



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

Complaint no.	544 of 2019
Date of filing complaint	11.02.2019
First date of hearing	13.09.2019
Date of decision	08.09.2022

Mr. Hari Ram Gupta, S/o Late Sh. Tara Chand <b>R/o:</b> F-2611-B, Palam Vihar, Gurugram, Haryana-122017.	<b>Complainant</b>
---	--------------------

Versus

M/s Landmark Apartment Pvt. Ltd. <b>Registered Office:</b> Landmark House 65, Sector 44, Gurugram, Haryana	<b>Respondent</b>
---	-------------------

**CORAM:**

Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Ms. Priyanka Agarwal (Advocate)	Complainant
Shri. Amarjeet Kumar (Advocate)	Respondent

**ORDER**

- 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 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. N.	Particulars	Details
1.	Name of the project	"Landmark The Residency ", Sector 103, Gurugram, Haryana
2.	Project area	10.87 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	33 of 2011 dated 19.04.2011 valid up to 15.04.2021
5.	Name of licensee	Basic Developers Pvt. Ltd and 2 others
10.	RERA Registered/ not registered	Not Registered
12.	Unit no.	B-56, 5 <sup>th</sup> floor (Page no. 53 of reply)
13.	Unit area admeasuring	1710 sq. ft. (Page no. 50 of complaint)
14.	Date of execution of agreement to sell	24.12.2013 (Page no. 26 of the complaint)
16.	Possession clause	<b>10.1 Possession</b>



		The developer based on its present plans and estimates and subject to all exceptions, contemplates to complete construction of the said apartment within a period of four years(48 months) from the date of execution of this agreement. (Page 37 of the complaint).
17.	Due date of possession	24.12.2017
18.	Total sale consideration	Rs.86,31,050/- (As per on page 53 of reply)
19.	Amount paid by the complainant	Rs.62,13,713 /- (As alleged by the complainant on page 6 of complaint)
20.	Cancellation letter	12.06.2014 (As pe on page 50 of complaint) <b>INVALID CANCELLATION SINCE THE UNIT WAS SUBSEQUENTLY OFFERED FOR POSSESSION.</b>
20.	Occupation certificate /Completion certificate	25.09.2020 (As per on page 100 of reply)
21.	Offer of possession	15.03.2021 (As per on page 103 of reply)

#### B. Facts of the complaint:

- The complainant booked a unit in the project namely "Landmark The Residency", Sector 103, Gurugram, Haryana. A unit bearing no. B-56,5<sup>th</sup> floor admeasuring 1710 sq. ft. in the project detailed above was allotted to him for total sale consideration of Rs.

86,31,050/-. Subsequently, a buyer's agreement was executed between the parties on 24.12.2013 and as per the same, the possession of the subject unit was to be handed over to him on 24.12.2017.

4. The complainant paid a total sum of Rs. 62,13,713/- of the basic sale price i.e. Rs. 65,40,750/-. He visited the project site and saw that the respondent was not doing considerable work even after extracting so much of money. The complainant, thus, decided to not pay the sum against demand raised on 14.04.2014.
5. On 12.06.2014, a cancellation letter with respect to the concerned unit was sent to the complainant.
6. After issuance of the letter, the complainant made repeated requests to refund the amount paid by the complainant with interest@ 18% p.a from the date of cancellation but no response was received from the respondent. The complainant even wrote reminder letters dated 08.01.2018 and 24.11.2018 but the amount has not been refunded till date.
7. It is pertinent to mention that on 15.03.2021 the offer of possession was made by the respondent and hence, the cancellation is considered to be invalid.
8. The respondent has indulged in all kinds of tricks and blatant illegality, misrepresentation and intentional mental and physical harassment to the complainant and his family. The complainant is thus left with no choice but to approach this authority for refund of his hard-earned money.

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



9. The complainant has sought following relief(s):
- To direct the respondent to refund the amount paid by him i.e., Rs. 62,13,713/- along with pendent lite and future interest.
  - Pass such penalty and further orders as this Hon'ble Authority for non-execution of FBA within time frame.

**D. Reply by respondent:**

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

- The complainant booked a unit in "Landmark the Residency", Sector 103, Gurugram and was allotted unit B- 56, 5<sup>th</sup> floor admeasuring 1710 sq. ft. for total consideration of Rs.86,31,050/-.
- The complainant paid a total sum of Rs. 63,02,570/-. He made default in making the payments after several demand letters. On 12.06.2014 the respondent issued final reminder cum cancellation letter to the complainant on account of non-payment.
- It is further submitted that the letter dated 12.06.2014 cannot be treated as cancellation letter , as no formal letter of cancellation was issued to the complainant .Thereafter demand letter dated 31/07/2014 was issued against the unit of the complainant , requesting for the payment Rs. 4,60.050/-. The complainant had approached the respondent seeking time for the payment of the dues/charges on account of some financial difficulty and hence, the it did not elect to cancel the unit.
- That the respondent again raised the demand due on completion of electrical conducting vide demand letter dated 03.11.2017 but the

complainant again chose not to make payment for reasons best known to him.

14. That the complainant was even offered possession vide letter dated 15.03.2021 but he has failed to take over the possession of the said unit and the occupation certificate was issued to the respondent project on 25.09.2020.
15. All other averments made in the complaint were denied in toto.
16. 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.

#### **Jurisdiction of the authority**

The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E. I Territorial jurisdiction**

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

##### **E. II Subject matter jurisdiction**



17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. 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.

**G. Entitlement of the complainant for refund:**

- G.1 Direct the respondent to refund of amount of Rs. 59,98,600/- paid along with interest along with interest calculated at the rate of 18% p.a.**

19. The complainant was allotted the subject unit by the respondent for a total sale consideration of Rs. 62,63,920/- against payment of Rs. 5,00,000/- as booking amount. A space buyer's agreement dated 20.08.2013 was executed between the parties about that unit. The due date of possession of the subject unit was calculated as per clause 10.1 where the possession of the unit was to be delivered to



the allottee within 42 months from the date of execution of the agreement, which comes to be 24.12.2017. After execution of space buyer's agreement, the complainant started depositing various amounts against the allotted unit and paid a sum of Rs. 62,13,713/- in all.

20. 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 agreement for sale as mentioned in the table above is 24.12.2017 and there is delay of 1 year 1 month 18 days on the date of filing of the complaint.
21. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received on 25.09.2020, after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and he has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount

received by him from the allottee in respect of that unit with interest at the prescribed rate

22. 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. (2021-22(1) RCR (c),35** 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*

23. 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.

24. 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 section 71 read with section 31(1) of the Act of 2016.
25. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 62,13,713/- 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*.

#### **H. Directions of the Authority:**

26. 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.
- i. The respondent/ promoter is directed to refund the amount of Rs.62,13,713/- received by it 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 deposited amount.

- ii. 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 receivable shall be first utilized for clearing dues of the allottee-complainant.
- iii. A period of 90 days is given to the respondent to comply with the orders of authority and failing which legal consequences would follow.
27. Complaint stands disposed of.
28. File be consigned to the Registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.09.2022**

**HARERA**  
**GURUGRAM**