

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

Complaint no.	:	1131/2018
Date of filing complaint:		26.02.2020
First date of hearing:		14.03.2019
Date of decision	:	01.08.2022

1. Neeta Ravikant 2. Arun Kumar Ravikant R/O: - H1C 054 Westend Heights, DLF Phase V Gurugram 122009	Complainants
Versus	
M/s Baani & Ors. Regd. Office at: BAANI, 271 Phase II, Udyog Vihar Gurugram, Haryana.	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
shri Arun Kumar Ravikant - Brig. complainant in person	Complainant
Ms. Preeti Advocate for R1 Shri Ganesh Kamath Advocate for remaining Respondents.	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees 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 complainants, 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	BAANI THE ONE, sector 66, Gurugram
2.	Subsequent project (Developed by Emaar on same land.)	Colonnade, sector 66, Gurugram, Haryana.
3.	Project area	2.296 acres
4.	Nature of the project	commercial
5.	DTCP License no. & validity status	cannot be ascertain
6.	Name of Licensee	N/A
7.	RERA Registered / not registered	not registered
8.	Unit no.	shop no . B-010
9.	unit subsequently changed to	LGF - 079
10.	Unit admeasuring	624sq. ft.
11.	allotment letter	31.03.2015
12.	Date of execution of Flat buyer agreement	not executed

13.	Possession clause	not on record
14.	Due date of delivery of possession	cannot be ascertain
15.	Total sale consideration	not known
16.	Total amount paid by the complainant	Rs 3,84,000/- (annexure P2, page 36 of complaint)

B. Facts of the complaint:

3. That Complaint relates to fraudulent collection & illegal retention of application money by persuading & inducing the complainants to invest in a luxury Retail Shop in a commercial complex with a 5 Star Hotel project promoted by M/s BAANI, RESPONDENT 1, called 'BAANI ONE' in Sector 66 on Golf Course Extension Road, GURGAON, by fraudulent active mis-selling through M/S K & T REALTY SERVICES PVT LTD. also commonly referred to as M/s K & T Associates, RESPONDENT 2, the Sole Marketing Agents)
4. That project BAANI ONE was mis-sold with criminal intent to defraud untrue enticements & assurances and wide publicity & misleading brochures by deliberately concealing the disputed land title and disputed Right to Build of M/s BAANI from the aspiring Applicants, including the Complainant despite respondents 1 & 2 being privy to the knowledge.
5. That Persuaded by the assertions & enticements preferred by the respondent the Complainants booked a Shop on payment of Rs 384000.00 Booking Money to M/s Green Heights Infrastructure Pvt Ltd, RESPONDENT 3, a company of M/s BAANI, on 07.07.2011 against Receipt given by M/s BAANI on BAANI Letterhead.

6. That after collecting the Booking Money, BAANI exited the project in april 2012 - in fact never even started the project as the land and the rights never belonged to them and for reasons not known to investors, transferred BAANI company M/s Green Heights Infrastructure Pt Ltd, RESPONDENT 3 with all the ill-gotten booking money from investors to M/S K & T REALTY SERVICES PVT LTD
7. That for 8 years, 3 months the money of the complainants has been illegally held, used or diverted for purpose other than execution & delivery of the shelved BAANI ONE, a criminal offence in itself, as if it were a free resource, for their own personal or other use.
8. That the Directors of respondent 2 have transitioned from realty services to builders under the name M/s ELAN Ltd. with office at Golf View Corporate Tower, 3rd Floor, Golf Course Road, Sector 42, Gurgaon 122009; and despite persistent repeated efforts are in continuing illegal & unlawful possession of the complainants Booking Amount of Rs.3,84,000.00/- received on 07.07.2011, which they arrogantly refuse to return with interest at SBI lending rate prevalent on 07.07.2011.
9. That marginal rate of lending from 2011-2015 was 12 % as evident from Home Loan availed by the Petitioners from the State Bank of India: Home Loan Account Statement showing that marginal rate of lending from 2011-2015 was 12 %.

Relief sought by the complainants:

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

- i. Direct the respondent to refund the amount of Rs. 3,84,000/- along with 15% interest.
- ii. Direct the respondent to pay compensation for cheating, extreme harassment and defrauding the complainant.

C. Reply by respondents:

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

REPLY ON BEHALF OF RESPONDENT NO.1

11. That on the onset it is respectfully submitted that there is no company named M/s BAANI i.e Respondent No. 1 as addressed by the Complainants, moreover BAANI is a brand name. As M/s Baani is not a legal entity as such no complaint can be filed against M/s Baani and the present complaint is liable to be dismissed on this ground alone. However the present reply is filed by Baani Technology Services Pvt. Ltd. a company part of Baani Group
12. That the present complaint is liable to be dismissed against Baani as neither it is necessary nor proper party. It is the case of the complainants that M/s Emaar MGF Ltd. allotted the Unit no. LGF-079 in the "Colonnade" vide Allotment Letter dated 31.03.2015. Complainants have filed Annexure P/4 to support their contention. Notice dated 7.6.2017 was also issued by the Complainant wherein it was categorically stated that owners & representatives of the M/s K&T Associates undertook for getting credit of INR 3,84,000/- to M/s Emaar MGF Ltd. who have taken over the project. Refer Annexure P/5 filed by Complainant. No demand

was lodged on Baani, Similarly Reminder dated 11.07.2017, 17.08.2017, 21.08.2017, 21.09.2017 were issued to Mr. Rakesh Kapoor, Mr. Ravish Kapoor, Mr. Akash Kapoor & Mr. Ashish Thapar as owners of M/s K&T Associates and M/s Green Heights Infrastructure Private Limited. The Complaint against Baani may be on the ground of misjoinder of parties may kindly be dismissed.

