

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

Date of decision: 02.09.2022

<b>Name of the Builder</b>		<b>Aaliyah Real Estate Private Limited</b>	
<b>Project Name</b>		<b>Baani City Center</b>	
<b>S.no.</b>	<b>Complaint No.</b>	<b>Complaint title</b>	<b>Attendance</b>
1.	CR/220/2021	Vijay Deep Nandal & Kartari Nandal vs. Aaliyah Real Estate Private Limited	Shri K.K. Kohli & S.S. Yadav Shri Somesh Arora
2.	CR/3271/2020	Aaliyah Real Estate Private Limited vs. Vijay Deep Nandal & Kartari Nandal	Shri Somesh Arora Shri K.K. Kohli & S.S. Yadav

<b>CORAM:</b>	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member

**ORDER**

1. This order shall dispose of two 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 complainants(s) in the above referred matters are allottees of the project,

namely, **Baani City Center** (Commercial colony) being developed by the respondent/promoter i.e., **Aaliyah Real Estate Private Limited**. The terms and conditions of the space buyer's agreements, fulcrum of the issues involved in the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, possession.

#### A. Project and unit related details

3. Both the cases relate to one allotted unit. One among these is filed by the allottee and the other one is filed by the builder, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of the project, the details of the sale consideration, the amount paid by the complainants, the date of proposed handing over the possession, delay period, if any are being given in the tabular form.

S.no.	Heads	Information
1.	Project name and location	"Baani City Center", Sector 63, Village Maidawas, Gurugram
2.	Project area	3.656 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	80 of 2010 dated 15.10.2010 Valid/renewed up to 14.10.2023
5.	Name of licensee	M/s Aaliyah Real Estate Pvt. Ltd.
6.	HRERA registered/ not registered	<b>Registered</b> Vide registration no. 66 of 2022 dated 18.07.2022 Valid up to- 17.02.2025 [Inadvertently, mentioned as non-registered in proceedings dated 02.09.2022.]
7.	Date of building plan approval	24.01.2013



8.	Date of revised building plan	03.02.2016 [annexure B, page no. 102 of complaint]	19.02.2020 [annexure F, page no. 118 of complaint]
9.	Provisional allotment letter	10.03.2013 [annexure J, page no. 161 of complaint]	
10.	Unit no.	505, 5 <sup>th</sup> floor in IKON tower [As per BBA dated 24.03.2014 page no. 143 of complaint]	
11.	Unit area admeasuring	1221 sq. ft. [As per BBA dated 24.03.2014 page no. 143 of complaint]	
12.	Date of commercial space buyer's agreement	24.03.2014 [annexure I, page no. 126 of complaint]	
13.	Date of endorsement	08.04.2014 [annexure I, page no. 156 of complaint]	
14.	Possession clause	<p><b>2. Possession:</b></p> <p><i>"The intending seller, based upon its present plans and estimates, and subject to all exceptions, <u>proposes to handover possession of the commercial space within a period of forty-two (42) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement.</u></i></p>	

		<p><b><u>whichever is later</u></b> ("commitment period"). Should the possession of the commercial unit not be given within the commitment period due to any reason (except delays mentioned in clause 9 below), <b><u>the intending purchaser agrees to an extension of one hundred and eighty (180) days ("grace period") after expiry of the commitment period for handing over the possession of the commercial unit."</u></b></p> <p>[annexure I, page no. 130 of complaint]</p>
15.	Due date of possession	<p><b>24.03.2018</b></p> <p>[Calculated from date of buyer's agreement i.e., 24.03.2014, being later.]</p> <p><b>Grace period of 180 days is allowed.</b></p>
16.	Payment plan	<p>Construction linked payment plan</p> <p>[As per annexure K, page no. 162 of complaint]</p>
17.	Total sale consideration as per statement of account dated 03.12.2019	<p>Rs. 1,23,50,185/-</p> <p>[As per schedule I, page no. 143 of complaint]</p> <p>[Inadvertently, mentioned as Rs. 1,75,08,490/- in proceedings dated 02.09.2022]</p>
18.	Total amount paid by the complainants-allottees as per statement of account dated 03.12.2019	<p>Rs. 45,62,342/-</p> <p>[As per annexure C/2 on page no. 29 of complaint in CR/3271/2020]</p> <p>[Inadvertently, mentioned as Rs. 45,69,950/- in proceedings dated 02.09.2022 as statement of account of one Gaurav Chauhan was mistakenly attached instead of Vijay Deep Nandal and per application for rectification for proceeding dated 02.09.2022]</p>





