

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

Complaint no.	:	2027 of 2018
Date of filing complaint:		27.12.2018
First date of hearing:		04.12.2019
Date of decision	:	12.04.2023

Alka Sharma R/O: Plot no. 928, Ram Nagar, Shastri Nagar, Jaipur, Rajasthan		Complainant
Versus		
1. Lemon Tree Land and Developers Pvt. Ltd. Regd. office: Plot no. 128, Sector - 44, Gurugram 2. Tata Housing Development Company Ltd. Regd. office: Time Tower, 12 th floor, Kamala Hills Compound, Senapati Bapat Marg, Lower Parel(west), Mumbai		Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Anil Kumar Sura (Advocate)	Complainant
Shri Arun Kumar Yadav (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for

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

A. Unit and project related details

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

S. N.	Particulars	Details		
1.	Name of the project	"Gurgaon Gateway", Sector 112-113, Village Bajghera, Gurgaon, Haryana		
2.	Project area	21.05 acres		
3.	Nature of the project	Group Housing Colony (Residential)		
4.	DTCP license no. and validity status	85 of 2012 dated 29.08.2012 valid upto 28.08.2018	105 of 2011 dated 11.12.2011 valid upto 10.12.2024	86 of 2012 dated 29.08.2012 valid upto 28.08.2025
5.	Name of licensee	CSN Estates Pvt. Ltd. &		
6.	RERA Registered/ not registered	Not registered		
7.	Unit no.	Unit no. 3, Level 09, Tower D		



		(Page no. 29 of complaint)
8.	Unit area admeasuring	2535 sq. ft. (Page no. 29 of complaint)
9.	Buyer agreement	Not Executed
10.	Possession clause (Taken from the BBA annexed in the file but not executed between the parties)	7.C Possession Time and Compensation <i>"The builder shall endeavor to give possession of the Residential Units to the Allottees on or before the possession date as mentioned in Annexure A hereto but subject to force majeure circumstances and reasons beyond the control of the builder. If the builder fails to give possession of the unit on the date mentioned herein the, it shall be liable to pay to the allottees compensation @6% p.a. for the amounts paid towards the residential units from the date of possession as mentioned herein till the date of actual possession".</i> (Page 74 of the Reply to Complaint) Annexure A of the Agreement does not mention the date of possession. (Page 83 of the Reply to Complaint).
11.	Date of allotment	28.06.2013 (Page no. 29 of complaint)
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 2,73,78,000/-



		(As per Allotment Letter on page 66 of the Reply to Complaint)
14.	Amount paid by the complainant	Rs. 10,00,000/- (As alleged by the complainant) Rs. 9,64,510/- (Annexure C-11 at page 41 of the Complaint)
15.	Occupation certificate	30.08.2017 (As per page 50 of the Reply to Complaint)
16.	Date of Cancellation	06.11.2013 (Annexure C-11 at page 41 of the Complaint)

B. Facts of the complaint:

3. That the complainant booked a unit in the project namely "Gurgaon Gateway", Sector 112-113, Gurugram and booked a unit and gave a booking amount of Rs. 10,00,000/- through cheque dated 20.02.2013 which was encashed on 09.05.2013. but the respondent did not get any kind of documents filled up or signed by the complainant and simply kept the amount with them.
4. That on 28.06.2013, Subsequently, respondent no. 1 got the application form of the complainant filled and on the same date they issued the allotment letter for the unit in question.

5. The respondent did not disclose the actual payment and the actual cost of the flat through the allotment letter/application. However, to the utter shock of their employees told complainant and her husband that the approximate cost of the flat is around 2.5 crore but they wanted to book a flat of small area. Feeling aggrieved upon this a mail was sent on 12.08.2013 and 13.08.2013, to the respondent by her w.r.t. withdrawal from the project and refund of the paid amount
6. Thereupon a mail dated 13.08.2013 was sent to complainant through respondent that as per terms and conditions of the application form, booking amount of Rs. 10,00,000/- can not be refunded an also put an offer to the complainant that we cannot refund the amount but can adjust the amount in a smaller unit.
7. That the office of respondents had issued the vague and bogus notices dated 21.09.2013 and 01.10.2013 for the said apartment and finally they cancelled the apartment on 19.10.2013 and 06.11.2013.
8. The complainant made several requests to the respondents for either to refund the booking amount or to allot an alternate flat but all requests went in vain. Hence the present complaint.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondent to refund an amount of Rs. 10,00,000/- along with interest.
 - ii. Direct the respondent to pay Rs. 1,00,000/- as cost of litigation.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

