



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

Date of decision: 02.12.2022

NAME OF THE BUILDER		M/s Manglam Multiplex Pvt. Ltd.	
PROJECT NAME		M3M Heights	
S. No.	Case No.	Case title	Appearance in both the cases
1	CR/3282/2021	Vandana Aggarwal v/s Manglam Multiplex Pvt. Ltd. and others	Complainant: Complainant in person with Ms Nutan Yadav Advocate Respondents: Ms. Shriya Takkar Advocate
2	CR/3370/2021	Vandana Aggarwal v/s Manglam Multiplex Pvt. Ltd. and others	

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

ORDER

1. This order shall dispose both the 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 allottee 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, M3M Heights being developed by the same respondent/promoter i.e., Manglam Multiplex Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to charge of payment plan as stipulated in allotment letter, non-payment of interest of amount held by the respondent among others.
3. Both the parties were directed to submit written submissions vide order dated 02.12.2022. In compliance of the order dated 02.12.2022, written submissions has been submitted by both the parties and have been taken into consideration.
4. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	M3M Heights, Sector 65, Gurugram
<p><u>Possession clause:</u> - 7. Possession of the unit</p> <p>7.1 Schedule for possession of the unit- <i>The promoter agrees and understands that timely delivery of possession of the Unit along with the car parking space (s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(F) of the Rules, 2017, is the essence of the Agreement.</i></p> <p><i>It is further agreed between the Parties that the Allottee shall not raise any objection, or refuse to take possession of the Unit on any pretext whatsoever, if the possession of the same is being offered duly completed with all Specifications, Amenities, Facilities as mentioned in "Schedule E" hereto, any time prior to the Commitment Period.</i></p> <p><i>The promoter assures to offer the handover of possession of the Unit along with the parking (if applicable) if any as per the agreed terms and conditions, unless there is a delay due to Force Majeure, court orders, Government Policy guidelines, policy guidelines of Competent Authorities, decisions affecting the regular development of the Project or any other event</i></p>	





reason of delay recognized or allowed in this regard by the Authority , duly completed with all Specifications , Amenities , Facilities as mentioned in Schedule E hereto , prior to the expiry of the Commitment Period . If, the completion of the Project is delayed due any of to the above conditions, then the Allottee agrees that MIPL shall be entitled to the extension of time for delivery of possession of the Unit, provided the above conditions are not of the nature which makes it impossible for this Agreement to be performed .

The Allottee agrees and confirms that, in the event it becomes impossible for promoter to implement the Project due to Force Majeure and above stand terminated and promoter shall refund to the Allottee the entire amount received by promoter from the allotment within 90 (ninety) days .The promoter shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he / she / they shall not have any rights, claims etc. against promoter and that promoter shall be released and discharged from all its obligations and liabilities under this Agreement.

Subject to the Applicable Law , if on account of any reasonable and justifiable reason the development of the Project and or M3M Heights in which the Unit has been booked by the Allottee cannot be proceeded with further , then in such an the event , the Allottee shall be offered with a development of the same strata in any other project of the Promoter or its associates/affiliates or any third party so as to place the Allottee in a same justifiable position as under this Agreement.

(Emphasis supplied)

Occupation certificate: -

➤ Not obtained

Common details: -

Occupation certificate-
Not obtained

Offer of possession- Not offered

Due date of Possession – Calculated as date of
completion of project as approved by the
authority

RERA registration- 01 of 2017 dated 14.06.2017 valid up to 01.05.2024

DTCP License: 15 of 2017 dated 02.05.2017 valid up to 01.05.2022
[Migrated from l no.114 of 2014(2.08175 acre),122 of 2014(1.4275 acre)
and 234 of 2007(6.94375 acre)+ add(3.85 acre)]



