

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

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| Complaint no. : | 1571 of 2021 |
| Date of filing complaint: | 22.03.2021 |
| First date of hearing: | 26.04.2021 |
| Date of decision : | 06.10.2022 |

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| Sh. Shashi Kumar S/o Sh. Ashok Kumar R/O: 11D-10 DDA Flats, Sector-23B, Dwarka, Delhi | Complainant |
| Versus | |
| M/s ALM Infotech City Private Limited Regd. office: B-418, New Friends Colony, New Delhi -110065 | Respondent |

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| CORAM: | |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Complainant-in-person with Sh. R.B Singh (Advocate) | Complainant |
| Sh. Pankaj Chandola & Ms. Ankita Saikia (Advocates) | 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 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 thereunder 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. | Particulars | Details | |
|-------|---------------------------------------|--|------------------------------|
| 1. | Name of the project | "ILD Grand", Sector-37C, Gurgaon | |
| 2. | Nature of project | Group housing project | |
| 3. | RERA registered/not registered | Registered vide registration no. 386 of 2017 dated 18.12.2017 | |
| | Validity status | 17.09.2019 | |
| | Licensed area | 41223.953 sqm. | |
| 4. | DTPC License no. | 96 of 2010 dated 03.11.2010 | 118 of 2011 dated 26.12.2011 |
| | Validity status | 02.11.2025 | 25.12.2024 |
| | Licensed area | 21.1804 acres | |
| | Name of licensee | M/s Jubilant Malls Pvt. Ltd. | |
| 5. | Unit no. | 26B on 25 th floor of tower Skytree A1 [As per page no. 25 of complaint] | |
| 6. | Unit area admeasuring | 1820 sq. ft. (super area) [As per page no. 29 of complaint] | |
| 7. | Allotment letter | 11.04.2017 | |

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| | | [As per page no. 68 of complaint] |
| 8. | Date of apartment buyer agreement | 11.04.2017 [As per page no. 26 of complaint] |
| 9. | Tri-partite agreement | 17.04.2017 [As per page no. 70 of complaint] |
| 10. | Total sale consideration | BSP- Rs. 77,80,500/- TSC- Rs. 91,54,200/- (without tax) [As per page no. 30-31 of complaint] |
| 11. | Amount paid by the complainant | Rs. 79,43,253/- [As alleged by the complainant on page no. 09 of complaint] |
| | | <table border="1"> <tr> <td>Amount paid by the complainant himself- Rs. 15,05,487/-</td> <td>Amount paid by the bank- Rs. 64,37,766/-</td> </tr> </table> |
| Amount paid by the complainant himself- Rs. 15,05,487/- | Amount paid by the bank- Rs. 64,37,766/- | |
| 12. | Possession clause | <p>Clause 9(i) of buyer's agreement</p> <p><i>Subject to Force Majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer the Developer proposes to complete the construction <u>within a period of 36 months computed from the date of execution of this agreement with further</u></i></p> |

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| | | <u><i>grace period of 180 days under normal circumstances.</i></u> |
|-----|------------------------|--|
| 13. | Due date of possession | 11.10.2020 [Calculated from date of agreement dated 11.04.2017 + grace period of 180 days] <i>Grace period of 180 days is allowed.</i> |
| 14. | Occupation certificate | Not obtained |
| 15. | Offer of possession | Not offered |

B. Facts of the complaint:

3. That in the due course of their business, the respondent launched a group housing project namely "ILD Grand" situated at Sector- 37C, Gurugram and floated a scheme of residential flat by way of advertisements.
4. That representatives of the respondent further assured to complete the project and handover the possession of the unit within a period of three years from the date of execution of agreement along with extendable for a further grace period of 6 months. However, the respondent has totally failed to provide possession to the complainant till date.
5. That the respondent further assured to the complainant that it would provide facility to get loan from the bank. As per the scheme of the respondent , EMI to the bank till possession would be paid by it and for showing his bonafide, it deposited certain amount of EMIs in the account of the complainant.

