

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

Complaint no. : 1107 of 2019
First date of hearing: 05.09.2019
Date of decision : 14.09.2022

Nilesh Jitubhai Patel
R/O : 26, Zaverchand Park - 2, Old Padra
Road, Near Ward no. 6, Mujmahuda,
Vadodara, Akota, Gujarat

Complainant

Versus

M/s Parsvnath Hessa Developers Private Limited
Office: Parsvnath Metro Tower,
Near, Shahdara Metro Station,
Shahdara, Delhi 110032

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Chairman
Member
Member**

APPEARANCE:

Sh. Rajesh Sharma (Advocate)
Sh. Dhruv Gupta (Advocate)

**Counsel for the complainant
Counsels for the Respondent**

ORDER

1. The present complaint dated 09.04.2019 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	"Parsvnath Exotica", sector-53, Gurgaon
2.	Nature of the project	Group Housing
3.	DTCP license no.	69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre) 52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre) 191 of 2007 dated 20.06.2007 valid up to 19.06.2024 (area 53.54 acre) 1079-1080 of 2006 dated 28.08.2006 valid up to 01.09.2019 (area 4.99 acre)
4.	RERA Registered/ not registered	Not registered
5.	Unit no.	B5-1201PH, 12 th floor, Tower B5 [page no. 13 of complaint]
6.	Unit admeasuring area	6805 sq. ft. of super area [page no. 13 of complaint]
7.	Date of booking	14.02.2012 (as alleged by the complainant, page 3 of complaint)
8.	Allotment letter	N/A
9.	Date of builder - buyer agreement	Undated BBA annexed with complaint
10.	Possession clause	<i>10 (a) Construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approval of all concerned authorities including the Fire Service Deptt.,....."</i>
11.	Date of start of construction	Not Provided



12.	Due date of possession	14.08.2014 (Calculated from the date of booking of the flat) *Note: Date of commencement of construction of the particular block is not given in file. So, due date is calculated from the date of booking of flat as per agreement)
13.	Cancellation of booking letter	N/A
14.	Basic sale price	Rs.5,78,76,525/- [page 13 of complaint]
15.	Total amount paid by the complainant	Rs 5,46,22,885/- [as per ledger account page 32 of complaint]
16.	Offer for fit outs	27.04.2018 [page 34 of reply]
17.	Occupation certificate	Not obtained

B. Facts of the complaint

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

- I. That the complainant booked a flat/pent house bearing no. B5-1201 PH, Parsvnath "Exotica" opp. Golf Course, Sector 53, Gurugram, Haryana-122002 (hereinafter referred as "the Flat/Penthouse) on 14.02.2012. The said penthouse is a part of the project named "Exotica" constructed by M/s. Parsvnath Hessa Developers Private Limited. As per the flat buyer agreement the basic price of the flat/penthouse was Rs.5,78,76,525/- excluding other charges.
- II. That the complainant made a payment of Rs. 15,00,000/- as a booking amount. Thereafter the complainant paid a sum of Rs. 3,51,15,941/- toward the basic sale price from 04.05.2012 to 30.03.2013. Furthermore, from 29.06.2013 to 01.011.2013, the complainant made a payment of Rs. 1,80,06,944/- toward the basic sale price for the above said unit in the favour of the respondent under the agreement and as part payment. It is pertinent to, mention that the complainant herein has made complete payment totalling to an amount of Rs. 5,46,22,885/-.

- III. That as per agreement clause 10(a) the respondent had to deliver the physical possession of the unit to the complainant within 24 months from the booking and a grace period of 6 months was also taken by the respondent over and above the period of 24 months as mentioned above in offering the possession of the unit.
- IV. That in view of the above, it is submitted that according to the said agreement, the complainant ought to have received the physical possession of the unit within 24 months from the date of booking of the unit or within an extended period of further 6 months subject to force majeure conditions, i.e. in August 2014. However, the period within which said possession should have been delivered to the complainant has lapsed and in addition to this almost 54 months have elapsed from the said date of delivery of possession.
- V. That there have been no such unforeseeable circumstance that prevented the respondent from fulfilling the contract that can come under force majeure conditions as such and that the extended period of is not applicable.
- VI. That it is submitted that the acts of the respondent herein have caused severe harassment both, physical and mental and that the respondent has duped the complainant of the hard earned money invested by the complainant by its act of not handing over the possession even after the stipulated period of 24 months in addition to the extended period of 6 months. Moreover, also in near future, it does not look likely that the respondent would be able to handover the physical possession of the flat unit to the complainant.
- VII. That through this complaint the complainant wishes that the principle amount deposited by him with the respondent in lieu of the agreement to