19.	Part occupation certificate	<b>16.01.2018</b> [Block A Ground Floor to First Floor; Block B Ground Floor to 13 <sup>th</sup> Floor; Block C Ground Floor to 2 <sup>nd</sup> Floor and Block D Ground Floor to 2 <sup>nd</sup> Floor] [annexure G, page no. 119 of complaint]
20.	Offer of possession	30.03.2018 [As per annexure C on page no. 103 of complaint]
21.	Reminders by builder for taking over the possession	04.08.2018 & 06.02.2020
22.	Complaint filed by builder against allottees seeking dues and direction of possession	12.10.2020
23.	Complaint filed by allottees against builder seeking refund	14.01.2021

### B. Facts of the complaint

4. That the representatives of the respondent-builder handed over a brochure of the company to one of the complainants namely Vijaydeep Nandal and Dhir Singh regarding the "Baani City Centre" in the January 2013 itself which looked to be a very well-designed international standards speaking high of the respondent. It spoke about very high reputation of the company w.r.t. delivery of the project on time and stated that it is in the process of contracting and equipping multi-storey commercial complex on the said land spread over multiple levels/floors, which the respondent proposed to complete in all respects with reference to civil finishes, flooring, electrical

power to distribution panels on each level/floor plumbing and ventilators, elevators, back up diesel generators etc.

5. That the respondent thereby invited applications from prospective buyers for the purchase of the commercial space/office/shop/flat in the said project. The complainants Vijaydeep Nandal and Dhir Singh i.e., his co-allottee were caught in the web of false promises of the representatives of the respondent and booked a commercial space in IKON tower of the project "Baani City Centre", Sector 63, G, admeasuring approximately 1224 sq. ft. @ Rs. 9,000/- per sq. ft. (basic sale price). Such cost was exclusive of other charges such as IDC, EDC, PLC, car parking, stamp duty charges, registration fee, interest free maintenance security, monthly maintenance charges, power back up charges, service tax & any other government taxes / charges levied / leviable. They paid an amount of Rs. 10,00,000/- as booking amount.
6. That vide letter dated 10.03.2013, they were allotted commercial space no. 309 in IKON tower of the respondent company's project "Baani City Center" on third floor, Sector 63, Gurugram admeasuring 1224 sq. ft. The allotment letter contained one sided condition which stated the location so given is tentative and could be changed at the sole discretion of the builder, without specifying any reasons, clearly a one side condition being forced after taking Rs. 10,00,000/-. It further stated that the provisional allotment letter was subject to signing of the commercial space buyer's agreement and agreeing to abide by the terms and conditions mentioned therein, to be provided to the allottees in due course. This also means that they have to sign on the dotted lines as would be provided to them after making payment of Rs. 10,00,000/-.
7. That such allotment letter stated that the letter supersedes all previous oral or written understanding between the parties including all the agreements,



specifications, advertisements, brochure, price lists and any other sale document. After collecting Rs. 10,00,000/-, the respondent-company now retracted from all their commitments as they realized that they cannot go anywhere, after having paid such a huge amount, violating the provisions of section 12 of the Act of 2016.

8. That on 17.03.2014, they were informed by the respondent that their unit & its area stands revised to unit no. as 505 and its area as 1221 sq. ft. This was done unilaterally without even talking with the complainants and without assigning any reason.
9. That it came to their notice their complainants that few days back, the project has commercial space towers A, B, C & D and there is no tower by the name of IKON tower. The commercial space unit no. 309 was subsequently changed to unit no. 506 of IKON tower on fifth floor vide letter dated 17.01.2014. By then, they have paid an amount of Rs. 45,62,342/- and without informing them reduced the size of the same to 1221 sq. ft. The said letter further stated that "We would like to share that we have finalized the commercial space buyer's agreement & same shall be sent to your kind attention for executing by end of the month". Hence, they were entirely at the mercy of the respondent as if they are not buyers but "beggars".
10. That on 24.03.2014, the commercial space buyer's agreement was executed between the allotted and the respondent wherein unit no. 506 unilaterally without even talking to them and without assigning any reason was changed to unit no. 505. Its further stated that "kindly note that it is mandatory to duly execute and deliver both the copies of this Agreement within Thirty (30 days) from the date of dispatch by the company." The agreement was intentionally dispatched late to gain time and the same was signed by the complainants on



