

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

Complaint no. :	1572 of 2022
Date of filing complaint:	21.04.2022
First date of hearing:	12.07.2022
Date of decision :	04.10.2022

Smt. Bharti Pathela W/o Sh. Ravinder Kumar Pathela R/O: 1/2, Shanti Niketan, New Delhi- 110021	Complainant
Versus	
1. M/s Advance India Projects Limited Regd. office: The Masterpiece, Golf Course Road, Sector - 54, Gurugram - 122002	Respondent
2. Rishi Raj Office: A-410 411, Emaar Digital Green, golf Couse Extension Road, Sector- 61, Gurugram	

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Ramneesh Khanna (Advocate)	Complainant
Sh. Harshit Batra (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 provisions 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.no.	Particulars	Details
1.	Name of the project	"AIPL Autograph", Sector- 66, Gurgaon
2.	Nature of project	Cyber Park Colony
3.	RERA registered/not registered	Registered vide registration no. 49 of 2021 dated 10.09.2021
	Validity status	08.04.2026
4.	DTPC License no.	112 of 2012 dated 27.10.2012
	Validity status	04.06.2022
	Licensed area	6.1275 acres
	Name of licensee	Om Prakash & Others
5.	Application dated	June 2018 [As per page no. 16 of complaint]
6.	Unit no.	Not allotted
7.	Unit area admeasuring	576 sq. ft. [As alleged by the complainant on page no. 16 of complaint]

8.	Allotment letter	Not allotted
9.	Date of apartment buyer agreement	Not executed
10.	Total sale consideration	Not provided on record
11.	Amount paid by the complainant	Rs. 5,00,000/- [As per page no. 16 of complaint]
12.	Possession clause	NA
13.	Due date of possession	NA
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Surrender dated	17.01.2021 [As per page no. 20 of complaint]
17.	Reminders dated	Dated- 25.02.2021, 20.03.2021, 23.03.2021, 30.03.2021, 05.04.2021, 09.04.2021, followed by legal notice dated 24.12.2021

B. Facts of the complaint:

- That in the year 2018, the respondent-builder approached the complainant and offered her to invest in the upcoming project AIPL Autograph in Sector 66 Gurgaon (hereinafter referred to as the said "Project") and represented that the said project would be launched within next 3 months, i.e., by September/October 2018.
- That it was assured to her that it had secured all necessary sanctions and approvals from appropriate authorities with respect to said

project and the same is registered under Real Estate (Regulation and Development) Act, 2016.

5. That on the representations made by respondent-builder and its agent/channel partner Mr. Rishi Raj (Transaction Point/Rishi Raj-respondent no. 2), the complainant booked a unit and deposited advance payment of Rs. 5,00,000/- through cheque in June 2018. A written confirmation dated 22.08.2018 was also received for unit nos., size, BSP, etc. in this regard.
6. That the complainant continuously followed up with the respondents, and every time, the response received was that the construction of the said project would start soon. Finally, frustrated by lackadaisical response of the respondents, she was compelled to write an email dated 17.01.2021 seeking refund of the deposited amount along with 18% interest and informed that she was no longer interested in the said project due to the gross delay and the opaque way of respondent's functioning. It was also informed that the concerned channel partner/respondent no.2, has stopped responding to calls and emails of the complainant. An email dated 25.02.2021 was also written to the registered customer care of the respondent-builder as the amount was collected and received by it in its name and thus, it was its responsibility to refund the same.
7. That the complainant was shocked to know that the respondents were collecting advance against the said launching project even without

having a RERA registration which is against the law, post introduction of Act of 2016. No company can accept advance without having the concerned project registered with the RERA Authority. This is a serious breach of the provisions of the Act by both the respondents.

8. That the customer care of the respondent-company informed the complainant that the concerned member of the sales team, Mr. Kamal Grover, relationship manager, would get in touch for necessary discussion and provided email id of Mr. Kamal Grover, (kamal@aipl.com) vide email dated 16.03.2021. It was also informed vide email of the same date that the channel partner/ respondent no. 2 would connect with the complainant on 16.03.2021 itself.
9. That as the respondent no. 2 did not connect with the complainant on 16.03.2021, she was once again constrained to bring the same to the respondent company's attention vide email dated 17.03.2021. It was admitted vide email of even date that the channel partner/respondent no. 2 could not get in touch with her on 19.03.2021. It was committed that he would connect with her on the same day in the evening.
10. That despite the above communications and multiple other emails such as 20.03.2021, 23.03.2021, 26.03.2021, 30.03.2021, 05.04.2021, Mr. Kamal Grover, Mr. Manish Chhabra and respondent no. 2 refused to respond to the concerns of the complainant. So, she was constrained to escalate the issue to the top management by writing emails to Mr. Pankaj Pal, President of the respondent-company and who vide email

dated 05.04.2021 stated that he himself had spoken to Mr. Kamal Grover in the sales team and who would coordinate with the channel partner i.e. respondent no. 2 to do the needful.

