

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

Complaint no.	:	571 of 2021
Date of filing	:	01.02.2021
First date of hearing:	:	10.03.2021
Date of decision	:	21.04.2023

Sh. Somveer S/o Sh. Mani Ram R/o: 758, Shree Durga PG, Sector 48, South City - Ii Gurugram	<b>Complainant</b>
Versus	
Apex Buildwell Private Limited Regd. office: 14A/36, WEA Karol Bagh, New Delhi-110053	<b>Respondent</b>
<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE WHEN ARGUED:</b>	
Shri Vijender Parmar (Advocate)	<b>Complainant</b>
Shri Anmol Saxena (Advocate)	<b>Respondent</b>

**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 to the allottee as per the agreement for sale executed inter-se them.

**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, delay period, if any, have been detailed in the following tabular form:

S.n.	Particulars	Details
1.	Name of the project	Our Bazaar
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Commercial component of Low-cost group housing project
4.	Shop no.	45 on ground floor (As alleged by the complainant on page no. 02 of the complaint)
5.	Area admeasuring	198 sq. ft. (As alleged by the complainant on page no. 05 of the complaint)
6.	Allotment letter dated	Not provided on record
7.	Date of apartment buyer agreement	Not executed
8.	Date of commencement of construction of the project	NA
9.	Possession clause	NA
10.	Due date of possession	Cannot be ascertained
11.	Total sale consideration	Rs. 16,73,100/-

		(As alleges by the complainant on page no. 05 of the complaint)
12.	Amount paid by the complainant	Rs. 14,33,548/- (As alleges by the complainant on page no. 05 of the complaint)
13.	Occupation certificate	<b>i. 29.11.2019</b> Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers) <b>ii. 24.02.2020</b> Type-1 (16 nos. towers) & Commercial (As per details available on site of DTCP)
14.	Legal notice dated	12.05.2020 (As per page no. 14 of complaint)

**B. Facts of the complaint**

3. That in year 2017, the respondent through its marketing executives and advertisement done through various medium and means approached the complainant with an offer to invest and buy a shop in its proposed project namely "Our Bazaar" in Sector-37C, Gurugram (hereinafter referred to as "said project"). It represented itself as a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of

- proposed shop on the assured delivery date as per the best quality assured by the respondent.
4. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. The respondent used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home would be delivered within the agreed timelines and he will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.
  5. That the respondent further assured to him that it has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specifications. Relying on the representations and warranties of the respondent and believing them to be true, the complainant agreed to the its proposal to book the residential shop in the project of respondent.
  6. That relying upon those assurances and believing them to be true, the complainant booked a shop bearing 45 on ground floor having super

- area of 190 Sq. ft. for total sale consideration of Rs.16,73,098.99/-. It has also executed and issued the application form, and payment receipts etc. to the complainant in the capacity of promoter.
7. That the respondent assured him that it would execute the shop buyer agreement at the earliest and maximum within one week. However, it has failed to fulfil its promise and have not executed the agreement as agreed by it till now.
  8. That thereafter, the respondent started raising the demand of installments from the complainant as per the agreed timelines and as on today he has paid total amount of Rs.14,33,548/- to the respondent towards the sale consideration of the aforesaid shop.
  9. That from the date of booking and till date, the respondent has raised various demands for the payment of installments towards the sale consideration of the said shop and the complainant has duly paid and satisfied all those demands without any default or delay on their part.
  10. That in March 2019, the complainant made last payment for the aforesaid shop and inquired about the status of shop but to his utter dismay and shock, he came to know that the respondent has issued the aforesaid shop on some other person's name knowingly the fact that the complainant has made the payments for the aforesaid shop.
  11. That in statement of account/passbook it is evident that the complainant has made the payments in favour of the respondent

- through cheque bearing no 14 amounting Rs 4,56,030/- drawn on ICICI Bank and 000014 amounting Rs 9,77,518/- drawn on HDFC Bank and the respondent duly acknowledged the same in its statement of account.
12. That the complainant through its advocate sent a notice dated 02.06.2020 regarding the status of shop and the wrong allotment of shop on someone's else name and in reply the respondent totally denied the allotment and booking of the complainant.
  13. That the conduct on the part of respondent has cleared the dust on the fact that all the promises made by the respondent at the time of sale of said shop. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said shop on the basis of its false and frivolous promises, which the respondent never intended to fulfil.
  14. The complainant had faced all these financial burdens and hardship from its limited income resources, only because of respondent's failure to fulfil its promises and commitments and has forced him to suffer grave, severe and immense mental and financial harassment with no-fault on their part.
  15. That the respondent has fraudulently and deliberately misappropriated the money of complainant and allotted the shop to some other buyer knowingly the fact that it was the complainant who has made all the payments for the aforesaid shop.