24.03.2014. The said delay in sending the agreement as clause 2.1 of said agreement specified that the possession of the said unit was to be delivered within a period of 42 months from the date of approval of building plans of the commercial complex or the date of execution of the agreement, whichever is later. Such period was extendable to 180 days due to any reason after expiry of the said commitment period for handing over of the possession of the commercial space. It means the delivery would be given by four years from the date of the buyer's agreement which was executed on 24.03.2014. Hence, the delivery of the possession of the space comes out to be 24.03.2018.

11. That a sum of Rs. 45,69,950/- was collected by the respondent against the basic cost of Rs. 1,09,89,000/- without even signing the commercial space buyer's agreement. Hence, they had no option but to sign the agreement on dotted lines as provided by the respondent-builder. By now, they have paid a huge sum of money and had no option but to sign on the one-sided commercial space buyer's agreement on dotted lines. They have objected to the one-sided clauses of the agreement such as clause 2.1 & 2.7.
12. That the respondent-builder collected 40% of the payment and since they had no option but to sign the buyer's agreement which was sent after eight months of taking the initial payment. The said possession clause was specifically incorporated to benefit the respondent, as delay in sending and signing of the agreement was to benefit the respondent-company and gave the respondent more time to execute the project.
13. That though originally, the unit was allotted to Vijaydeep Nandal and Dhir Singh but the later relinquished his interest in that unit in favour of Ms. Kartari Nandal complainants and the same was endorsed in her favour vide

Va



endorsement sheet dated 08.04.2014. So, in this way the complainants became allottees of the subject unit.

14. That the complainants made all payments amounting to Rs. 45,69,950/- against the demands raised by the respondent from the date of booking i.e., 01.03.2013 till 23.07.2013 without any delay. Finally, they realized within months of signing the agreement that the corresponding construction at the site was neither as per the assurances given nor corresponding to the payment already made by the complainants to the respondent.
15. That the complainants were subjected to unethical trade practice as well as to harassment in the name of one-sided commercial space buyer's agreement, change of the unit and floor without even without their consent. It was very painful and to add to the miseries, the area was being reduced at the respondent's whims and fancies.
16. That the complainants therefore were reluctant to make any payment unless they were given the floor booked by them and the construction on the site was visible corresponding to the payments made.
17. That from the date of signing the agreement on 24.03.2014, there were no demands raised by the respondent till April 2016. There was absolute silence on its the part for these two years on their queries regarding the progress of construction on the site. Moreover, no response was received from the customer services division despite personal visits.
18. That the complainants were subjected to unethical trade practice as well as subjected to harassment in the name of one-sided commercial space buyer's agreement. Further, it not only failed to adhere to the terms and conditions of buyer's agreement dated 24.3.2014 but also illegally extracted money from them by stating false promises and statements. It took advantage of the

complainants, and they were always kept in dark about the actual status of construction. It did not leave any stone unturned to illegally extract money. Hence, they kept on asking for the refund with interest but the same was, though assured by the representatives of the respondent company, but never paid.

19. That the complainants despite having paid a considerable amount equivalent to 40% of the total cost, much before the buyer's agreement being signed, were somehow not feeling comfortable and convinced with the situation on the site. Hence, the respondent could not instil confidence in the complainants that it would be able to deliver the project on time.
20. That though the complainants made the above payment, the actual excavation work was not initiated at all till the time of signing the buyer's agreement. Hence, the total reluctance was on the part of the complainants to make any further payments against the demand of the respondent. It failed to adhere to the schedule of completion attached with the allotment letter and hence asking for payment was amounting to illegally extraction of money from them by making false demands, not consistent with the progress on the site. There was hardly any activity going on at the site and the payment collected by the respondent was more than the activities undertaken on the site.
21. That the above said acts of the respondent clearly prove that it has been indulging in unfair trade practices and also been providing gross deficient services. All such Acts and omissions on the part of the respondent caused an immeasurable mental stress and agony to the complainants. By having intentionally and knowingly induced and having falsely misrepresented to the complainants on the construction activity at site and by giving false



delivery schedules and making them to act in accordance to its misrepresentations and owing to all the deliberate lapses/delays on the part of the respondent, it is liable as being requisitioned/claimed by them to pay the entire amount collected with interest from the date of receipt of the individual payments.