S. n o.	Complaint title/date no/ of filing	Date of execution of agreement	Unit no. and area admeasuring	Due date of possession	Total Sale consideration and amount paid
1.	CR/3282/2021 Vandana Aggarwal V/S Manglam Multiplex Pvt. Ltd. DOF: 03.09.2021	22.08.2022	MH TW-06- 1505, 15 th floor, tower- 6	01.05.2024	TSC: 1,12,54,42 2/- (as per BBA) AP: 44,36,750/- [Annexure C1 at page no. 15-16 of the complaint]
2.	CR/3370/2021 Vandana Aggarwal V/S Manglam Multiplex Pvt. Ltd. DOF: 03.09.2018	22.08.2022	MH TW-06- 2601, 26 th floor, tower- 6	01.05.2024	TSC: 1,12,54,42 2/-(as per BBA) AP: 44,36,750/ - [Annexure C1 at page no. 15-16 of the complaint]

5. The aforesaid complaints were filed by the complainants against the promoter on account of non-execution of BBA due to variance in payment plan as stipulated in allotment letter, award for compensation and for refund of pre handover charges.

6. 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 promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 3282/2021 titled as Vandana Aggarawal V/S M/s Manglam Multiplex Pvt. Ltd.* is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and Unit Details

8. The particulars of the project, the details 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:

CR/3282/2021 titled as Vandana Aggarawal V/S M/s Manglam Multiplex Pvt. Ltd.

S.N.	Particulars	Details
1.	Name of the project	M3M Heights, Sector 65, Gurugram
2.	Unit no.	MH TW-06-1505, 15 th floor, tower 6 [Annexure C4 at page no. 23 of the complaint]
3.	Super area	1261 sq. ft. [Annexure C4 at page no. 23 of the complaint]





4.	Date of allotment	16.03.2021 Page 90 of the reply
5.	Date of builder buyer agreement	BBA has been executed as per the directions of the authority on 12.08.2022 on 22.08.2022
6.	Possession clause	<p>7. Possession of the unit</p> <p>7.1 Schedule for possession of the unit- <i>The promoter agrees and understands that timely delivery of possession of the Unit along with the car parking space (s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(F) of the Rules, 2017, is the essence of the Agreement.</i></p> <p><i>It is further agreed between the Parties that the Allottee shall not raise any objection, or refuse to take possession of the Unit on any pretext whatsoever, if the possession of the same is being offered duly completed with all Specifications, Amenities, Facilities as mentioned in " Schedule E ' hereto, any time prior to the Commitment Period.</i></p> <p><i>The promoter assures to offer the handover of possession of the Unit along with the parking (if applicable) if any as per the agreed terms and conditions, unless there is a delay due to Force Majeure, court orders, Government Policy guidelines, policy guidelines of Competent Authorities, decisions affecting the regular development of the Project or any other event reason of delay recognized or allowed in this regard by the Authority, duly completed with all Specifications, Amenities, Facilities as mentioned in Schedule E hereto, prior to the expiry of the Commitment Period. If, the completion of the Project is delayed due any of to the above conditions, then the Allottee agrees that MIPL shall be entitled to the</i></p>



		<p><i>extension of time for delivery of possession of the Unit , provided the above conditions are not of the nature which makes it impossible for this Agreement to be performed .</i></p> <p><i>The Allottee agrees and confirms that , in the event it becomes impossible for promoter to implement the Project due to Force Majeure and above mentioned conditions , then this allotment shall stand terminated and promoter shall refund to the Allottee the entire amount received by promoter from the allotment within 90 (ninety) days .The promoter shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he / she / they shall not have any rights, claims etc. against promoter and that promoter shall be released and discharged from all its obligations and liabilities under this Agreement.</i></p> <p><i>Subject to the Applicable Law , if on account of any reasonable and justifiable reason the development of the Project and or M3M Heights in which the Unit has been booked by the Allottee cannot be proceeded with further , then in such an the event , the Allottee shall be offered with a development of the same strata in any other project of the Promoter or its associates/affiliates or any third party so as to place the Allottee in a same justifiable position as under this Agreement.</i></p> <p>*Note: Possession clause is given but time period for handing over of possession is not mentioned.</p>
7.	Commitment Period	m) Commitment Period shall mean 30.06.2024 as notified by the Promoter to the Authority, at the time of registration of the project under the Act, for completion of the

