
Ms. Stuti Sharma (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 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.	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 69 of reply]
7.	RERA Registered/ not registered	Registered vide no. 164 of 2017 dated 29.08.2017
8.	RERA registration valid up to	28.08.2022
9.	Unit No.	1, 15 <sup>th</sup> floor , Tower Iconic (Page 16 of complaint)
10.	Allotment Letter	18.11.2013 but not for the present unit (Page no. 65 of the complaint)
11.	Unit area admeasuring	6000 sq. ft. (Page 16 of complaint)
12.	Date of execution of apartment buyer agreement	31.12.2013 (Page no. 13 of the complaint)
13.	Possession clause	3. Possession



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

		<p><i>handing over the possession, whereafter, within 30 (thirty) days, the purchaser shall clear its outstanding dues when complete documentary formalities and take physical possession of the apartment.</i></p> <p>(Page 27 of the complaint).</p>
14.	Due date of possession	<p>12.08.2017</p> <p>[Note: Grace period of 6 months allowed being unconditional and unqualified due date calculated from date of ec being later]</p>
15.	Total sale consideration	<p>Rs.6,00,74,433/-</p> <p>(As alleged by the complainant))</p>
16.	Amount paid by the complainant	<p>Rs. 5,48,63,631/-</p> <p>(As per payment schedule on page 29 of reply and as alleged by the complainant)</p>
17.	Occupation certificate	<p>22.06.2020</p> <p>[Page 25 of reply]</p>
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

- That a forthcoming project named "Paras Quartier" Gwal Pahari, Gurgaon was advertised by the respondent in newspapers. The complainant coming to know about the same booked a unit in it of 6,000 sq.ft. for total sale consideration is Rs 6,00,74,433/- Later on with the consent and permission of the respondent the complainant endorsed the flat in his name.
- The complainant has paid an amount of Rs 5, 48,63,631/-to the respondent till date. The buyer's agreement was executed between

the parties on 31.12.2013 and the respondent allotted a Unit No.01 on 15th Floor in Iconic Tower having super area of 6,000 sq. ft. to the complainant. That as per para no.3.1 of the buyer's agreement, the possession of the unit was to be delivered within 42 months from the date of signing of the buyer's agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later with an extended period of 6 months.

5. The complainant regularly visited the site but was astonished to see that construction work was not in progress and no one was present at the site to address the queries of the complainant. Despite receiving of 95% approximately payments on time all the demands raised by the respondent for the said unit were fulfilled. But repeated requests and reminders over phone calls, emails and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit to him within stipulated period.
6. That as per clause 3.3 of the buyer's agreement it was agreed by the respondent that in case of any delay, he would pay the complainant a compensation @ Rs. 5/- per sq.ft. per month of the super area of the unit. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan.
7. That the complainant has requested several times on making telephonic calls, emails and also personally visiting the offices of

the respondent to deliver possession of the unit in question along with prescribed interest on the amount deposited by him but met with no response.

8. That the complainant many times approached the respondent to deliver the possession of the unit, but it never gave any concrete reply and has not offered the possession till date leading to filing this complaint seeking refund of the deposited amount.

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

9. The complainant has sought the following relief(s):
  - i. Direct the respondent to refund the amount of Rs. 5,48,63,631/- along with interest.

**D. Reply by respondent:**

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

10. That the buyer's agreement was signed between the parties 31.12.2013 and the respondent received environmental clearance (EC) on 12.07.2013. The complainant has been himself guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates. The complainant has also admitted the fact he has not paid the total consideration.
11. All the approvals for commencement of the construction work were received towards around the end of the year 2013 and the construction work began only in november, 2013.
12. The complainant himself on multiple occasions has defaulted in payment of its complete installment due to which respondent was forced to send multiple reminders to him for payment of pending

installments. However, the complainant continued to ignore the said requests of the respondent and delay the payment of installments

13. The respondent on various dates have send demand letters for making the payment on time dated 28.02.2013, 12.04.2013, 23.04.2013, 12.06.2013, 07.11.2013, 09.01.2014, 22.10.2014, 17.11.2014 05.12.2014, 24.12.2014, 03.03.2015, 13.03.2015, 13.04.2015, 29.05.2015, 17.06.2015, 18.08.2015, 12.09.2015, 28.09.2015 11.02.2016, 27.06.2016, 23.11.2016, 04.09.2017, 18.11.2017 respectively.
14. The complainant has failed to make the complete payment therefore he is in breach of the Real Estate Regulatory Authority Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
15. The respondent has suffered due to the breaches committed by complainant and continued with the construction of the apartment despite the later not paying the complete consideration.
16. That the respondent was forced to stop the construction activities due to various reasons which were beyond its control. The Director of Town and Country Planning, Haryana 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 20.04.2018 directed to de-freeze the construction on the site of Project "Paras Quartier vide order dated 29.04.2016.

17. The construction activity does not start immediately after receiving of such orders. It takes time to mobilize the work force and to mobilize the construction material on site. The construction at the site of the Project "Paras Quartier was stopped from 28.07.2015 to 29.04.2016, for a period of 9 months and 2 days.
18. 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 & Anr. had banned the extraction of ground water in the whole NCR 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 was taken, also one of the reason of delay in the project.
19. That in the year of 2019, the Supreme Court has banned construction activities on the recommendations of Central Pollution Control Board (CPCB) in Delhi NCR region from 4.11.2019, to 09.12.2019. Even on the said date, the ban was partially lifted, and construction activities was allowed between 6 AM to 6 PM, in daytime only. It is further stated that the respondent takes 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 NCR region was from 4.11.2019 to 9.12.2019, for the period of 1 month and 5 days. Even thereafter, full-fledged activities were not allowed at the construction site.
20. The project has faced these instances which are of the nature of act of god and force majeure, which forced us to stop construction



activities at the site of "Paras Quartier" for the period more than 12 months and 17 days and in turn delayed completion of project.

21. 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 parties.

**E. Jurisdiction of the authority:**

22. 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 complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

23. 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.*

24. 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.
25. 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 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."*

26. 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.**

27. 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.

28. 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 Supreme 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. Findings on the relief sought by the complainant:**

- G.1 Direct the respondent to refund the amount of Rs. 5,48,63,631/- along with interest.**

29. It is not disputed that the complainant booked a unit in the above-mentioned project of the respondent leading to execution of buyer's agreement on 31.12.2013. The total sale consideration of the unit was fixed Rs. 6,00,74,433/-. The complainant paid a sum of Rs. 5,48,63,631/- against the total price. The due date of possession as per agreement for sale as mentioned in the table above is 12.08.2017 and there is delay of 1 year 8 months 13 days on the date of filing of the complaint. Neither the project is complete, nor the possession of the allotted unit has been offered to the

complainant by the respondent. So, keeping in view the fact that the allottee 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 matter is covered under section 18(1) of the Act of 2016.

30. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received on 22.06.2020 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 to 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.

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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (supra) was observed as under:

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.*

31. 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.
32. 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.
33. The authority hereby directs the promoter to return the amount received by him from the complainant i.e., Rs 5,48,63,631/-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*.

34. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was 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. 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.

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

35. 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.*

36. 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.
37. 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%.
38. The definition of term 'interest' as defined under section 2(z) 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;”*

39. 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 issued the Authority:**


40. 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.5,48,63,631/- 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 each payment till the actual date of refund of the deposited amount.



- ii. A period of 90 days is given to the respondent to comply with the orders of authority 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.
41. Complaint stands disposed of.
42. File be consigned to the Registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

Dated: 31.08.2022