22. That earlier, the respondent vide letter dated 10.03.2013 informed/confirmed the allottees about provisional allotment of commercial space no. 309 on 3rd floor, having a super area of approx. 1224 sq. ft. @ Rs.9000/- per ft. being the basic sale price, exclusive of other charges. After having collected a sum of Rs. 10,00,000/- on 01.03.2013, the unit number allotted to the complainants was commercial space no. 309 in IKON tower of the project "BAANI CITY CENTER", Sector 63, Gurugram. The respondent has been naming the IKON tower whereas the complainants understand from the different sources that there is no such tower named as IKON tower and the names of the towers are A B C & D. However, on enquiry from the respondent, it was repeatedly emphasized that the tower where the space is being allotted is IKON tower. Due to the bad tricks and tactics of the respondent, they did not wish to continue with the project of the respondent and therefore, expressed desire to discontinue with their project.
23. That the complainants had been repeatedly visiting the office of the respondent and meeting: Shri Virendra Bhatia having mobile no. 9810022264, Shri Rajnish Dutt having mobile no. 9811162804 and many more officers from the customs relations and was informed that they are not interested in buying the commercial space in view of the respondent informing the complainants that the units can be changed again and in view of the fact that there has not been a progress on the site corresponding to the

102



money being paid by the complainants. However, it refused to return the money to them and refused to entertain the request personally on their request for the refund.

24. That on 30.11.2015, the complainants came to know that the respondent has submitted revised building plans to the concerned authorities and the building plans were approved provisionally vide office memo no. 23390 dated 30.11.2015 for the purposes of inviting objections and suggestion by the Town & Country Planning. This therefore means that the entire set of the building plans were being revised and obviously till the objections/suggestions received are attended to and the no objection is issued by all the objectors the project cannot be proceeded ahead with. It is to be noted that the initial deposit to the tune of more than Rs. 45, 65,342/- was collected by April 2014 and after more than one year the building plans were being submitted to re-erect the building with modifications. This was clear indication that the project would definitely get delayed beyond the committed dates and the complainants lost all the interest in the project and asked the Respondent for the refund.
25. That on 18.01.2016 the STP, Gurgaon informed that all the objectors have issued the no objection certificate. The District Town & Country Planner, Chandigarh issued approval of the revised building plans on 03.02.2016.
26. That the respondent company, after collecting a huge payment of Rs. 45, 65,342/- did not show the corresponding progress on the site and the work was absolutely stopped on the site from 2014 till 2016. They were not convinced with the progress and the credibility of the respondent and therefore decided not to pay the amount. The revised plans were approved only in February 2016 and the delivery of the unit had to be made as per the



buyer's agreement in December 2017 hence it was absolutely evident that the respondent company would never be able to complete the project within the delivery period as specified in the intentionally delayed buyer's agreement. Be that as it may be, since the terms and conditions initially agreed upon at the time of booking and the terms and conditions as provided in the brochure were not incorporated in the buyer's agreement provided by the respondent, the entire amount paid by the complainant ought to have been refunded by the respondent to the complainants.

27. That the respondent has played a fraud upon the complainants and have cheated them dishonestly with a false promise to complete the construction over the project site within stipulated period. In spite of this, it malafidely issued demand for payment along with the interest, despite the fact that the payments were to be made under the construction linked plan for which the corresponding construction was not taken place. After 51 months of depositing of initial installments to the respondent, it sent a demand on 08.07.2017, for collection of funds on completion of super structure plus 100% parking. It was very evident from this demand that the delivery time being December 2017, the respondent would never be able to give the delivery of the project by December 2017 as the construction in the month of June 2017 was at the super structure only.
28. That the respondent vide letter no. ZP-668/SD(BS)/2017/2154 dated 16.01.2018 received a part occupation certificate which covered block A ground floor to first floor, block B ground floor to 13th floor, Block C ground floor to 2nd floor and block D ground floor to 2nd floor and on 30.3.2008, it sent a final notice for possession when no earlier notice was ever sent. This is where it is trying to misrepresent and mislead the complainants. The

respondent very well knows that the part occupation certificate received by the respondent is not for the unit allotted to the complainants. The unit no. 701 allotted to the complainants was in tower A for which the occupation certificate has not been issued. The said fact was very well known to the respondent that unit no. 701 was not covered in the part occupation certificate, mislead and misrepresented to the allottee with the sole intention of extracting money from the complainants which actually is not due to the respondent and hence is trying to cheat the complainants.