		Project, or as may be further revised/approved by the authorities.
8.	Due date of possession	01.05.2024 (Mentioned as the date approved by the Authority for completion of the project)
9.	Total sale consideration	Rs.1,48,95,564/- [As per allotment letter at page 80 of the reply]
10.	Revised Total sale consideration	Rs.1,12,54,422/- [As per allotment letter at page 91 of the reply]
11.	Amount paid	Rs.44,36,750/- [Annexure C1 at page no. 15-16 of the complaint]
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	Pre cancellation notice	22.07.2021 [Annexure R/10at page no. 101 of the reply]
14.	Cancellation letter	31.01.2022 NOTE: After cancellation of unit the BBA was executed inter se the parties, hence, the same stands invalidated.

B. Facts of the complaint

9. That the complainant booked a residential apartment no. tower-06-1505 in residential complex "M3M Heights" developed by promoters in Sector-65, situated in Tehsil & District Gurugram (Haryana) measuring 1261 sq. ft. (approx.) @11,250/- per sq. ft. on 31.01.2021 by making a payment of Rs. 11,00,000/- vide cheque number 617193 dated 31.01.2021 drawn on



- State Bank of India and further payment of Rs.33,68,670/- on 02.03.2021 vide UTR number SBINR52021030213662943 after deducting TDS@0.75% which is equal to 30% of total price as per allotment letter.
10. That the complainant booked an apartment bearing number T-06/1505 in the project through its channel partner (Anubhav Munjal of Upside Capital) under Port Your Property (*hereinafter* "PYP") scheme launched by the respondents whereby unknown property papers were forged in favour of complainant by channel partner for which complainant filed a complaint with Economic Offence Wing on 05.08.2021 bearing number 10097/CP/21 for registering the FIR against all persons involved in this conspiracy and forgery.
11. Thereafter, on 25.05.2021, the complainant met the sales head of the M3M Heights project for refund of the amount deposited by the complainant but instead, the representative proposed to transfer the unit from PYP to Non PYP at Rs 8,500/- per sq. ft + possession charges + GST and this offer was accepted by the complainant for which mail confirmation was sent on 28.05.2021. Due to reduction in rate, payment made by complainant constitutes to 40% of the total cost of the unit. During settlement, nothing was discussed or agreed on payment plan which implies payment plan of original allotment letter will be applicable for revised allotment letter.
12. That on 03.07.2021, complainant, received the reminder from the respondents towards 10% additional payment apart from 40% already released which shook the complainant as she had already made 10% excess payment for which complainant is seeking either refund or interest till the time of next milestone is due @18% PA.



13. That complainant again asked the sales head to reinstate the payment plan as per original allotment letter which is 30% at the time of booking, 60% at the time of application of OC and 10% at the time of offer of possession and refund the excess payment over and above the 30% of the total cost as per allotment letter. The respondents then sent a mail to complainant to meet in person on 09.07.2021 and meeting was held on 11.07.2021 in his office. During meeting, the representative of the respondent agreed to reinstate the payment plan of original allotment letter (30%,60%, 10%) and assured that the confirmation mail will be sent today itself but she has not receive any mail confirmation till date.
14. That on 31.07.2021, the complainant received the revised documents post conversion from PYP to Non PYP (Allotment Letter, BBA and payment receipts) and there also, payment plan mentioned was 50% at the time of booking, 40% at the time of application of occupation certificate and balance 10% on offer of possession. The complainant however refused to sign the agreement to sale due to unilateral change in the payment plan even after assurances by the representatives.
15. That the complainant was also entitled to pre handover charges rebate charges from 02.03.2021 @ Rs. 78,615/- per month to which complainant is entitled for till the time of execution of revised agreement to sale.
16. That the act and conduct of the respondent shows that they had only one intention i.e., to grab a handsome amount from the complainant and trap the complainant through channel partner by making false grounds by using unfair trade practices of fraud, criminal conspiracy, criminal breach of trust and forgery, which shows the deficiency in service on the part of the respondents, hence the present complaint.