11. That after follow up with Mr. Pankaj Pal on 09.04.2021, Mr. Kamal Grover, vide email of the same date confirmed in writing that he would receive an approval for the refund of the deposited amount and the same was confirmed by respondent no. 2 and Mr. Manish Chhabra separately on phone calls received by the complainant.
12. That post communicating the approval for refund, it was later informed that no interest would be paid by the respondent-company due to fund crunch and it was requested that the complainant must submit a cancellation/request letter, as per its requirement.
13. That despite of the huge delay and exchange of various emails, the complainant reluctantly and to close the issue agreed to accept the refund of the amount without interest, in case the same was received within 30 days from submitting the request letter on 05.07.2021 and a receipt was also issued against the same by the respondent.
14. That the complainant called upon the concerned persons of the respondents several times reminding them to clear the outstanding amount. However, they did not reply and tried to delay the same on one pretext or the other. They have not remitted payment against the outstanding amount even after confirming the same in writing.

15. That the complainant was constrained to serve a legal notice dated 24.12.2021 followed by a final notice dated 18.01.2022 to the respondents, requesting them to come forward and pay the outstanding amount of Rs. 5,00,000/- along with an interest of 18% per annum from June 2018. However, they have miserably failed to comply with or reply to the abovesaid legal notices leading to filing of the present complaint seeking refund of the paid-up amount besides interest.

C. Relief sought by the complainant:

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

- i. Direct to the respondent to refund the amount deposited by the complainant of Rs. 5,00,000/- along with interest @ 18% from date of deposit till the date of the refund.
- ii. To take action against the respondent no. 1 & no. 2 for launching and accepting advances without permissions and registration of the project as required under the provisions of the Act.
- iii. Direct the respondent to pay sum of Rs. 75,000/- towards cost of litigation.

17. Despite service of notice vide post and email dated 13.05.2022 and 07.05.2022 respectively neither respondent no. 2 put in appearance nor filed any written reply.

18. 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 respondent-builder:

The respondent by way of written reply made following submissions

19. That the relief of refund, as sought by the complainant, cannot be granted by this Authority. The elements of section 12 have not been met in order for the complainant to seek refund under this section.
20. That it is submitted that answering-respondent obtained due permissions and sanctions for the development of the project and got the project registered with the authority vide registration certificate no. 49 of 2021 dated 10.09.2021.
21. That the complaint is premature as the due date of completion of the project, as declared in the registration certificate is 08.04.2026.
22. That the jurisdiction of the Authority is derived from the Act which establishes the builder-buyer relationship by virtue of an allotment or a sale of a real estate property/unit, without which, the complainant cannot be said to be an "allottee" within the meaning of section 2(d) of the act. The legislature in its utmost wisdom has implemented the act with the intent to cover the disputes between the "allottee" and the promoter. On the other hand, the complainant cannot be said to be an allottee without any allotment being made by the respondent. It is a matter of record that she has credited Rs. 5,00,000 on 21.06.2018, as evident from the bank account statement on page 19 of the complaint.

However, it is also a matter of record that there does not exist any relationship, let alone a builder-buyer relationship between the answering-respondent and the complainant. She has failed to produce any document/record to sufficiently or even remotely show any allotment in her favour and in such circumstances, it cannot be deemed that a builder-buyer dispute exists between the parties.

23. That the project was unregistered in 2018 and the same was within due knowledge of the complainant. In these circumstances, no booking in the name of the project was accepted which is evident from the fact that no application form was ever executed by the complainant which is the primary step.
24. That the complainant has paid a meagre sum of Rs. 5,00,000/- showing her interest in the company of the respondent. If the booking had to be made for a unit, she had to make further payments to the tune of 10% of total sale price of a real estate unit of her choice. However, she failed to make any payment in furtherance to her interest shown to invest in its company.
25. That the complainant was sleeping over her rights all these years and is now trying to take advantage of her wrongs after having credited a sum of Rs. 5,00,000/- and is seeking refund of same after a lapse of almost 3 years. Thus, the present complaint is barred by limitation.
26. That in lieu of the amount deposited by the complainant, the refund was never confirmed/approved by the answering-respondent and its

process was explained to her and the same was subject to the paperwork. She was invited for the pre-requisite paperwork, as evident from email dated 09.04.2021 but the same was not followed by the complainant.