10. That this authority has no jurisdiction to entertain the complaint.
11. That the complaint filed by the complainant is time barred since the respondent had terminated her allotment of the said apartment on 6th November 2013 and the complainant has filed this present complaint in December 2018 after a period of five years
12. The complainant had filed the complaint before the Permanent Lok Adalat at Gurugram in 2013 and withdraw the same in 2016 after a period of three years. In this case, the respondent had also duly filed its reply to the complaint. After initiating the proceeding for 3 years and post contesting of the complaint before Lok Adalat by the respondent, the complainant withdrawn the complaint on 4th April 2016 with liberty to file fresh complaint before any other competent authority since the complainant at relevant time itself had realised that her complaint will be dismissed on merits if she argue the matter and so as to also pressurize the respondent company for refund of the forfeited money.
13. Subsequently, with an intention to harass the respondent and with an intention to seek refund of the amounts forfeited by the respondent as per the terms and conditions of the application form, the complainant had filed the complaint before DCDRC, Gurugram on 22nd July 2016 and after a period of one year i.e. 27th July 2017 withdrawn the

complaint for want of jurisdiction and now after a period of one year, the complainant filed the complaint before this Hon'ble Authority in December, 2018. Thus, it is very evident that the complainant is forum hunting and trying to harass the respondent for refund of the amounts. Hence, the period of court proceedings should not be deducted / considered while calculating limitation period to entertain the complaint.

14. Further, the complainant has filed an application under section 14 of the Limitation Act, 1963 which stipulates that excluding of time of proceeding due to defects of limitation or other cause of similar nature. Hence, the application under section 14 of the limitation act be disposed and accordingly also the complaint is liable to be demised for want of limitation.
15. Further, the complainant with malafide intention and ulterior motives she has suppressed the complete Application Form dated 28th June 2013 which was duly signed by her post which itself make amply clear that the Complainant is trying to make a case for refund of the amounts by putting false representation before this Hon'ble Authority.
16. Complainant has suppressed the material fact that the Complainant herself vide email dated 31st August 2013 had made a request for transfer of the unit from 2535 sq. ft to 1503 sq. ft by stating the reasons that she is suffering from heart problem and hence it is again admitted position on the part of the complainant that the complainant

herself made a request for transfer to small unit and not because of the respondent who had hide anything with the complainant as allegedly stated in the body of the complaint.

17. That respondent thereafter issued a letter dated 1st October 2013 to the complainant and thereby given the opportunity by extending the time till 30th October 2013 to make the balance payment. Despite that the complainant did not make any further payment. Since the complainant did not bother to pay any further instalment and hence the respondent had initially issued the Final Pre-Cancellation dated 19th October 2013 and thereby requested to make payment by 31st October 2013 failing which, as per the terms of the application form, the allotment of the apartment be cancelled, and the following amounts will be forfeited. Despite giving her several opportunities, the complainant did not make the balance payment and hence, the respondent was constrained to issue the cancellation letter dated 6th November 2013.
18. All the averments made by the complainant are denied in toto.
19. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

21. 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) R.C.R. (Civil) 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 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.*

F. Entitlement of the complainant for refund:

F.I Direct to the respondent to refund an amount of Rs. 10,00,000/- along with interest.

22. The complainant was allotted a unit in the project of respondent "Gurgaon Gateway", in Sector 112-113, Gurugram vide allotment letter dated 28.06.2013 for a total sum of Rs. 2,73,78,000/-. Though no buyer's agreement was executed between the parties, but the complainant has paid the amount i.e., booking amount of Rs. 10,00,000/-. That after coming to know about the exact cost of the flat, which was much higher than what he was anticipating, the complainant went in utter shock and on 12.08.2013 and 13.08.2013, the complainant sent an email to the respondent for seeking refund of the amount paid. To which respondent replied on 13.08.2013, that as per terms and conditions of the application form booking amount of Rs. 10,00,000/- cannot be refunded and gave an alternate option for transferring the said amount into a smaller admeasuring unit. But no positive outcome has been reached between them.
23. The respondent sent various emails/demand letters dated 21.09.2013 and 01.10.2013 to complainant for paying outstanding amount and finally on 06.11.2013 they cancelled the unit on the ground of non-payment.
24. It is evident from the above mentions facts that the complainant paid a sum of Rs.10,00,000/- against basic sale consideration of Rs. 2,73,78,000/- of the unit allotted to them on 28.06.2013. The respondent has contended that as per clause 6 of terms and conditions of application form the respondent-builder is entitled to forfeit the entire booking amount and hence no amount is left to be refunded.

25. Even Otherwise, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. Amount Of Earnest Money

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view **that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.**"*

26. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the amount paid by the complainant against the allotted unit as it is both the earnest money and even less than the 10% of the consideration amount. So same is liable to be forfeited as per clause 6 of Application form and Haryana Real Estate Regulatory Authority Regulation 11(5). However, the amount paid by the complainant i.e., Rs. 10,00,000/- constitutes 3.65 % of sale consideration of Rs. 2,73,78,000/- Thus, no direction to this effect.


F. II Direct the respondent to cost of litigation.

27. The complainant is seeking relief w.r.t compensation in the aforesaid relief, 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.*** ***Supra*** 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 may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

28. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
29. Complaint stands disposed of.
30. File be consigned to the registry.


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram


Ashok Sangwan
Member

Dated: 12.04.2023