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6. That being lured by the schemes published by the respondent, he decided to book a flat in the above mention project and decided to visit the project of the respondent-builder along with its representative. Among various options given by the respondent as per 'lay-out plan', he opted for flat on 25th floor type 3BR bearing apartment no. 26B in Tower-Skytree (A1) for a total sale consideration of Rs. 91,54,200/- based on its good location and accordingly it showed the location of flat to him.
7. That being satisfied with the layout plans, actual and attractive views of the block/flat along with the lucrative schemes of the respondent, he decided to book the said flat on 11.04.2017 and after doing the necessary formalities as required by the respondent, he made initial payment of amount as demanded by the respondent.
8. That the booking of the aforesaid flat was confirmed by the respondent vide allotment letter dated 11.04.2017. In terms of the 'allotment letter' dated 11.04.2017 executed between the parties, the respondent contemplated to complete the development of the said residential flats within a period of 3 years from the date of execution of 'allotment letter' i.e. 11.04.2017. As such the respondent-builder was under obligation to handover the possession of the allotted unit by April 2020.
9. That the complainant made total payments of Rs. 15,05,487/- (wherein Rs.9,00,000/-, Rs. 5,00,000/- and Rs. 1,05,487/- on 13.04.2017, 20.04.2017 and 29.05.2017 respectively) and further a sum of Rs. 64,37,766/- was paid by the bank to the respondent towards

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consideration of allotted unit, with full hope that it will hand over the subject unit to him in time as contemplated by it.

10. That after passing of such period for completing the construction, he inquired from the office of respondent about the development of the project, upon which officials of the respondent always assured him that the possession of the same is to be offered very soon and also advised him to check the status of progress on its web-site. Following the advice of the respondent, he also visited the project but observed that no construction work was going on, whereas on the website it was not clearly reflecting the status of the project.
11. That the respondent has totally failed to complete the project and handover the possession of the unit till date.
12. That on 26.08.2020, the complainant sent an email to the respondent's office requesting to cancel the booking of the allotted unit due to delay in handing over the possession of the flat within time and also demanded refund of his amount with compensation but the A.R. of the respondent has neither shown bonafide reason for not returning the amount of the complainant nor responded to the complainant email's request.
13. That the respondent has taken the amount of Rs. 79,43,253/- from the complainant on the basis of their impressive projections and false promises and drained out his hard-earned savings. Thus, the respondent has committed the offence of "Cheating". As per Section 12 of the Act of 2016, the respondent provided false information on the

prospectus/brochure and under the same section he is entitled to get the entire amount refunded along with compensation. It has also committed the offence of "Criminal Breach of Trust" as it dishonestly misappropriated the hard-earned money of the complainant by making false promises and giving frivolous assurances.

14. That the respondent has also not performed their part according to the terms and conditions of the agreement as construction of the project was not completed by the respondent as per the agreed schedule and unable to hand-over the possession of the subject unit to complainant within the fixed time period.
15. That as the aforesaid project was based on "Pre-Launch System" so the complainant paid an amount of Rs. 79,43,253/- towards consideration of allotted unit as per usual course of transaction but the respondent despite of so many requests on the part of complainant, with dishonest and malafide intention has yet not handed over the possession of the unit. In view of the delay in handing over of possession, he seeks refund of the entire amount paid to it i.e. Rs. 79,43,253/- along with compounded interest @ 18% per annum from the date of deposit till the realization of the amount and Rs. 10,00,000/- as compensation towards mental harassment and agony caused by it and an amount of Rs. 1,00,000/- towards litigation charges as well as an amount of Rs. 10,00,000/- as inflation amount.

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16. That it is a settled law and in catena of judgments, the Hon'ble courts have opined that the allottee of a real estate property is legally entitled to seek refund of the amount already deposited besides interest and compensation if the builder fails to honour its commitment to complete the project in time. Once the promised date of delivery of possession is exhausted, it is the discretion of the complainant to exercise his choice to either take refund or wait for the delivery. In one of the recent judgments, the Hon'ble National Consumer Dispute Redressal Commission has asked the real estate developer to refund Rs 3.4 Crores to the home buyers and commented that the complainant cannot be asked to wait indefinitely for delivery of possession in the absence of a committed date and the act of the developers in relying on 'Force Majeure' clause while enjoying the hard earned money of the complainant for a long period without valid reason, is not only an act of deficiency of service but also amounts to unfair trade practice.
17. That the builders cannot be absolved of their contractual obligations and cannot shelter under the one-sided agreements entered between the parties who are not equal in their bargaining power. The terms of the agreement executed between the parties are unilateral, patently unfair and loaded in favour of the respondent. Further, the consent obtained from the flat buyers in unfair clauses of the agreement is not a free consent but given under undue influence and coercion, thus those terms are absolutely unfair and are not binding on the complainant. It has misappropriated the hard earned money of the gullible complainant for

its selfish use without utilizing the same for the said project resulting in almost abandoning the construction work in between for which he is liable to refund the principal amount along with an interest besides compensation for the harassment, mental agony and litigation charges.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s):