17. That it is quite clear that respondents have dishonest, mollified, and mischievous intentions to grab the amount from complainant and to obtain wrongful gain and causing wrongful loss to complainant.
18. That now in the present circumstances the complainant is seeking relief towards the adherence of payment plan of original allotment letter which is 30% at the time of booking, 60% at the time of OC and balance 10% at the time of offer of possession and excess payment made by complainant should be refunded to the complainant or paid interest as per section 15 of the Haryana Real Estate Regulation Rules, 2017.

C. Relief sought by the complainant: -

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

- I. Direct the respondents to reinstate the payment plan as per original allotment letter in the revised allotment letter i.e., 30% at the time of booking, 60% at the time of offer of possession and 10% at the time of possession of property.
- II. Direct the respondents to refund the excess payment over and above the 30% of the total cost or pay interest to the complainant @ 18% from date of payment i.w., 02.03.2021 till due date of next milestone which is application of OC
- III. Direct the respondents to pay to the complainant pre hand over charges from 02.03.2021 till the time of execution of BBA.
- IV. Direct the respondent to pay legal expenses.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds:



20. At the outset, the respondents denied each and every statement, averment, submission and contention set forth in the complaint to the extent the same are contrary to and/or are inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondents in the present reply.
21. That the complaint filed by the complainant is not maintainable in view of the reliefs sought by her whereby she has sought a relief qua change of the payment plan which was duly accepted by the complainant herself. She had admittedly agreed that her unit was transferred from PYP scheme to non-PYP scheme at a reduced rate and accordingly changes were made in the payment terms. That the complainant by way of the present complaint is malafidely not only trying to get the benefit of the reduced rate but is also seeking a direction to adhere to the original payment plan which was much on the higher side and such kind of relief cannot be granted by this Hon'ble Authority. In addition, the complainant is also seeking a relief qua refund of the alleged excess payment which does not fall within the jurisdiction of this Hon'ble Authority. Thus, the present complaint needs to be dismissed for want of jurisdiction.
22. It was submitted that an application for allotment for booking/allotment of a unit having in the project, residential component project being developed by the respondent-promoter. The application for allotment was submitted by the complainant's real estate broker. It was also submitted that the complainant had signed and submitted the application form after duly understanding all the clauses stipulated therein. The terms and conditions contained in the application form were the indicative terms and conditions of the agreement to be executed between the parties. That in due consideration of the complainant's



commitment to make timely payments, an apartment bearing no. MH TW-06-1505 (*hereinafter* "Apartment") for an agreed cost of Rs. 1,48,95,564/- plus other charges in M3M Heights was provisionally allotted to the complainant vide allotment letter dated 16.03.2021. The payment plan opted by the complainant is reproduced herein below:

PAYMENT PLAN OF TCV

Name of Instalment	Payment Plan	Charge Amount in Rs.	Tax Amount in	Instalment (amount in Rs.)
On Booking	7.38% of TCV	10,47,619/-	52,380/-	10,99,999/-
Within 30 Days of Booking(Subject to Signing of Builder Buyers Agreement)	22.62% of TCV	32,08,256 /-	1,60,412/ -	33,68,668.00/-
On Application of OC (eligible discount proportionately as per the Certificate issued under Scheme PYP)	60% of TCV	85,11,751/-	4,25,588/ -	89,37,339.00/-
On Notice of Offer of Possession (eligible discount proportionately as per the Certificate issued under Scheme PYP)	10% of TCV	14,18,626/-	70,932/-	14,89,558/-
	TOTAL	1,41,86,252 /-	7,09,312/ -	1,48,95,564/-

PAYMENT PLAN OF OTHER CHARGES

NAME OF INSTALMENT	PAYMENT PLAN	CHARGES AMOUNT IN (Rs.)	TAX AMOUNT IN (Rs.)	INSTALMENT (AMOUNT IN Rs.)

On Notice of Offer of Possession	100% of Power Back Up charges(Carpet)	1,34,177.00/-	24,152.00/-	1,58,329.00/-
On Notice of Offer of Possession	100% of IFMS(carpet area)	1,99,452.00/-	0.00/-	1,99,452.00/-
		3,33,629.00/-	24,152.00/-	3,57,781.00

The complainant was allotted the apartment under the PYP scheme.

