

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

Complaint no. : 2899 of 2020  
Date of filing complaint : 13.10.2020  
First date of hearing : 03.03.2021  
Date of decision : 14.02.2023

Vishal Jyani R/O: - 1403, Tower 1, Uniworld Garden, Sohna, Gurugram, Haryana.	<b>Complainant</b>
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana-122003	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sanjeev Sharma	Advocate for the complainant
Sh. Ck Sharma & Dhruv Dutt Sharma	Advocates for the respondent

**ORDER**

1. 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	'The Leaf', Sector -84-85, Gurugram
2.	Nature of the project	Group Housing Complex
3.	DTCP License No.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
4.	RERA Registered/ Not Registered	RERA registered 35 of 2021 dated 14.07.2021
5.	Unit no.	7A, 7 <sup>th</sup> Floor, Tower-10 (BBA on page no. 35 of complaint)
6.	Unit admeasuring	2280 sq. ft. (BBA on page no. 35 of complaint)





7.	Allotment Letter	10.09.2012 (As per page no. 25 of complaint)
8.	Date of execution of builder buyer agreement	22.03.2014 (on page no. 34 of complaint)
9.	Possession clause	<b>8. Possession</b> <b>8.1: Time of handing over the possession</b> 8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, <b>the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement.</b> However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat

		<p>buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period , for applying and obtaining occupation certificate in respect of the Group Housing Complex.</p> <p><b>(Emphasis supplied).</b></p>
10.	Due date of delivery of possession	<p>22.03.2017</p> <p><b>(calculated from the date of signing of buyer agreement)</b></p>
11.	Total sale consideration	<p>Rs. 1,21,12,200/-</p> <p>(As per BBA on page no. 36 of complaint)</p>
12.	Total amount paid by the complainant	<p>Rs. 49,02,221/-</p> <p>(As alleged by the complainant)</p>
13.	Cancellation of Allotment	<p>24.11.2021</p> <p>(As per page no. 106 of reply)</p> <p>(Invalid cancellation as the complainant filed the complaint for refund earlier than cancellation of the allotted unit by the respondent before Hon'ble</p>



		Authority)
14.	Occupation Certificate	09.05.2022 (As per page no. 111 of reply)
15.	Notice for offer of possession	12.05.2022 (As per page no 107 of reply)
16.	Grace period utilization	As per the clause for possession, the developer shall be entitled to a grace period of 90 days, after the expiry of thirty six month(36) months or such extended period for applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for occupation certificate within the time limit prescribed In the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore , the grace period is not allowed

**B. Facts of the complaint**

3. That the complainant booked a unit in the project of the respondent namely, "The Leaf" located at Sector 84-85, Gurgaon, Haryana for a total sale consideration of Rs. 1,21,12,200/-.
4. That on 10.09.2012, the respondent issued an allotment letter to the complainant wherein he was allotted a "Unit No. 7A, 7<sup>th</sup> Floor, Tower-10" having an approximate super area of 2,280 sq. ft. in the Tower -10 of the said project at the basic rate of Rs.4,550.00 per sq.ft. and preferential location charges (PLC) of Rs. 100 (+Rs. 75 for additional PLC) per sq.ft. external development charges (EDC) of Rs.355/- per sq.ft. infrastructure development charges (IDC) of Rs.35/- per sq.ft (hereinafter referred to as "the said Unit").
5. That finally a flat buyer's agreement was executed between the parties on 22.03.2014. As per the agreement, the possession of the said unit was to be handed-over to the complainant within 36 months from the date of execution of the agreement, that is by, 22.03.2017.
6. The total Invested amount by the complainant is Rs 49,02,221/-. After that the respondent has neither sent any demand nor completed the work despite all the efforts in getting several commitment verbally during the visit at the marketing office of the RESPONDENT.
7. That During September 2018 and then again during June 2019 the complainant visited few more times so as to understand the work in progress and to check the management's commitment towards fulfilling



its commitment, but to the dismay of complainant, there wasn't any progress.

8. That then complainant tried to reach out to the officials of the respondent but several rounds of meeting with respondent yielded no proper conclusion and commitment. The complainant even demanded the return of his invested money but it was all in vein.