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

16. The complainant has sought following relief:

- i. Direct the respondent to refund Rs. 14,33,548/- paid by the complainant towards sale consideration of the said shop along with the interest at the prescribed rate.
- ii. Direct the respondent to pay Rs. 10,00,000/- towards mental and physical harassment caused due to delay in delivery of possession, breach of trust, damages, false and frivolous promises, misrepresentation, deficiency in services and unfair trade practices.

17. 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:**

18. That the answering respondent most respectfully submits that the above noted case is a mere abuse of process of law wherein the complainant does not have any cause or concern with any shop of the answering-respondent and the documents qua the shop being used has already been taken over by the allottee of the same namely Sh. Sukhvir S/o Ram Karan, R/o Dhani Mauji, Churu, Rajasthan. In fact, the complainant deserves to be prosecuted and punished for initiating a false, frivolous and wrongful complaint of the sort. It is at the very outset it is submitted that the complainant has no cause of action

against the answering respondent and the alleged cause of action is nothing but false, frivolous and wrongful one and the respondent has neither caused any violation of the provisions of the Act and does not have any privity of contract with the complainant.

19. That the complaint under reply is neither tenable nor maintainable and has been filed with an oblique motive when the shop has already been taken over by the actual allottee of the shop. That the complainant does not have any cause of action nor any right, title or interest to seek any refund from the respondent under the jurisdiction of the Authority and at best it could be dispute between the actual allottee and the person paying money on behalf. Hence, the complaint is liable to be dismissed.
20. That the contents of para 2 of the facts of the case as stated are correct to the extent of the project named "Our Bazaar" being part of the project named "Our Homes" being developed by the answering respondent. However, it is denied that the Hon'ble Adjudicating Officer has any jurisdiction to try to decide the present complaint as neither the complainant has any locus standi nor any cause of action to pursue the present complaint.
21. That the respondent is duly engaged in the business of real estate and has been diligently pursuing and constructing the project in the name of Our Homes wherein the commercial space is promoted in the name



of Our Bazaar and despite all odds completed the said project and offered possession of the same to all its bona fide customers.

22. That the actual allottee, whose documents are being relied upon, i.e. Sukhvir S/o Ram Karan R/o Dhani Mauji, Churu has already taken over the possession of the shop No. G39 on Ground Floor of the said project and the alleged Shop No. 45, Ground Floor was initially allotted to the said Sukhvir S/o Ram Karan only which was later transferred due to change in area and the, complainant, therefore, does not have any right, title or interest to pursue or even file the present complaint.
23. That the copy of statement of account as relied by the complainant does not pertain to the complainant and seems to be forged document illegally created for wrongful gains and it has not raised any demand upon the complainant towards the sale consideration of the alleged shop.
24. That it is specifically denied that the complainant made any payments qua any specific shop. At max it seems that the payment have been made on account of some other customer and the complainant is trying to take wrongful advantage of the same by seeking refund of the said amount.
25. All other arguments made in the complaint were denied in toto.
26. 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**

27. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

#### **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 promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

The Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per Section 11(4)(a) of the Act of 2016 leaving aside compensation which is to be decided by the Adjudicating Officer. 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 complainant at a later stage.