29. That together with this letter a statement of account was enclosed which stated that "the possession shall be delivered by the company latest by 15.05.2018." which was very wrong, false and untrue statement as the development on the site was too slow and there was no possibility of delivering the possession, when it not even applied for the occupation certificate, as was evident from the records of the Town & Country Planning, Haryana.
30. That the said letter demanded payment on account of many reasons but since the complainants had already made up his mind that they are not interested in buying the property anymore and informed the representative of respondent, because the same is already delayed by one years since the possession as per the commercial space buyer's agreement had to be provided by 19.12.2017.
31. That the respondent has not received the occupation certificate for the unit allotted to the complainants till now. Meanwhile, they came to know that it made an application for approval dated 21.02.2019 before the Town & Country Planning, Haryana for approval of revised building plans of block A (Part) falling in commercial colony area measuring 3.656 acres (License No.



80 of 2010 dated 15.10.2010) for permission to re-erect the buildings in commercial colony area measuring 3.656 acres.

32. That the respondent claimed in the letters that it has received the part occupation certificate from the Director, Town & Country Planning, Government of Haryana on 16.01.2018 whereas on research it was found that building plans were revised again and got a fresh approval on 03.02.2016, and subsequently, again because of the change in the building plan the respondent got another revised approval on 19.02.2020. Moreover, the said fact was hidden by the respondent from them.
33. That the respondent through communication dated 30.03.2018 informed them that it has received part occupation certificate for the commercial complex "Baani City Centre" and offered the complainants the final physical possession. A promoter / Builder cannot offer the possession of the property till the time the occupation certificate in respect of the property has been obtained. A possession without the occupation certificate is absolutely meaningless and is not an offer of possession in the eye of law.
34. That unfortunately, when the repeated requests of the complainants were not being heard and attended to in terms of refund of the total amount paid by the complainants to the respondent amounting to Rs. 45,62,42/- with interest. They were left with no option but to move an application before the CM Window and the Economic Offence Wing of the Police Department, Government of Haryana vide letter dated 04.08.2020 asking for the refund.

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

35. The complainants have sought following relief(s):

A

- i. Direct the respondent not to cancel the allotment and to allot the same till the entire amount paid by them is refunded along with interest till the date of payment.
  - ii. Restrain the respondent from raising any fresh demand as the complainants are interested in refund of the amount along with interest and are not interested in retaining the unit.
  - iii. Direct the respondent to pay delay compensation to recompensate for deficiency in service of an amount of Rs. 10,00,000/-
  - iv. Direct the respondent to pay Rs. 15,00,000/- for mental and physical hardships and trauma to the complainants.
  - v. Direct the respondent to pay Rs. 35,00,000/- to compensate for loss as the complainants have been deprived of the benefit of the escalation of price of the flat.
  - vi. Direct the respondent to pay litigation cost of Rs. 2,00,000/-
  - vii. To take Suo-motu action against the respondent for not registering the said project being an on-going project.
36. 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 the respondent**

37. The respondent has contested the complaint on the following grounds:
- i. That the project inter alia comprises of various units, with suitable infrastructural facilities and the development was to be carried out in a planned and phased manner over a period of time. The project has been developed in accordance with the license and the building plans as



- approved by DTCP from time to time and other requisite approvals and permissions.
- ii. That the respondent is the absolute owner of the project land, situated in the revenue estate of Village-Maldawas Golf Course Extension Road, Sector-63, Gurugram (Haryana) and obtained License no .80 of 2010 dated 15.10.2010 (hereinafter referred to as the License") from DTCP, under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made thereunder for using the land for the construction and development of the project thereon in a planned and phased manner over a period of time. In this process, it has obtained necessary sanctions, permissions and approvals from the concerned authorities for the development of the commercial project.
  - iii. That pursuant to the development of the Baani City Center, a commercial project and after due inspection and verification, it has been granted occupation certificate vide DTCP letter no. ZP- 668/SD (BS)/2017/2154 dated 16.01.2018.
  - iv. That the complainants applied for booking of a commercial unit vide application form dated 01.03.2013 in the project 'Baani City Center.' They duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the unit, size/super area of the unit, timeline for possession (including the provisions and eventualities subject to which the various timelines were agreed to) etc. were clearly mentioned in the said application along with indicative terms and conditions. Subsequently, the complainants made some payments as per the payment