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

9. The complainant has sought following relief:
- (i) Direct the respondent to return the principal amount of Rs. 49,02,221/- paid by the complainant till date to the respondent.
  - (ii) Direct the respondent to pay a simple interest Rs. 52,93,949/- at 15% PA simple interest on the said principle amount which is still continuing till the time of realization.
  - (iii) Cost of litigation, mental harassment, financial loss due to this default of respondent, which amounts to Rs 10 Lakhs.

**D. Reply by the respondent.**

10. That on 10.09.2012, the complainant was allotted unit no. 7A. 7<sup>TH</sup> Floor, Tower-10 having an approximate super area of 2280 sq. ft. in the Tower-3 of the project "The Leaf" at the basic rate of Rs. 4550/- per sq. ft. and preferential location charges (PLC) of Rs. 175/- per sq. ft. external development charges (EDC) of Rs. 355/- per sq. ft., infrastructure development charges (IDC) of Rs. 35/- per sq. ft. to be payable as per the payment plan. It is submitted that the total sale consideration of the flat booked by the complainant was Rs. 1,21,12,200/-. However, it is submitted that the total sale consideration amount was exclusive of the



registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainant at the applicable stage. The complainant agreed that the payment would be made as per the payment plan (construction linked payment plan) annexed with the allotment letter and the copy of same was read over to him at the time of advance registration of the flat. It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the flat from the very initial and the last payment was made on 28.07.2015 and since then, no payment has been made by the complainant. It is submitted that upon failure to make payment of outstanding instalments, the respondent was constrained to issue e-mails dated 12.10.2015, 01.04.2016, 03.03.2017, 18.04.2017, 23.05.2018, 07.06.2018, 20.06.2018 and 31.07.2018, and reminder letters dated 08.10.2013, 07.12.2013, 11.04.2014, 12.10.2015, 21.01.2016 and 03.03.2017 respectively to the complainant to make the outstanding payment. But the respondent's request fell on deaf ears of the complainant and he did not pay the outstanding dues pending against the said unit the complainant always gave false promises and assurances regarding payment of instalment but deliberately withheld the due payment payable to the respondent as per the agreed payment plan.

11. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and flat buyer's agreement and as such, the case is liable to be rejected. It is submitted that out of the total consideration of Rs. 1,21,12,200/- of the flat, the amount actually paid by the complainant is Rs. 36,92,755/-, i.e., approx.30% of the total sale consideration booked by the complainant. It is further submitted that there is an outstanding



amount of Rs. 1,00,49,657/- (excluding interest) on accepting possession of the said unit payable by the complainant as on 28.05.2022 as per the construction linked plan opted by the complainant. The complainant is a real estate investor who has made the booking with the respondent only with an intention to make profit in a short span of time. However, it appears that his calculations has gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. The complainant after defaulting in complying with the terms and conditions of the flat buyer's agreement, now wants to shift the burden on the part of the respondent whereas it has suffered a lot financially due to such defaulters like the present complainant.

12. That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from them further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated if the payment from other perspective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainant freezes the

hands of developer / builder in proceeding towards timely completion of the project.

13. All the averments made in the complaint were denied in toto.
14. 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**

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 Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottees 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.*

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.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to return sale consideration sum of Rs. 49,02,221/-received by them from the complainant.**

15. In the present complaint, the complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or its inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per agreement for sale as mentioned in the table above is 22.03.2017. The matter is covered under section 18(1) of the Act of 2016.
16. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The



complainant-allottee has already wished to withdraw from the project and he has become entitled his right under section 19(4) to claim the refund of amount paid along with interest to at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1)RCR, 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed as under:

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

18. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to



give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

19. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoters on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoters as the promoters fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
20. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 49,02,221/- with interest at the rate of 10.60% (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*.

**F.II That this Hon'ble Authority may direct the respondent to pay litigation cost, mental harassment, etc. @Rs. 10,00,000/- to the complainant.**

21. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, 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

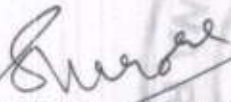
**G. Directions of the authority**

22. 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 entire amount of Rs. 49,02,221/- paid by the complainant along



with prescribed rate of interest @ 10.60% p.a. from the date of each payment till the actual date of refund of the deposited amount within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

- II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow
23. Complaint stands disposed of.
24. File be consigned to registry.

  
**(Sanjeev Kuma Arora)**  
Member

  
**(Ashok Sangwan)**  
member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2023

**HARERA**  
**GURUGRAM**