

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

Complaint no. : 4949 of 2020  
Date of filing complaint: 12.01.2021  
First date of hearing : 01.02.2021  
Date of decision : 20.10.2022

Hanna Minz

**R/O:** H.No.1247/A, Near Panchwati South  
Railway Colony, P.O. Chutia, Anandpur  
Ranchi, Jharkhand- 834001.

**Complainant**

Versus

Experion developers Private Limited  
**Regd.office:** F-9, First Floor, Manish Plaza -1,  
Plot no. 7, MLU Sector 10, Dwarka,  
New Delhi- 110075.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Vivek Kilhor

Counsel for the complainant

Shri Arun Kumar Sharma

Counsel for the respondent

Ms. Srijita Kundan and

Shri Sanjeet Kumar Thakur

Authorised representative  
of 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.	Heads	Information
1.	Project name and location	"THE HEART SONG", Sector 108, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	a) DTCP license no	38 of 2010 DATED 14.05.2010
	b) License valid up to	13.05.2022
	c) Name of the licensee	M/s S.K.N. Developers pvt. Ltd. and M/s K.S.N. Real Estate Developers
	d) Licensed area	15.025 acres
4.	RERA registered/not registered	<b>Registered vide no. 113 of 2017 dated 28.08.2017 (Phase 4, Pocket D- Block D1, D2 &amp; D3)</b> <b>Valid up to 27.08.2018</b>
5.	Date of allotment letter	04.12.2018 [Page 10 of complaint]

12



6.	Unit no.	B5/ 1003 (Page 10 of complaint)
7.	Unit admeasuring	1758 sq. ft. (Page 10 of complaint)
8.	Date of execution of builder buyer agreement	Not executed
9.	Total consideration	Rs. 1,08,98,524/- [As per applicant ledger dated 05.09.2019, page 74 of reply]
10.	Total amount paid by the complainants	Rs. 5,00,000/- (As per applicant ledger dated 05.09.2019, page 74 of reply)
11.	Possession clause	Cannot be ascertained as the BBA is not executed
12.	Due date of delivery of possession	Cannot be ascertained
13.	Occupational certificate	02.03.2017 [Page 72 of reply]
14.	Offer of possession	Not offered
15.	Reminder letters	03.06.2019 (Page 66 of reply), 17.07.2019(Page 68 of reply)
16.	Cancellation letter	16.09.2019 [Page 70 of reply]

**B. Facts of the complaint:**

3. That complainant booked a residential flat in the project of the respondent namely "The Heartsong", Sector-108, Gurugram, Haryana



instead of project in Ranchi, Jharkhand. The representatives of the promoter made utterly false representations that promoter shall be launching the project in Ranchi, Jharkhand and showcased a fancy and greeny picture which depicted that the project will be developed as state of the art and one of its kind with all modern amenities and facilities and thereby induced the complainant to pay the booking amount of Rs. 5,00,000/- on 05.11.2018 but the respondent issued provisional allotment and receipts dated 04.12.2018 and complainant was shocked to find that flat was booked for the project in Sector-108, Gurugram, Haryana instead of project in Ranchi.

4. That the complainant after being influenced by the rosy picture and misrepresentation put forth by the representatives of the respondent/promoter was induced to book a flat of the respondent/promoter. That latter on respondent started to convenience complainant that the project is a premium high-end multi-storey project being developed with the assistance of internationally renowned architects and all necessary sanctions and approvals had been obtained to complete the same within the promised time frame. It was also represented that the project in Ranchi has been delayed so respondent made the booking of the apartment in another project ie. The Heartsong, Sector-108, Gurugram, Haryana.
5. That the complainant was further induced to sign pre-printed blank format and respondent stated that apartment buyer's agreement will be signed later. That by virtue of provisional allotment letter, the respondent allotted unit bearing no. B-5/1003 having sale area of 163.32 sq. mtr. /1758 sq. ft in group housing project, at "The Heart Song", Sector-108, Gurugram. The complainant has paid a total sum of



Rs. 5,00,000/- towards the allotment of flat in Ranchi, Jharkhand but the respondent made the booking in The Heartsong, Sector-108, Gurugram, Haryana.

6. That after issuance of provisional allotment letter dated 04.12.2018, the complainant apprised about miss deeds and misrepresentation done by the representatives of the promoters. On this, the complainant was assured that amount shall be refunded to her in that bank account from which complainant has made the payment. The respondent further asked complainant to send an email which should state that "complainant will not able to execute the purchase agreement and due to personal reasons I am not in position to pay the remaining amount and hence requested to pay back the booking amount" and the complainant sent the email on 25.07.2019, but to the utter surprise of the complainant, the respondent reverted the email on 01.08.2019 stating that "in case of cancellation, the entire amount stands forfeited."
7. That the act and conduct of the respondent shows their dishonest intention, the respondent has grabbed the hard-earned money of the complainant by making a false representation of project to be constructed in her hometown Ranchi, Jharkhand but after taking the booking amount, the respondent made booking in "The Heartsong', Sector-108, Gurugram, Haryana project.
8. That the respondent has misrepresented the complainant about the location of the project, by which respondent breach the trust and faith of the complainant and illegally grabbed the hard-earned money of complainant. That the respondent has not acknowledged the requests

A



of the complainant regarding misrepresentation of the project. That the respondent misrepresents regarding the location of the project. The complainant is entitled for refund of its entire amount paid to the Respondent along with interest @ 18% p.a. as well as compensation/penalty.

