

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

Complaint no. :	563 of 2019
Date of filing complaint:	20.02.2019
Date of decision :	23.02.2023

Sh. Arun Gupta <b>Both R/O:</b> Flat no. 135 Young Professionals CGHS Ltd., Plot no. 10, Secor-11, Dwarka- 110075	<b>Complainant</b>
Versus	
1 M/s Samyak Projects Private Limited <b>Regd. office:</b> 201/202, Solitaire Plaza, opp. Garden estate, M.G. Road, Gurugram. 2 M/s Universal Buildwell Private Limited. <b>Regd. Office:</b> Universal Trade Tower, 8 <sup>th</sup> floor, Gurgaon-Sohna Road, Sector-49, Gurgaon- 122018.	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Arun Gupta	Complainant in person
None	Respondent

**EX- PARTE 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 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Market Square", Sector 67, Gurugram.
2.	Total area of the project	1.75 acres (178.412 acres)
3.	Nature of the project	Commercial project part of residential colony
4.	DTCP license no.	18 of 2010 dated 10.03.2010 valid up to 09.03.2018 21 of 2011 dated 24.03.2011 valid up to 23.03.2019 26 of 2012 dated 30.03.2012 valid up to 26.03.2018
5.	Name of licensee	M/s Sukh Dham Coloniser Pvt. Ltd. c/o Ansal Properties Infrastructure Pvt. Ltd.
6.	Registered/not registered	Registered as "Town Plaza" Vide registration no. 09 of 2018 dated 24.07.2018 valid up to 31.07.2021
7.	Provisional allotment letter w.r.t. unit no. S-30 admeasuring 363 sq.	10.05.2011

	ft. issued by M/s Universal Buildwell Pvt. Ltd.	[pg. 16 of complaint]
8.	Date of allotment letter	03.12.2015 [pg. 12 of CRA]
9.	Unit no.	S-88 [pg. 12 of CRA]
10.	Area of the unit	287.69 sq. ft. [pg. 12 of CRA]
11.	Date of execution of buyer's agreement between complainants & Ansal properties & Samyak projects.	03.12.2015 [pg. 15 of CRA]
12.	Possession clause	<p><b>10 (a). Schedule for possession of the Said Unit</b></p> <p><i>the developer based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to circumstances beyond an the power and control of the developer or force majeure conditions including but not limited to reasons mentioned in clause 10(b) and 10(c) or due to failure of the allottee(s) to pay in time the total consideration and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement. In case there is any delay on the part of the allottee(s) in making of payments to the developer then notwithstanding rights available to the developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time</i></p>



		<p><i>equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the developer and in such eventuality the allottee(s) shall not have any right to claim any compensation/damages, whatsoever, from the developer due to the delay in implementation of the project.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[pg. 22 of CRA]</i></p>
13.	Due date of possession	03.12.2020 (Note: 60 months from date of agreement i.e., 03.12.2015)
14.	Basic sale consideration as alleged by CRA dated at pg. 9	₹ 25,69,730/-
15.	Total amount paid by the complainant as per sum of receipts annexed on pg. 15 of complaint	₹ 8,01,201/-
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

- That the complainant applied for commercial space in "Market Square" in sector- 67, Gurugram, Haryana vide application dated 23.12.2010 with M/S Universal Buildwell Private Ltd. and made payment of Rs. 8,01,201/- for unit no S-30 (second floor) measuring 363 sq. feet (super area). The land property belonged to M/S Samayak Projects Pvt Ltd. and M/S Universal Buildwell Private Ltd. was to develop/construct the project. The project was never started and went into litigation between M/S Samayak Projects Pvt Ltd. and the developer.



4. That on 24.11.2015, on the request of M/S Universal Buildwell Private Ltd., revised application was submitted by the complainant vide which area and shop number was revised to 287.69 square feet and S-88 (second floor). An indemnity bond was signed on 24.11.2015 and builder buyer agreement was executed on 03.12.2015.
5. That the construction never started and on 10.09.2018 complainant visited the office of M/S Universal Buildwell Private Ltd. where the notice of liquidation of M/S Universal Buildwell Private Ltd., was pasted and the office was closed. It also came to complainant notice that M/S Samyak Projects Pvt Ltd. has started taking fresh bookings for the project (Town Plaza). On visit of their office on 10.09.2018 it was informed that M/S Samyak Projects Pvt Ltd. are not giving any allotment to complainant as complainant didn't book the commercial space with them.
6. That it is submitted that the from day one M/S Samyak Projects Pvt Ltd. were owner of the land and M/S Universal Buildwell Private Ltd. were to develop the project. M/S Samyak Projects Pvt Ltd. gave the construction project to M/S Universal Buildwell Private Ltd. but litigation never stopped and project couldn't take off for eight years.
7. That vide letter dated 14.01.2019, M/S Samyak Projects Pvt Ltd. were requested to allot the commercial space as per contract or refund Rs 801201.00 to the applicants with interest as per RERA guidelines. The

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speed post letter to their head office in Delhi stands delivered but the registered letter to their Gurugram office has been returned with remarks 'Refused' dated 18.01.2019.

8. That vide letter dated 11.02.2019 M/S Universal Buildwell Private Ltd were requested to refund Rs 8,01,201/- to the applicants with interest as per RERA guidelines. The speed post letter to their Gurugram office has been returned with remarks as 'lene se inkar' on 15.02.2019.

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

9. The complainant has sought following relief(s):
- Direct the respondent to refund the amount paid by them along with prescribed rate of interest.
10. The authority issued a notice dated 21.02.2019 & 27.02.2019 of the complaint to the respondent by speed post and also on the given email address at samyakprojects.sales@gmail.com. The delivery reports have been placed in the file. Thereafter, reminders dated 25.09.2019, 14.10.2020, 22.05.2021, 16.08.2021 for filing reply were sent to the respondent on email address at samyakprojects.sales@gmail.com. Despite service of notice through email and public notice, the respondent preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

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11. 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.

**D. Jurisdiction of the authority:**

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. 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.

**D. 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 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,*

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*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 promoter, 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 complainants at a later stage.

**E. Entitlement of the complainants for refund:**

**E.1 Direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest.**

13. That the complainant applied for commercial project in the subject project vide application dated 23.12.2010 with M/s Universal Buildwell Private Ltd. The subject land belongs to the M/s Samayak Projects Pvt. Ltd. And M/s Universal Buildwell Pvt. Ltd was to develop/construct the project. On, 10.09.2018, the complainant visited the office of the respondents, where the notice of liquidation was pasted and the office was closed. It is further submitted that the M/s Samayak Projects Pvt. Ltd. Gave the construction project to M/s Universal Buildwell Private Ltd but litigation never stopped, and project could not take off for eight years.

14. It brought to the notice of the authority that the authority has appointed a local commission to visit the site of the project and as per the report of the local commission dated 07.10.2022, no work has been done by the

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promoter on the project site. The project site is left vacant, and no construction activity has been carried out and project seems to have been abandoned.

15. Keeping in view the fact that the allottee- 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 his failure to complete or inability to give possession of the unit.
16. Further, in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(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 allottees 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 allottees, 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 allottees/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 allottees 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*

17. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and

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regulations made thereunder under section 11(4)(a). 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.

18. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 8,01,201/- with interest at the rate of 10.70% (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. Directions of the Authority:**

19. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent/promoters are directed to refund the amount i.e., **Rs. 08,01,201/-** received by it from the complainant along with interest at the rate of 10.70% p.a. 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.

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ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to the registry.



(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 23.02.2023**



**HARERA**  
**GURUGRAM**