- i. Direct the respondent to refund the amount of Rs. 79,43,253/ received by the respondent from the complainant along with an interest @18% from the date of respective deposit till date of realization.
- ii. Direct the respondent to pay a sum of Rs. 1,00,000/- towards harassment and mental agony.
- iii. Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses.

19. The present complaint was filed on 22.03.2021. On 22.12.2021, the counsel for the respondent put in appearance and sought adjournment for filing of reply. The said request was allowed with a cost of Rs. 3,000/-. On 12.05.2022 i.e. the next date of hearing, the counsel for the respondent again sought short adjournment for filing of reply. The said request was allowed with a specific direction to file the reply within one week i.e. by 20.5.2022 subject to cost of Rs. 5000/- (including the previous cost of Rs. 3000/-) to be paid to the complainant, with a specific direction that, in case the reply is not filed within the time specified, the defence of the respondent would be struck off.

20. On 06.10.2022, the counsel for the respondent handed over a cheque of Rs. 5,000/- as cost imposed during the last proceeding dated 12.05.2022. However, the counsel for complainant points out that the name of the complainant in favour of whom cheque is drawn is not correct. The A.R assured that correct cheque shall be handover to the complainant by that day itself. It was also submitted that the reply has been handed over to the counsel for the complainant and undertook to file the same in the registry of the authority. However, no reply has been filed by the respondent. In view of the above, the defence of the respondent is struck off.
21. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority:

22. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.1 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.

D. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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.

23. 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.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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."

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Entitlement of the complainant for refund:

E.I Direct the respondent-builder to refund the amount of RS. 79,43,253/- received by the respondent from the complainant along with an interest @18% from the date of respective deposit till date of realization if such amount.

25. The project detailed above was launched by the respondent as group housing project and the complainant was allotted the subject unit in tower Skytree A1 on 11.04.2017 against total sale consideration of Rs. 91,54,200/-. As per clause 9(i) of the said agreement dated 11.04.2017

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executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months along with grace period of 180 days from date of execution of such agreement and that period has admittedly expired on 11.10.2020. It has come on record that against the total sale consideration of Rs. 91,54,200/- the complainant has paid a sum of Rs. 79,43,253/- to the respondent including an amount of Rs. 64,37,766/- disbursed by the bank on account of loan.

26. Due to delay in handing over of possession by the respondent-promoter, the complainant-allottee wishes to withdraw from the project of the respondent and has filed the present complaint. Thus, keeping in view the fact that the allottee- complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on its failure 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 agreement for sale as mentioned in the table above is 11.10.2020 and there is delay of more than 5 months 11 days on the date of filing of the complaint i.e. 22.03.2021.
27. 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 they have 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 allottee 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....."

28. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter 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 (Supra)** decided on 12.05.2022 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

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) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of

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agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the complainant/allottee, as the complainant/allottee 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.

29. 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.
30. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 79,43,253/- 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 rules 2017 *ibid*.
31. It is observed that out of total amount paid by the complainant, it includes an amount of Rs. 64,37,766/- disbursed by the bank as per tri-partite agreement dated 17.04.2017. In view of aforesaid circumstances, the respondent-builder is further directed that out of total amount so assessed, the amount paid by the bank/payee be refunded in the account

of bank and the balance amount along with interest would be refunded to the complainant.

E.II Direct the respondent to pay a sum of Rs. 1,00,000/- towards harassment and mental agony.

E.III Direct the respondent to pay a sum of Rs. 50,000/- as litigation expenses.

32. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. 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., 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 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:

33. 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:

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- i) The respondent/promoter is directed to refund the amount i.e. **Rs. 79,43,253/-** received by him 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 amount.
 - ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
 - iii) The respondent-builder is directed that out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest would be refunded to the complainant.
 - iv) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
34. Complaint stands disposed of.
35. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022