23. That thereafter the respondent company on 26.03.2021 sent copies of the buyer's agreement to the complainant for the execution at her end. It was submitted that the terms and conditions contained in the allotment letter dated 16.03.2021 were the indicative terms and conditions of the agreement to be executed between the parties.
24. That on the request of the complainant and post discussion with her, the respondent changed the booking of the complainant from PYP to non PYP scheme as a goodwill gesture. Accordingly, as per discussion between the parties the changes were made in the total price of the apartment, payment plan/timelines and PDCs as per settlement discussion. However, the complainant to unjustly enrich herself started asking the respondent herein for discounts/concession which were never discussed amongst the parties. That vide email dated 31.05.2021 the settlement terms were acknowledged by the complainant, and she also asked for inclusion of free maintenance for both units for a period of 12 months. That vide the said email the complainant also inquired about the issuance of the revised documents as per the settlement terms. That the respondent vide email dated 31.05.2021 in its response made it clear that the no such issue regarding free maintenance was ever discussed between the parties.



25. Thereafter as per discussion, the fresh allotment letter dated 16.03.2021 was once again issued to the complainant by the respondent, for the apartment bearing no. MH TW-06-1505 for an agreed cost of Rs.1,12,54,422/- plus other charges etc. The cost for the apartment shall be Rs. 8500/- psf plus possession charges plus applicable taxes. Copy of the payment plan is reproduced herein below for ready reference.

Name of Instalment	Payment Plan	Charge Amount in Rs.	Tax Amount in	Instalment (amount in Rs.)
On Booking	9.77% of TCV	10,47,619/-	52,380/-	10,99,999/-
Within 30 Days of Booking (Subject to Signing of Builder Buyers Agreement)	29.94% of TCV	32,08,256 /-	1,60,412/-	33,68,668.00/-
On or before 30 th June, 2021	10.29% of TCV	11,03,375/-	55,168/-	11,58,543/-
On Application of OC	40% of TCV	42,87,400/-	2,14,370/-	45,01,770/-
On Notice of Offer of Possession.	10% of TCV	10,71,850/-	53,592/-	11,25,442/-
	TOTAL	1,07,18,500/-	5,35,922/-	1,12,54,422/-

That the said changes were made post discussion with the complainant. The said fact is evident from email dated 19.06.2021.

26. Thereafter, the respondent vide demand letter dated 09.06.2021 requested the complainant to make payment of third demand due on or before 30.06.2021 as per the payment plan. That thereafter copies of the apartment buyers agreement were re-issued to the complainant for execution on her end vide letter dispatched on 21.07.2021. That the complainant for the reasons best known to her did not perform her contractual obligation and execute the buyer's agreement and the respondent was constrained to issue reminders requesting the



- complainant to comply her obligations and execute the apartment buyer's agreement and make further payments.
27. That thereafter the complainant despite repeated follow ups did not execute the agreement. The respondent herein issued fresh documentation as per the terms agreed between the parties. To sort out the issues between the parties the respondent called up the complainant, however no response was received from her side.
28. That since the complainant failed to comply with her obligations to execute the buyer's agreement and make payments the respondent issued a reminder letter dated 03.07.2021. Thereafter since the complainant did not come forward to perform her obligation the respondent was constrained to issue a pre-cancellation notice dated 22.07.2021.
29. Instead of performing her contractual obligations, the complainant had chosen to approach this Hon'ble Authority with a frivolous complaint only with a malafide intention to unjustly enrich herself and in one way or the other cover up her own breaches and non-performance of her contractual obligations. Hence, the complainant is not entitled to any relief whatsoever from this Hon'ble Authority.
30. That the provisional allotment letter was issued to the complainant, and she is bound by the terms thereof as also complainant remain bound by the terms and conditions mentioned in the said booking application. The said application was duly signed by the complainant after properly understanding each and every clause contained therein, and all the issues and concerns of the complainant were duly addressed to and satisfied by the respondent before the said booking application was considered and accepted for the allotment of an apartment in the project.



The complainant was neither forced nor influenced by the respondent to sign the said application. It was the complainant who after understanding the clauses acted further, signed and submitted the said application in her complete senses. The act of the complainant to make the booking application was an independent decision.