be returned back along with a compensation of 24% p.n. of the said principal amount in lieu of non-delivery of the possession of the unit. Further, an amount of Rs.1,00,00,000/- as compensation towards the mental and physical harassment caused by the respondent be also allowed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Direct the respondent to return the amount of Rs. 5,46,22,885/- to the complainant being the consideration paid by the complainant for the unit.

II. Direct the respondent to pay interest @24% per annum compounded quarterly on the amount of Rs 5,46,22,885/- being the amount by the Complainant with the respondent from the respective date of payments made by the complainant till the date on which the arrears are paid in the complainant.

III. Direct the respondent to pay Rs. 1,00,00,000/- towards the damages and Rs. 2,00,000/- towards the litigation cost.

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.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.

a. That at the outset, it is submitted that the averments made in the complaint under reply may be considered to have been specifically denied and controverted, unless specifically admitted hereinafter.

b. That it is submitted that the project construction is already completed. The competent authority has already been granted occupancy certificate for the part of the project of 11 (Eleven Towers) and for



- remaining part (5 Towers), it has been awaiting for getting occupancy certificate from the competent authority.
- c. That respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. It is submitted that out of the said 18 towers, 11 towers were duly developed and completed and the occupancy certificate has already been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that the occupancy certificate with respect to remaining 03 (Three) towers i.e. D4, D5 & D6 has already been applied for on 01.11.2011 for which review was also filed by the respondent on 24.11.2017. It is pertinent to mention that the part occupancy certificate application with respect to 02 (Two) Towers No. B1 and C4 was also applied on 13.08.2013 before DTCP. Furthermore, it is pertinent to place on the records that the review letter for OC of the above-mentioned 5 Towers (D4, D5, D6, B1 & C4) was again filed on 11.02.2019 before the competent authority. It is submitted that appropriate and relevant reports from the Office of DTP; STP; PHE, and external services have been forwarded to Department of Town & Country Planning, (HQ), Chandigarh, Haryana.
- d. The Occupancy Certificate (OC) is not being granted by DTCP for want of beneficiary interest/right in favour of the developer under the policy dated 18th February, 2015. It is pertinent to state that in principal, DTCP has accorded his approval on the transfer of the beneficiary interest in favor of the developer. However, the formal approval is in process.



- e. That tower no. B5, in which the flat of the complainant is located, almost stands completed and the respondent has offered the same him for carrying out the fit-out work. The complainant has also been offered possession for fit-outs along-with the FSA reflecting the special rebate or delay compensation from the period Sep. 2014' to December' 2017 for 40 months amounting Rs. 27,22,000/- vide letter no. PHDPL/Exotica/B5-1201PH/05 dated 27.04.2018. All the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site which is adequate with respect to the current occupancy at the project site. It is pertinent to state that due to pendency of the beneficiary interest in favour of the respondent, the delay is being caused in handing over the possession of the unit.
- f. That the approval regarding the transfer of beneficial interest & marketing rights framed on 18.02.2015 being under suspension till 31.01.2017 is pending. Hence, grant of refund of the deposited amount etc. is not justifiable & tenable at this advance stage of the project.
- g. That it is worthy to mention here that the respondent company has invested a huge amount on the construction and development of the said project and in case, the refund is allowed to the complainant, it would cause financial loss to the project as well as loss to the genuine customers in the said project.
- h. That the delay in handing over the possession of the apartment was caused only due to the various reasons beyond the control of the respondent company. Following important aspects are relevant which are submitted for the kind consideration of this authority:
1. *Lack of adequate sources of finance.*
 2. *Shortage of labour.*

3. *Rising manpower and material costs.*
4. *Approvals and procedural difficulties.*
5. *There was extreme shortage of water in the region which affected the construction works.*
6. *There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.*
7. *Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.*
8. *Recession in economy also resulted in availability of labour and raw materials becoming scarce.*
9. *There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).*

All the above problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainant that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondent.