27. That the complainant is seeking compensation as relief before this authority which is not maintainable as the power to adjudicate compensation lies with Adjudicating Officer by the provisions of the Act.
28. That the complainant is attempting to defame answering-respondent by making such baseless and false allegations. It is further denied that any of the above-mentioned allegations exhibit the respondent company's bent of mind to make illegal, unjustified, and wrongful benefits.
29. All other averments made in the complaint were denied in toto.
30. 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 as well as written submissions filed by the answering-respondent.

E. Jurisdiction of the authority:

31. 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 complete territorial jurisdiction to deal with the present complaint.

E. 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.

32. 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."

33. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matters mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on objections raised by the respondent

F.I Objection regarding maintainability of complaint being pre-mature.

34. It is pleaded on behalf of respondent that the due date of completion of the project, as declared in the registration certificate is 08.04.2026 and

the present complaint was filed on 21.04.2022. Thus, the same is liable to be dismissed on account of being pre-mature. A reference has been made to complaint of **Neetu Soni. vs. Imperia Wishfield Pvt. Ltd. (01.02.2019 - RERA Haryana; C. No. 1076 of 2018; MANU/RR/0147/2019)**, wherein refund was sought and an issue before this Authority was:

"Whether the respondent has failed to provide possession of the unit in question without any reasonable justification?" The Authority dismissed the Complaint being premature observing the following:

"23. iii. In respect of issue No. iii raised by the complainant, as per clause 11(a) of the memorandum of understanding dated 11.07.2016, the respondent was under obligation to deliver the possession of the unit within a period of 42 months from the date of agreement, hence on calculation the due date for delivery of possession of the subject unit comes out to be 11.01.2020. Hence, this complaint is premature on this count..."

27. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby dismissed the complaint as being premature. The complainant is advised to approach the authority if she does not get the possession on due date

35. No doubt as per registration certificate of the project issued by the Authority, the project was to be completed by 08.04.2026 but in the case in hand, neither there is any allotment of the unit nor any buyer's agreement was executed between the parties. Rather the complainant approached the Authority seeking refund of the booking amount on its cancellation on 17.01.2021 and the same has not been made up to now. So, in such a situation, the complaint seeking refund of the paid-up amount on cancellation of booking is very much maintainable and same cannot be said to be barred by limitation.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

G.I Direct to the respondent to refund the amount deposited by the complainant of Rs. 5,00,000/- along with interest @ 18% from date of deposit till the date of the refund.

36. A project by the name of "AIPL Autograph" situated in Sector-66 being a Cyber Park Colony, was launched by the respondent builder on the basis of DTCP license bearing no. 112 of 2012 dated 27.10.2012 and same being valid up to 04.06.2022. This project was got registered with the Authority at Gurugram vide registration no. 49 of 2021 dated 10.09.2021. The complainant coming to know about the same, made a booking of unit in it in June 2018 by paying Rs. 5,00,000/- on 21.06.2018. But after that neither any letter of allotment of any unit was issued in favour of the complainant nor there is any buyer's agreement in pursuant to the same. A number of emails starting from 17.01.2021 were exchanged between the parties but nothing materialized leading to writing letter dated 05.07.2021 seeking refund followed by a legal notice dated 24.12.2021. Though the respondent-builder agreed for refund that amount but sent a settlement deed as a pre-condition for releasing the paid-up amount. Ultimately, the complainant sought refund of the paid-up amount by filing the present complaint. It has come on record after initial payment of Rs. 5,00,000/- on 21.06.2018 neither there is any correspondence with regard to allotment of a specific unit not its price in the above-mentioned project. It was only in the year 2021 beginning from 17.01.2021 when

the correspondence between the parties commenced but with no tangible results. The respondent-builder has not disputed receipt of the above-mentioned amount from the complainant against booking of unit. But when that booking has been got cancelled then the respondent-builder was bound to refund that amount and can't plead that any settlement deed be signed before honouring that commitment. Thus, in such a situation on cancellation of booking the complainant has a right to receive that amount but only when she surrendered that booking w.e.f. from 17.01.2021 with interest at the prescribed rate.

.G.II To take action against the respondent no. 1 & no. 2 for launching and accepting advances without permissions and registration of the project as required under the provision of the Act.

37. No arguments have been addressed on this issue. So, in the absence of the same, findings are not being returned on the same.

G.III Direct the respondent to pay sum of Rs. 75,000/- towards cost of litigation.

38. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case 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, 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.

H. Directions of the authority

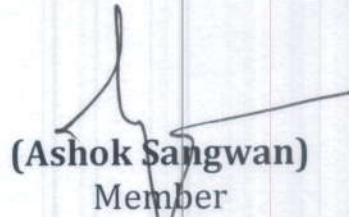
39. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount of Rs. 5,00,000/- to the complainant along with interest @ 10 % p.a., from the date of surrender i.e., 17.01.2021 till the date of realization of payment.
- 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.

40. Complaint stands disposed of.

41. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.10.2022