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

**Relief sought by the complainant:**

**F.I Direct the respondent to refund Rs. 14,33,548/- paid by the complainant towards sale consideration of the said shop along with the interest at the prescribed rate.**

28. Before proceeding further, it is important to highlight the fact that initially the instant complaint was clubbed with complaint bearing no. 3503 of 2021 titled as *Sukhvir Vs Apex Buildwell Private Limited* on the request of the respondent. However, in view of proceedings dated 09.09.2022 recorded in Complaint no. 3503/2021, the same were decided to be taken up separately due to different issues involved.
29. The complainant filed the present complaint seeking relief of refund of the paid-up amount. It was submitted that he booked a shop bearing no. 45 in the project of the respondent for a consideration of Rs. 16,73,100/- and till date, paid an amount of Rs. 14,33,548/- towards consideration of allotted unit. It was also submitted the respondent failed to get the buyer's agreement executed. It was in March 2019 when

he made the last payment and came forward to enquire about the unit, he was shocked to know that the said unit was now allotted to some other person. He also sent a legal notice dated 12.05.2020 in this regard.

30. On the other hand, the respondent submitted that the subject unit bearing no. 39 was allotted to one Sh. Sukhvir S/o Ram Karam R/o Dhani Mauji, Churu, Rajasthan and later on, that unit was renumbered as G-45. But this unit was neither allotted to the complainant at any time nor the respondent received any amount from him against this unit.
31. The Authority observes that as per the facts and finding of the complaint bearing no. 3503 of 2021, it was concluded that the said unit G-39 was allotted to Sh. Sukhvir vide allotment letter dated 14.09.2017 (*annexed on page no. 23 of complaint Cr/3503/2021*) and subsequently, a shop buyer's agreement dated 14.11.2019 for the allotted unit i.e. G39 was executed between those parties (*same is evident from page no. 28 of complaint Cr/3503/2021*). The said complaint was decided vide order dated 09.09.2022 of the Authority wherein it was concluded and directed that conveyance deed shall be executed in favour of complainant in that case i.e. Sh. Sukhvir S/o Ram Karam. Thus, there is no doubt that the Sh. Sukhvir S/o Ram Karam was the allottee of the subject unit of the complaint and not the complainant as pleaded by him.

32. Now coming back to the issues involved in the instant complaint, the complainant submitted that lured by the representations of the respondent, it booked a unit in the aforesaid project of the respondent and till date has already paid an amount of Rs. 14,33,548/-. It was further pleaded that booking form in this regard and payment receipt were issued by the respondent to the complainant. The Authority observes that despite aforesaid contentions, the complainant has failed to provide on record any application form and payment receipt in his favour with regard to the subject unit. Though he placed reliance on payment receipts dated 17.03.2017 & 16.03.2020 wherein the respondent acknowledged the receipt of the amount in question as detailed earlier but as per perusal of those receipts at page no. 11 & 12 respectively (annexure 1 & 2) shows the same having been issued in favour of one Sukhvir R/o Churu (Rajasthan).
33. The complainant during the course of proceedings dated 17.01.2023 submitted that the respondent in para-wise reply of para 10 submitted that *"at max it seems that the payment have been made on account of some other customer"*. But no inference can be drawn through that.
34. The complainant during the course of proceedings dated 17.01.2023 placed on record his statement of account and submitted that on 15.03.2019, a payment of Rs. 9,77,518/- was made in favour of M/s Apex Buildwell private Limited vide cheque bearing no. 00014 and in

receipt dated 16.03.2020, same cheque number i.e., 00014 has been shown to be credited towards payment of subject unit. But no conclusion through that can be derived w.r.t allotment of subject unit to the complainant as receipt w.r.t payment of Rs. 9,77,518/- was issued in favour of one Sukhvir R/o Dhani Mauji, Churu (Rajasthan). Hence, despite providing opportunity to place on record anything relevant wherein allotment in favour of the alleged allottee can be concluded, the complainant has failed to provide on record any such document.

35. Thus, in view of aforesaid circumstances, where the complainant has miserly failed to place on record documents to prove payment to respondent-builder towards allotment of subject unit, no case of refund is made out in favour of alleged allottee and hence, the complaint stands dismissed.

**G.II Direct the respondent to pay Rs. 10,00,000/- towards mental agony and physical harassment caused due to delay in possession, breach of trust, damages, false and frivolous promises, misrepresentation, deficiencies in services and unfair trade practices.**

36. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. 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 an allottee may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

37. Hence, in view of findings of the Authority on issue no. 1 and discussion above, no case for refund of paid-up amount is made out and the complaint stands dismissed.
38. Complaint stands disposed of.
39. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2023

  
(Ashok Sangwan)  
Member