13. That Share Purchase Agreement dated 06.09.2011, M/s Green Heights Infrastructure Private Limited was taken over by Mr. Ravish Kapoor, Mr. Akash Kapoor & Mr. Ashish Thapar from M/s Baani Facilities Management Private Limited & other persons. The Amount of INR 3,84,000/- was received by M/s Green Heights Infrastructure Private Limited as reflected in Page 38, Annexure P/2 of the Complainant and was sole responsibility of other Respondents except Baani which is clear from Para 4 of the Share Purchase Agreement Annexed as Annexure R/1 with this Reply.
14. That scheme of Amalgamation was approved by Hon'ble High Court of Delhi vide order dated 16.05.2016 by Mr. Justice Sudarshan Kumar Mishra and in terms of which M/s Baani Facilities Management Pvt. Ltd. merged/amalgamated with M/s Baani Technology Services Private Limited. M/s Baani Facilities Management Pvt. Ltd. was one of the Share Holders of M/s Green Heights Infrastructure Private Limited. Thus, M/s Baani Technology Services Private Limited has filed the Reply on and for Baani Group.
15. That M/s Baani Group is neither the promoter nor the developer of the project, it has not failed to complete the project and as the

Project is not constructed thus question of inability to give possession is not an obligation under RERA of M/s Baani Group. The petition against Baani Group is liable to be dismissed.

REPLY ON BEHALF OF RESPONDENT NO.2, 3, 4, 5 and 6

16. That the Complainants have not explained in the Complaint filed by them the reason for delaying the filing of the complaint after 7 years nor have filed any application for condonation of delay in filing the present complaint.
17. That the alleged payments were made in 2011 and the answering respondent got notice of the same in the last week of December 2021. Thus by no stretch of imagination can it be presumed that the Answering Respondent is having accounts of 2011. That further, it is pertinent to mention here that in 2011, during the time of said alleged transactions, the Answering Respondent was controlled by other set of governing bodies, which the directors are now not in touch with.
18. That , there is not a single document on record to show that the Answering Respondent, in any manner was connected to, or had received money for the transaction as alleged in the complaint. The Complainant has deliberately suppressed various material facts which have substantial bearing on the outcome of the present proceedings.
19. That the complainant has not made Emaar MGF Land Limited a party to the present complaint and the complaint ought to be dismissed on this ground alone. the complainant has not made **M/s Emaar MGF Land Limited** a party to the present complaint through whom the unit was purchased. That thus the complaint is bad for non joinder of the parties.

E. Jurisdiction of the authority:

20. 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

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)(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.

21. 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 complainants at a later stage.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to refund the amount of Rs.3,84,000/- along with 15% interest.

22. The In the instant case, the complainant booked a unit in a project named "The One" by M/s. Baani and M/s K&T Associates in the year 2011 by paying a booking amount of Rs. 3,84,000 /- vide cheque dated 07/07 /2011 bearing no. 176330 in name of M/s Green Heights Infrastructure Pvt. Ltd., a company of M/s Baani.
23. They were then allotted a unit bearing number B-010 admeasuring 512 sq. Ft. However, after payment of this amount, the respondent and M/s Emaar MGF Ltd. went into a dispute over the title of the land on which the project was being developed. Apparently, the title lay with Emaar. Thereafter, in 2012, the respondent communicated to the complainants that the project cannot be built by them. Following the exit of M/s Baani, M/s K&T Associates and M/s Green Heights Infrastructure Pvt. Ltd

24. Hence, the project was abandoned by the builders. After exit of all the builders, M/s Emaar MGF Ltd. in whose favour the title of the land lay started construction of their own project namely 'The Colonnade'. Emaar charged a fresh booking amount for their project because the former builders did not transfer the booking amount to Emaar even after giving assurance of the same. The complainant tried contacting the builder but no avail as they had vacated their office and changed their name. This is classic case of builders irresponsible behaviour and harassment of the allottees. The complainants have been waiting for 11 years now for an amount it had paid for a home. The respondent contends that M/s. Baani is not a legal entity and thus, no complaint can lie against it. However, there exists Baani Group and Baani Technology Services Pvt. Ltd. has replied to the complaint. In view of the above mentioned facts, the case of complainants fall within the ambit of Section 18(1)(b) of the Act of 2016 as a dispute arose with regards to the title of the project land and which ultimately went in favour of M/s. Emaar MGF Ltd. the respondents are directed to refund the amount of Rs. 3,84,000/- along with interest 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).

F.2 Direct the respondent to pay compensation for cheating, extreme harassment and defrauding the complainant.


25. 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.

H. Directions issued the Authority:

26. 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.3,84,000/- received by it from the complainants along with interest at the rate of 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.
 - 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.
27. Complaint stands disposed of.

28. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2022

HARERA
GURUGRAM