- i. That the complainant is a chronic defaulter in making payment on time contrary to the agreed terms. In this regard, respondent company has issued many reminders to the complainant.
 - j. It is submitted that the flat buyer agreement delineates the respective liabilities of the complainant as well as the respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.
7. Copies of all the relevant documents have been filed and placed on 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

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

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.

12. 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 (Civil), 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."

13. 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. Findings on the relief sought by the complainant.

F. I Direct the respondent to return the amount of Rs. 5,46,22,885/- to the complainant being the consideration paid by the complainant for the unit.

FII Direct the respondent to pay interest @24% per annum compounded quarterly on the amount of Rs 5,46,22,885/- being the amount by the Complainant with the respondent from the respective date of payments made by the complainant till the date on which the arrears are paid in the complainant

14. The complainant booked a flat/pent house bearing no.: B5-1201 PH, in the project of respondent on 14.02.2012. As per the flat buyer agreement, , the basic price of the flat/penthouse was Rs. 5,78,76,525/- excluding other charges. The said flat/penthouse had to be completed within 24 months from the date of booking (with a grace period of 6 months) i.e., 14.08.2014. The complainant has paid all the installments on various dates aggregating to Rs. 5,46,22,885/-. Near the promised possession date and at various points, the complainant reminded the respondent to hand over the possession but it was all in vain. On 05.04.2019 the matter was filed before the authority and the site was inspected in another pending case of Mr. *Rajesh Sharma Vs. Parasnath Hessa Developers Private Limited (RERA-GRG-555-2019)* to report the work progress of the flat/penthouse. It was stated in the report that the work progress in tower B5 was approximately done up to 60-65% only as on 27.05.2019. Even after approx. 8 years from the due date of possession the construction of the flat/penthouse was not completed. Now, in the year 2022, more than 10 years has been lapsed from the date of booking the flat/penthouse. The complainant has also taken a bank loan to purchase the flat/penthouse. After more than ten years, he has neither received the possession of the said flat/penthouse, nor the huge hard-earned money back that has been paid i.e., Rs. 5.46 Cr. Approx.

15. The respondent stated in its reply that tower no. B5, in which the flat of the complainant is located, almost stands completed and the respondent has offered the same for fit-out purpose to him for carrying out the fit-out work in the flat. It is pertinent to state that the complainant has also been offered the possession of the fit-outs along-with the FSA reflecting the special rebate or delay compensation from the period Sep. 2014 to December 2017 for 40 months amounting Rs. 27,22,000/- vide letter no. PHDPL/Exotica/B5-1201PH/05 dated 27.04.2018. All the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site which is duly adequate with respect to the current occupancy at the project site. Due to pendency of the beneficiary interest in favour of the respondent, the delay is being caused in handing over the possession of the unit.
16. 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. The due date of possession as per date of booking as mentioned in the table above is 14.08.2014 and there is delay of 4 years 7 months 26 days on the date of filing of the complaint.
17. 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....."

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 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.

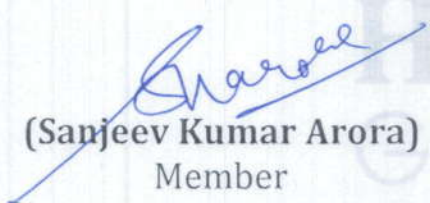
20. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 5,46,22,885/-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.

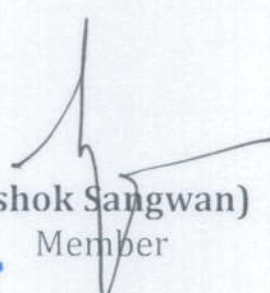
F III. Direct the respondent to pay Rs. 1,00,00,000/- towards the damages and Rs. 2,00,000/- towards the litigation cost.


22. The complainants is also seeking 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. (supra)**, 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. 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 is directed to return the amount received by him i.e., Rs. 5,46,22,885/-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.
 - 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.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022