*Pa*

- plan opted and were duly acknowledged by the respondent. However, they failed to adhere to pay the installments on time.
- v. That thereafter, the respondent provisionally allotted commercial space, developed in a planned and phased manner in favor of the complainants vide provisional allotment letter dated 10.03.2013.
- vi. That the parties signed the commercial space buyer's agreement dated 24.03.2014, after having been read, understood and agreed to all the terms and conditions thereof. The clause 1.7 of the commercial space buyer's agreement was read and understood by the complainants that the time is of essence, and they have the obligation to make timely payments of every installment of the total consideration in accordance with the payment plan along with other charges. In case of non-payment of due amount, they were liable to pay a penalty of 21% compounded quarterly.
- vii. That the respondent proposed to hand over the portion of the apartment within 42 months from the date of sanction of building plans or execution of the builder buyer agreement, whichever was earlier and the same was also mentioned in the agreement in clause 2.1. Further, a grace period of 6 months was also provided over and above the proposed/estimated commitment period. The time taken by it to develop the project was the usual time taken to develop such a large-scale project. Clause 2 of that agreement also contemplated and fully provides for scenarios wherein the delivery of possession was beyond the contemplated 42 months. Under clause 9, the parties have agreed that if the delay was on account of force majeure conditions, then the builder would not be held responsible for such delays.

A



- viii. That the parties agreed in clause 2.6 that in the event of delay for reason other than force majeure, the allottees shall be entitled to compensation at 9% per annum on the amount paid by them, to be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default of any of the terms of the agreement.
- ix. That without prejudice to the submissions as provided above, it is humbly submitted that in the intervening period when the construction was under progress there were various instances when the work was to be put on hold on account of non-availability of building material pursuant to the directions issued by the Hon'ble High Court of Punjab and Haryana on mining activities and on account of various environmental related directions issued by various judicial quasi-judicial authorities from time to time.
- x. That appreciating the large size of the commercial project, various factors including role of governmental authorities and support agencies involved, the parties contemplated that the timelines of possession as mentioned in the agreement could not be firm.
- xi. That the construction of the project where in the unit was situated was completed and the respondent by following the due process applied for the grant of occupancy certificate on 22.05.2017 from the office of Director General Town and Country Planning, Haryana.
- xii. That despite best efforts and regular follow ups, it received the occupation certificate only on 16.01.2018 after a period of almost 7 months. That delay of the competent authorities in giving occupation certificate could be attributed on the part of the respondent in delivering the possession of the commercial space as on the day, the respondent

A

- applied for occupation certificate and the subject unit was complete in all respects.
- xiii. That immediately upon receipt of the occupancy certificate, the respondent issued notice for offer of possession dated 30.03.2018 upon the complainants, advising them to clear their outstanding dues and complete all the possession related formalities including execution of the necessary documents and to take possession.
- xiv. That the statement of accounts cum invoice attached along with the said possession notice shows that as on the said date, there was an outstanding due of Rs 80,76,590.63/- towards the sale consideration.
- xv. That the respondent vide letters dated 04.07.2018. 18.07.2019. 06.02.2020 requested them to inspect the said unit and to take over the possession after completing the basic formalities as required.
- xvi. That the complainants have failed to take over possession of the commercial space and come forward for completing the formalities as required. Thus, they have failed to fill their obligations as an allottee as enshrined under the Act of 2016.
- xvii. That the complainants have breached their contractual obligations and the obligation cast upon them in terms of Section 19 of the Act, whereby they were under an obligation to take the possession within the prescribed period upon receipt of the notice to offer the possession.
- xviii. That in the present case, the occupation certificate was granted on 16.01.2018, and the same was duly communicated to them vide notice to offer the possession. However, they failed to take the physical possession of the unit and also complete all the formalities for the due conveyance,

12



transfer and grant of rights, title and interest in the sold commercial space in their favour.

- xix. That the complainants instead of coming forward and performing their agreed contractual obligations and taking over the possession of the commercial space started raising frivolous issues for the reasons best known to them. It is pertinent to mention here that the complainants also filed a frivolous police complaint against the respondent.

