

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

Date of decision: 15.12.2022

| NAME OF THE BUILDER |              | M/S BRIGHT BUILDTECH PVT. LTD.                |   |
|---------------------|--------------|---|---|
| PROJECT NAME        |              | "Woodview Residences"                         |   |
| S. No.              | Case No.     | Case title                                    | APPEARANCE  |
| 1                   | CR/1309/2021 | Amar singh Vs Bright Buildtech pvt. Ltd.      | Anshul Yadav and<br>Deeptanshu Jain ,<br>Dhruv Gupta    |
| 2                   | CR/2409/2021 | Rohit Jain Vs Bright Buildtech pvt. Ltd.      | Vikas Sharma and<br>Deeptanshu Jain ,<br>Dhruv Gupta    |
| 3                   | CR/459/2021  | Nalnish Agarwal Vs Bright Buildtech pvt. Ltd. | Iuv Kumar and<br>Deeptanshu Jain ,<br>Dhruv Gupta       |
| 4                   | CR/1647/2021 | Ekta Agarwal Vs Bright Buildtech pvt. Ltd.    | Nishant Dwivedi and<br>Deeptanshu Jain ,<br>Dhruv Gupta |

**CORAM:**

Shri Ashok Sangwan

**Member**

Shri Sanjeev Kumar Arora

**Member**

**ORDER**

1. This order shall dispose of all the eight complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017





(hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, “Woodview Residences”, (plotted colony) .The terms and conditions of the buyer’s agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply status, unit no.s, date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| <b>Project:</b> Woodview Residences, Sector-89 &90, Gurugram, Haryana   |  |              |                                |                          |                        |   |               |
|---|--|--------------|--------------------------------|--------------------------|------------------------|---|---------------|
| <b>Possession clause:</b> Clause 5(1)   |  |              |                                |                          |                        |   |               |
| The company shall endeavour to complete the construction of the building block in which the dwelling unit is situated within 36 months, with a grace period of 6 months from the date of issuance of allotment letter provided that all amounts due and payable by the buyer has been paid to the company in timely manner. |  |              |                                |                          |                        |   |               |
| <b>Grace period clause:</b> 5.2   |  |              |                                |                          |                        |   |               |
| Not Allowed   |  |              |                                |                          |                        |   |               |
| Sr. no  | Complainant No., Case Title, and Date of filing of complaint | Reply status | Unit No. and area adme serin g | Date of allotment letter | Due date of possession | Total sale consideration and amount paid by the Complainant (s) | Relief Sought |





|    |   |                              |   |            |            |   |                           |
|----|---|------------------------------|---|------------|------------|---|---------------------------|
| 1. | CR/1309/2021 titled as Amar singh Vs Bright Buildtech pvt. Ltd.<br><br>DOR-08.03.2021     | Reply received on 24.09.2021 | B-89, upper ground floor, admeasuring 1090.00 sq. ft. | 26.01.2015 | 26.01.2018 | TSC:<br>Rs.72,17,937/-<br>AP:<br>Rs.<br>23,96,238/- | Refund of the paid amount |
| 2. | CR/2409/2021 titled as Rohit Jain Vs Bright Buildtech pvt. Ltd.<br><br>DOR-10.06.2021     | Reply received on 21.08.2021 | B-88, Upper ground floor, admeasuring 1090 sq. ft.    | 11.02.2015 | 11.02.2018 | TSC:<br>Rs.72,17,937/-<br>AP:<br>Rs.24,20,442 /     | Refund of the paid amount |
| 3. | CR/459/2021 titled as Nalnish Agarwal Vs Bright Buildtech pvt. Ltd.<br><br>DOR-22.01.2021 | Reply received on 23.08.2021 | B63 second floor admeasuring 1336 sq. ft.             | 12.02.2015 | 12.02.2018 | TSC:<br>Rs.79,08,751/-<br>AP:<br>Rs.17,00,000 /     | Refund of the paid amount |





|    |   |   |  |                |                |   |                              |
|----|---|---|--|----------------|----------------|---|------------------------------|
| 4. | CR/1647/<br>2021<br>titled as<br>Ekta<br>Agarwal<br>Vs Bright<br>Buildtech<br>pvt. Ltd.<br>DOR-<br>09.04.202<br>1 | Reply<br>received<br>on<br>21.08.20<br>21 | E 52,<br>admea<br>suring<br>358<br>sq. ft. | 11.02.2<br>015 | 11.02.<br>2018 | TSC: Rs.<br>1,55,90,275/-<br>AP:<br>66,16,613/- | Refund of the<br>paid amount |
|----|---|---|--|----------------|----------------|---|------------------------------|