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

9. The complainant has sought following relief(s)

- i. Direct the respondent to refund the amount of Rs. 5,00,000/- along with the interest as per rule says.
- ii. Cost of litigation Rs.1,00,000/- and compensation cost of Rs.30,00,000/-

**D. Reply by respondent:**

10. The respondent by way of written reply made the following submissions:

- i. That the complainant has no cause of action to file the present complaint under the Act/Rules. It is vehemently denied that there is any misrepresentation in respect of the location of the project, hence the question that the booking was done for project in Ranchi is false, frivolous and bogus.
- ii. That the complainant seems to be an educated woman who after understanding all the terms and conditions of the booking application signed and submitted the booking application form and the cover page of the booking application and the very first line of the booking application form, and the heading of the booking application form clearly states that the booking application is regarding the project named the HEART SONG in

A



Sector 108, Gurgaon and the same has been repeated quite a few times in the said booking application form, as such concocting the story of some project in Ranchi is completely false, frivolous and bogus.

- iii. That the respondent repeatedly gave time and opportunity for depositing the accrued instalments as per the payment plan opted by the complainant, but the complainant despite having notice and knowledge of her obligation to make due payments as per the said payment plan, the complainant wilfully, malafidely, wrongfully withheld the instalments and the respondent was left with no option but to cancel the allotment as per the agreed terms and conditions of the booking application. The respondent had every right to forfeit the amount as per the agreed terms and conditions of the above said booking application and the complainant is in default of Rs.9,35,826/- towards the amount to be forfeited which the respondent is entitled for recovery as per the agreed terms and conditions of the booking application and as mentioned in the cancellation letter dated 16.09.2019.
- iv. That the respondent duly sent not only the provisional allotment letter but also apartment buyers' agreement, but the complainant failed to sign and submit the copy of apartment buyers agreement.
- v. That the respondent has constructed/developed the project as per agreed specifications and had obtained occupation certificate for apartment in question even before the booking made by the complainant. The complainant is bound by the terms and conditions of the allotment and the documents executed by her.

A

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

12. 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.*

13. 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.
14. 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 judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

A



15. 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 respondent**

**F.I Direct the respondent to refund the entire amount.**

16. The complainant was allotted unit no. 1003 on of tower B5 in the project "The Heartsong" by the respondent builder for a total consideration of Rs. 1,08,98,524/- and she paid a sum of Rs. 5,00,000/- which is approx. 4.5 % of the total sale consideration. The builder buyer's agreement was not executed between parties in respect of the allotted unit and the due date for completion of the project cannot be ascertained. However, the respondent has obtained the occupation certificate from the competent authority on 02.03.2017.
17. The respondent had sent reminder letters dated 03.06.2019 and 17.07.2019, to the complainant for making payment of outstanding dues. However, the complainant has failed to pay amount due against the allotted unit. The complainant continued with default and again failed to make payment even after receipt of final reminder letter. Subsequently, the cancellation notice was served to the complainant by the respondent on 16.09.2019 cancelling the allotment of the subject unit due to non-payment of outstanding amount as per the payment plan.
18. The authority is of view that as per section 19 (6) and (7) of the Act, the allottee is under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. The

A



complainant has defaulted in making payments even after issuance of various reminder letters, which led to cancellation of the unit vide letter dated 16.09.2019. Sufficient opportunities have been granted by the respondent to the complainant. Moreover, the said unit was cancelled on 16.09.2019 after obtaining occupation certificate on 02.03.2017. In view of the above, the authority is of considered view that the cancellation done by respondent is valid in the eyes of law.

19. As per clause (19) titled as 'Timely Payments' of application form entered into between the parties, the promoter is entitled to forfeit 15% earnest money on account of cancellation. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

*"5. AMOUNT OF EARNEST MONEY*

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

20. In view of aforesaid circumstances, the respondent should have refunded the amount paid by the complainant after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 on the date of cancellation i.e. 16.09.2019. However, the complainant has paid

A



an amount of Rs.5,00,000/- against a total consideration of Rs. 1,08,98,524/- constituting 4.5% of total consideration, which is less than 10% of total consideration. Hence, no direction to this effect can be given.

**F.II Direct the respondent to pay an amount of Rs. 1,00,000/- for mental harassment and trauma.**

21. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is at liberty to approach the adjudicating officer for seeking the aforesaid relief.
22. Complaint stands disposed of.
23. File be consigned to the registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

V.I - 3  
(Vijay Kumar Goyal)

Member

Dated: 20.10.2022