38. 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.

#### **E. Jurisdiction of the authority**

39. The respondent has raised a preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana 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**

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)(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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**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.*

So, in view of the provisions of the Act of 2016 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.

39. 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*

na



**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."*

40. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases referred above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding force majeure circumstances and excluding time period taken by competent authority in granting necessary approval.**

41. The respondent-builder took a plea that there was delay in construction of project due to intervening period when the construction under progress was put on hold on account of non-availability of building material pursuant to the directions issued by the Hon'ble High Court of Punjab and Haryana on mining activities and also on account of various environmental related directions issued by various judicial quasi-judicial authorities from time to



time. The authority observes that as per clause 2 of buyer's agreement dated 24.03.2014 executed between the parties, due date of handing over of possession is to be calculated as 42 months from date of approval of building plans or the date of its agreement, whichever is later. The building plan of the project was approved on 24.01.2013 and buyer's agreement inter-se parties was executed on 24.03.2014. Therefore, the due date of handing over of possession is calculated from date of agreement being later i.e., 24.03.2014 and which comes out to be 24.03.2018. The respondent obtained part occupation certificate on 16.01.2018 and subsequently, offered the possession of the unit other than allotted one on 30.03.2018. The due date of handing over of possession was 24.03.2018 along with grace period of 180 days. The respondent took a plea that there were delay in construction due to orders of Hon'ble High Court of Punjab and Haryana wherein there was stay on construction activities, etc. but failed to provide any details in this regard. Thus, no leniency in this regard can be granted to the respondent.

42. As far as plea w.r.t. excluding time taken by the competent authority in granting occupation certificate is concerned, the same cannot be considered at this point of time. If there is any delay attributable due to delay in services of any competent authority concerned, then it may file an application requesting the concerned to declare such period as "zero-period." Till then, the plea taken by the respondent- builder cannot be entertained.

**G. Findings on the relief sought by the complainants:**

**G.I Direct the respondent not to cancel the allotment and to allot the same till the entire amount paid by the complainants is refunded along with interest till the date of payment.**

A ✓



**G.II Restrain the respondent from raising any fresh demand as the complainants are interested in refund of the amount along with interest and are not interested in retaining the unit.**

43. It is relevant to comment upon the validity of cancellation of allotted unit before proceeding further. The respondent has issued reminder letters dated 04.08.2018 & 06.02.2020 to complainants w.r.t. handing over of possession. However, there is nothing on record to show that the builder-respondent has proceeded with cancellation of allotted unit. Hence, no direction this effect can be issued.
44. Now, the question arises before the authority is as to whether the allottees are entitled for refund of the amount paid along with interest or they be directed to take the possession of the allotted unit after clearing the outstanding dues along with interest.
45. The promoter filed a complaint before the authority complaint No. CR/3271/2020 on 12.10.2020 and after 3 months, the allottees also filed a complaint No. CR 220/2021. Both these complaints were clubbed together in order to avoid conflicting orders. Now, the matter before the authority is as to whether the allottees have right to seek refund or not, when the promoter is unable to give possession of unit in accordance with the terms of agreement for sale. Initially, the allottees were allotted unit No. 309 (two-bedroom unit) on 10.03.2013 having an area of 1224 sq. ft. as per letter of allotment dated 10.03.2013 which was later on, changed to unit no. 505 having an area of 1221 sq. ft on 08.04.2014. It led to execution of buyer's agreement in this regard on 24.03.2014. The unit No. mentioned in that agreement as 505 having an area of 1221 sq. ft. in the attached payment plan. But due change in the building plan in the year 2016, the unit No. 505 became

A

one- bedroom having an area of 804 sq. ft. But as per the buyer's agreement the unit was having two-bedroom consisting of an area of 1221 sq. ft. Later on, the unit was again changed to 701 (two-bedroom) having an area on 1187 sq. ft. on 29.03.2018 and also as per final notice of possession. The allottees have not taken possession of the unit and filed a complaint before the authority seeking refund u/s 18 (1) of the Act, 2016 on account of failure of the promoter to give possession of the unit in accordance with the terms of agreement for sale i.e., unit no. 505 having an area of 1221. The promoter has unilaterally changed the unit and there is no document on the record wherein any such request for change of unit was either made or agreed upon by the allottees. The change of unit from time to time has been summarized hereunder: -