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviations Full form**

DOR- Date of receiving complaint

SA- Subsequent allottee

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the allottees against the promoter on account of violation of the apartment buyer's agreement executed between them in respect of allotted units for not handing over the possession of the same by the due date, seeking award of refund the entire paid-up amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the



promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. So, Out of the above-mentioned cases, the facts of the lead case of **CR/1309/2021 titled as Amar Singh Vs M/s Bright Buildtech pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

7. The particulars of the project, the amount of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads                            | Information  |
|--------|----------------------------------|--|
| 1.     | Name and location of the project | "Woodview Residences", Sector 89-90, Gurugram, Haryana |
| 2.     | Nature of the project            | Plotted Colony   |
| 3.     | Area of the project              | 101.081 acres  |
| 4.     | DTCP License                     | 59 of 2013 dated 16.06.2013                            |
|        | valid up to                      | 15.07.2021   |
|        | Licensee name                    | Orris Land & Housing Pvt. Ltd. and 42 others           |
| 5.     | RERA registered/ not registered  | Registered vide no. 34 of 2020                         |
|        | Valid up to                      | 16.10.2020   |
| 6.     | Unit no.                         | B-89, upper ground floor, admeasuring 1090.00 sq. ft.  |
| 7.     | Super area admeasuring           | 1090 sq. ft.   |
| 8.     | Allotment Letter                 | 26.01.2015   |



|     |  |  |
|-----|--|--|
| 9.  | date of buyer's agreement                      | 21.08.2015   |
| 10. | Possession clause                              | Clause 5(I)<br>The company shall endeavour to complete the construction of the building block in which the dwelling unit is situated <b>within 36 months, with a grace period of 6 months from the date of issuance of allotment letter</b> provided that all amounts due and payable by the buyer has been paid to the company in timely manner |
| 11. | Total consideration                            | Rs.72,17,937/-   |
| 12. | Total amount paid by the complainant           | Rs.23,96,238/  |
| 13. | Due date of delivery of possession             | 26.01.2018   |
| 14. | Date of offer of possession to the complainant | Not obtained   |
| 15. | Occupation certificate                         | Not offered  |

### B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

8. That the respondent no. 1, M/S Bright Buildtech Pvt. Ltd. (A Lotus Group Of Company) is a company registered under the Companies Act, 1956, as amended, having its registered office at D - 107, Panchsheel Enclave, New Delhi - 110017, and having corporate office at Lotus Business Park, Building Block - B, Plot No. 8, Sector 127, Noida 0 201304 and respondent no. 2 Orris Infrastructure Pvt. Ltd ., is a company registered under the Companies Act, 1956, as amended, having its registered office at J-10/5,Dlf Phase-2, Mg Road, Gurugram, Haryana-122002





9. That the respondent planned to construct / create a Plotted Colony named as "Woodview Residences" (hereinafter referred to as said Project / complex / plotted Colony) in the year 2013 in Sector 89 & 90, Gurgaon. The details of the same has been clearly mentioned in the builder buyer agreement
10. That the complainant based on promises made by the respondent applied to the company for allotment of the Dwelling Unit in the said complex and an Application Form dated 20/10/2013 was executed between the complainant and the respondent (hereinafter called as the said Application Form). That the respondent on the basis of the same allotted a unit bearing No. B - 89, UGF, Tower - B, in the said complex , the said application form
11. That at the time of signing the abovesaid Application Form the complainant was made to pay an amount of Rs. 8,00,000/- (Rupees Eight Lakhs Only) and the said amount was to be treated as the booking amount for the above-mentioned dwelling unit.
12. That the respondent has acknowledged the above said payment vide the payment acknowledgement receipt issued in the name of the complainant dated 02.04.2014. That the intentions of the builder were clear from the initial phase of the transaction when the above said receipt was issued after a delay of five months. That soon after the passage of time the builder demanded another payment of Rs. 5,75,386/-, the builder issued a payment acknowledgment slip against the above said payment dated 02.06.2014



13. That thereafter, the respondent issued an allotment letter dated 16.01.2015 to the complainant where in the respondent has clearly mentioned and acknowledged that an application dated 01.11.2013 was executed between the complainant and the respondent for the allotment of an independent floor in the aforesaid upcoming plotted colony. That it is pertinent to mention here that the complainant has already been allotted the dwelling unit in the year 2013 and just to delay the phase and to extort hard earned money from the complainant the above said allotment letter was issued and the complainant was made to pay an amount of Rs. 4,20,852/- & Rs. 6,00,000/-, the said payment has been acknowledged by the builder vide the payment acknowledged slips dated 27.07.2015 issued in the name of the complainant.
14. That the complainant has made all the payments timely as demanded by the builder in accordance with the terms and conditions agreed between the parties at the time of signing the said application form. That all the payment acknowledgment slips issued to the complainant.
15. That it is pertinent to mention that in the month of July 2015 the complainant has made a total payment of Rs. 23,96,238/- as and when demanded by the builder. That after receiving the above said payment, a builder buyer agreement dated 21.08.2015 was executed between the complainant and the respondent bearing Reference No. WR-0019.
16. That as per clause 5 of the terms and conditions i.e. clause 5 of the said buyer agreement signed on 21/08/2015, it was promised by the respondent that the possession of the said Unit will be delivered to the