31. It was submitted that the complainant till date has paid an amount of Rs.44,68,669/- against the total dues of Rs.56,27,210/- plus interest towards the apartment in question. It was submitted that the complainant is a defaulter.
32. That instead of performing her contractual obligations, the complainant had chosen to approach this Hon'ble Authority with a frivolous complaint only with a malafide intention to unjustly enrich herself and in one way or the other cover up her own breaches and non-performance of her contractual obligations. Hence, the complainant is not entitled to any relief whatsoever from this Hon'ble Authority.
33. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:-

34. The plea of the respondent regarding lack of jurisdiction of this authority 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 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) 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.

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.

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. (Supra)* 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."

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.I. Direct the respondents to reinstate the payment plan as per original allotment letter in the revised allotment letter i.e., 30% at the time of booking, 60% at the time of offer of possession and 10% at the time of possession of property.



35. The main issue of the complainant is reinstatement of payment plan as was originally intimated to the complainant vide allotment letter dated 16.03.2016. The complainant booked a unit in the respondent's project under the PYP scheme. In the instant case, the payment plan as stipulated in the allotment letter was 30:60:10. However, on 19.06.2021, the parties had discussions inter se wherein it was decided that the unit will not be covered under the PYP scheme anymore. Thus, a revised payment plan was issued to the complainant wherein the payments were to be made in the ratio of 50:40:10. Thereafter, on 31.07.2021, the complainant was sent a buyer's agreement for execution of the same, but the complainant refused to sign it due to unilateral change in payment plan and thereafter approached the Authority by filing the present complaint.
36. During the course of hearing i.e., on 03.08.2022, both the parties were directed to execute the buyer's agreement. The same was duly complied with and parties entered into an agreement on 22.08.2022. The payment plan so agreed upon by the parties under the said agreement stipulates for payment of dues in the ratio of 50:40:10. Given the fact that the complainant herself has agreed to the revised payment plan, the present relief becomes redundant.

F.II. Direct the respondents to refund the excess payment over and above the 30% of the total cost or pay interest to the complainant @ 18% from date of payment i.e., 02.03.2021 till due date of next milestone which is application of OC

37. The complainant had deposited 40% of the sale consideration instead of 30% of the sale consideration which was to be deposited as initial instalment towards payment of dues. The complainant is seeking interest



on the additional 10% deposited by her. However, since the revised payment plan stipulates for 50% of sale consideration as initial instalment and the complainant herself has agreed to it, hence no interest can be awarded to the complainant.

F.III. Direct the respondents to pay to the complainant pre hand over charges from 02.03.2021 till the time of execution of BBA.

38. The respondent had sent an undated letter to the complainant wherein it was stipulated that a monthly rebate of Rs. 78,611/- will be paid to the complainant on payment of Rs. 53,62,401/- which shall be payable with effect from 02.03.2021 till the date of filing of application for grant of occupancy certificate of the unit. The letter also specifies that to convey the acceptance of the terms of the letter, the complainant should put her signature and return the signed copy to the respondent.
39. However, the complainant never signed the said letter thus never accepted the terms of the letter. The complainant cannot be allowed to take advantage of something she did not agree to in the first place. Thus, the present relief cannot be allowed.

F.IV. Legal Expenses

40. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in



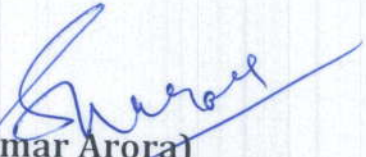
section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority

41. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. Both the parties are directed to adhere to the terms and conditions stipulated in the builder buyer agreement dated 22.08.2022 as signed in pursuance to proceedings dated 12.08.2022. The complainant-allottee is further directed to make timely payments in accordance with payment plan stipulated in the buyer's agreement and the respondent-promoter is directed to deliver possession of the unit within the time period stipulated under the said buyer's agreement.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate by the respondent/promoter and the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.
- iii. The respondent shall not levy/recover any charges from the allottee which has not been specified in the buyer's agreement.

42. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
43. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.12.2022