Unit details			
S.no.	Unit no.	Unit area	Documentary proof
A	309, 3 <sup>rd</sup> floor	1224 sq. ft.	As per allotment dated 10.03.2013 page no. 161 of complaint
B	505, 5 <sup>th</sup> floor in IKON tower	1221 sq. ft.	As per BBA dated 24.03.2014 page no. 143 of complaint
C	701, 7 <sup>th</sup> floor	1187 sq. ft.	As per final notice for possession dated 18.07.2019 page no. 106 of complaint & offer of possession dated 30.03.2018

46. The project detailed above was launched by the respondent as commercial colony. One of the complainants along with Dhir Singh, booked the subject unit in January 2013 and paid booking amount of Rs. 10,00,000/- and the same was acknowledged by the respondent. The counsel for the respondent submitted that allottees are speculative investors and not a user. The authority is of the opinion that as per the Act of 2016 Section 2 (d), the complainants in CR No 220/2021 and respondent in CR No.3271/2020 are



allottees and accordingly, eligible for rights and duties of the allottees as per Chapter 4 of the Act and promoter is obligated as per Chapter 2 of the Act for the functions and duties of the promoter. The objection raised by the respondent w.r.t. complainants being investor has been addressed above in detail.

47. During the course of arguments, the counsel for the respondent clarified the facts of the present complaint as detailed in the preceding para. He also brought to the notice of the authority clause 1.2 of the agreement and the relevant part is extracted below: -

*The floor plan of the said premises and its super area mentioned in the agreement is tentative and subject to change during completion of construction of the said complex. After accounting for changes, if any, the final and confirmed areas shall be incorporated in the Sale Deed."*

*i. The intending seller shall have the right to effect suitable and necessary alternation in the layout plan, if and when for necessary, which alteration may involve all/any of the following changes, namely, change in the position of the commercial space/unit being change in its number or change in its dimension area to the extent of plus 15%. If there is any increase/decrease in the area, the revised price will be payable/adjusted at the allotment rate. The revised price becomes payable by the intending purchaser upon written communication of the change in the price by the intending seller. To implement any such change in the area and if considered necessary supplementary agreement may be executed with the intending purchaser."*

48. The submissions made by the respondent were considered by the authority and it is of the view that such kind of one-sided agreements, loaded in favour of promoter are very common in pre-RERA cases. The intimation or change of unit was made to the allottee by the promoter on 29.03.2018 i.e., after coming into force of RERA and now a unit, its plan and specifications cannot be changed without their previous consent as per section 14(2)(i) of the Act, 2016. The allottees are not only reluctant but vehemently opposed to take



the possession of the changed unit and accordingly, the authority decides to refund the amount along with prescribed rate of interest.

49. Accordingly, the authority hereby directs the promoter to return the amount received by him i.e., **Rs. 45,62,342/-** 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*.

**G.III Direct the respondent to pay delay compensation to recompensate for deficiency in service of an amount of Rs. 10,00,000/-.**

**G.IV Direct the respondent to pay Rs. 15,00,000/- for mental and physical hardships and trauma to the complainants.**

**G.V Direct the respondent to pay Rs. 35,00,000/- to compensate for loss as the complainants have been deprived of the benefit of the escalation of price of the flat.**

**G.VI Direct the respondent to pay litigation cost of Rs. 2,00,000/-.**

50. The complainants are 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.



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 complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G.VII To take Suo-motu action against the respondent for not registering the said project being an on-going project.**

51. Violation of Section 3 of Act attracts punishment under Section 59 of Act of 2016. Vide proceedings dated *21.12.2020 of CRN/3271/2020 titled as Aaliyah Real Estate Pvt. Ltd. Vs Vijaydeep Nandal*, a show cause notice dated 29.11.2019 was issued to the promoter. The respondent-promoter has already applied for registration of the project with the authority on 28.01.2022.

**H. Directions of the authority**

52. Hence, the authority hereby passes this order and issue 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 to return the amount received by him i.e., Rs. 45,62,342/-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.

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.

53. A copy of this order be placed in the connected case bearing no. CR/3271/2020.
54. Both the complaints stand disposed of.
55. File be consigned to registry.

  
Sanjeev Kumar Arora  
(Member)

  
Vijay Kumar Goyal  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 02.09.2022**

**HARERA**  
**GURUGRAM**