complainant within 36 months from the date of allotment Letter. That the respondent has cheated the complainant here by tweaking the facts to harass the innocent complainant. that the said dwelling unit was allotted by the respondent to the complainant vide the Application Form dated 20/10/2013 and the respondent with the intention to defraud the complainant issued an allotment letter dated 16th January 2015. That the complainant has made timely payments as asked by the respondent, but the respondent has failed to keep the promises made by him as per the terms and conditions of the said agreement. That the respondent has failed to deliver the possession of the said flat within 36 months which expired on OCTOBER 2016

17. That it is most critical to point out that the said Builder has been alleged of fraud and misrepresentation in various forums. one such allegation is that he has not yet deposited EDC & IDC charges to the appropriate government authorities but has yet received it from the complainant.
18. That the complainant has time and again requested the respondent to hand over the possession of the said dwelling as promised by them at the time of signing the said application form or to refund the amount paid by the complainant, but the respondent being affluent and influential player in real estate choose not to respond or take any action regarding the said requests. The complainant has personally made numerous visits to the office of the builder at the site in Sector 89 & 90, Gurgaon. The Complainant was given assurances by the officials of the respondent that the possession will be handed over timely and the construction is going at a good pace



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

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

- I. Direct the respondent to refund Rs. 23,96,238/- paid by him along with interest.
- II. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainant

20. On the date of hearing, the authority explained to the respondent/ promoters 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 respondents**

**The respondents by way of joined written reply dated 24.09.2021 made the following submissions: -**

21. That the complainant in his own discretion and decision has paid the booking amount, and it is correct that the said amount is to be treated as the booking amount for the above-mentioned dwelling unit, and the complainant willfully approached the answering Respondent seeking a good investment opportunity.
22. the complainant has violated the terms of the payment plan and ignored/delayed several demands raised by the respondent as per the terms of the payment plan.
23. That the complainant has violated the terms of the payment plan and ignored/delayed several demands raised by the Respondent as per the terms of the payment plan.





24. That that the complainant has presented the said fact in concocted manner with malicious intent and therefore, same cannot be admitted, however, it is admitted that the BBA was executed on 21.08.2015.
25. That the dwelling unit was allotted to the complainant vide allotment letter dated 16.01.2015 and the period of delivering of possession shall be calculated as per the term of the builder buyer agreement only.
26. That that the complainant has been serious offender of the deadlines set by the respondent in terms of the payment plan and has delayed in the payment of the several demands raised by the respondent. It is submitted that the date for delivery of possession was July, 2018 and not October 2016, the complainant is put to strict proof in this aspect. However, it is submitted that the delay which has occurred in completion of the project is due to force majeure conditions, which are beyond the control of the answering Respondent.
27. That the construction of the Project is 70% complete and the Respondent undertake to deliver the possession by July 2021, therefore, the prayer for refund cannot be satisfied.
28. All other averments made in the complaint were denied in toto.
29. Copies of all relevant documents have been filed and placed on record. There authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

**E. Jurisdiction of the authority**



30. The plea of the respondents 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**

31. 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**

32. 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.*

33. 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.

34. 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 © 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."*

35. 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.1 Direct the respondents to refund Rs. 27,69,198/- paid by the complainant along with interest.**

36. 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.
37. The due date of possession as per agreement for sale as mentioned in the table above is **26.01.2018**
38. 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 as under:-*





*“.... 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.....”*

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)** 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*

39. 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 the 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.

40. 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.

41. The authority hereby directs the promoter to return to the allottees the amount received by him i.e., Rs.23,96,238/ with interest at the rate of 10.35% (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*.

**G. Directions of the authority**

46. 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/promoter is directed to refund the amount received by them from the complainant / allottees in each case along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from



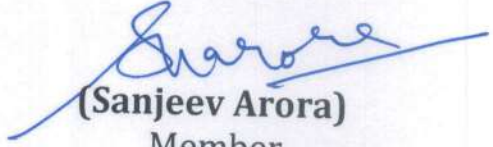
the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
47. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.
48. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
49. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
50. Files be consigned to registry.

  
(Ashok Sangwan )

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Sanjeev Arora)

Member

Dated: 15.12.2022



