

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

Complaint no. : 776 of 2020  
First date of hearing: 03.03.2020  
Order pronounced on: 21.04.2023

M/s HI-TECH Pipes Ltd.,  
R/o: - 10GF &505, Pearl Omaxe Tower,  
Netaji Subhash Palace, Pitampura, Delhi.

**Complainant**

Versus

M/s Parsvnath Developers Ltd.  
**Regd. Office At:** 6<sup>th</sup> Floor, Arunachal Building,  
19, Barakhamba Road, New Delhi-110032.

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Rahul Sharma (Advocate)  
Shri Deeptanshu Jain (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint dated 11.02.2020 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 provisions of the

Act or the Rules and regulations made thereunder or to the allottees 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:

S.N.	Particulars	Details
1.	Name and location of the project	"Parsvnath Exotica", sector-53, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	11.092 acres
4.	DTCP license no.	69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre) 52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre)
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	D5-1002, 10 <sup>th</sup> floor, Tower D5 [page no. 29 of complaint]
7.	Unit admeasuring area	3400 sq. ft. of super area [page no. 29 of complaint]
8.	Allotment letter	31.01.2007 [page 4 of CRA of refund]
9.	Date of booking	31.03.2006 [page 4 of CRA of refund]
10.	Date of builder buyer agreement	31.01.2007 [page 27 of complaint]
11.	Possession clause	<i>10 (a) Construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and</i>

		<i>approval of all concerned authorities including the Fire Service Deptt....."</i>
12.	Due date of possession	01.10.2008 (Calculated from the date of booking of the flat as date of commencement of construction of the particular block is not available on record) (grace period of 6 months is allowed being unqualified)
13.	Basic Price	Rs.1,43,85,000/- [page 2 of promoter information]
14.	Total amount paid by the complainant	Rs.1,37,66,000/- [page 2 of promoter information]
15.	Occupation certificate	Not yet obtained
16.	Offer for fit outs	01.05.2015 (annexure R2, page 25 of reply)

### **B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That in the year 2005, the respondent launched a group housing residential project named "Parsvnath Exortica" at sector 53, Gurgaon, Haryana. Believing the representations made regarding its timely completion, the complainant booked a residential unit in the said project by making payment of booking amount of Rs.20,00,000/- vide receipt no. S0028193 dated 31.03.2006.
- II. That a buyer's agreement dated 31.01.2007 was executed between the parties vide which unit bearing no. D5-1002, 10<sup>th</sup> floor, Tower D5 was allotted to it for a basic sale consideration of Rs.1,42,80,000/- and has paid a sum of Rs.1,37,66,000/- against the same.
- III. That as per clause 10(a) of the buyer's agreement, the construction of the flat was to be completed within a period of 36 months from the date of commencement of construction of the concerned block with a grace



period of 6 months and which eventually had already expired. But the project of the respondent is neither complete, nor it has obtained occupation certificate or completion certificate from the concerned government authorities till date. The construction activities of the entire project were abandoned since last many years.

- IV. That the complainant approached the respondent regarding handing over the possession but there was no response from its side till date.
- V. That recently in February 2019, the respondent issued a final statement of account of it in which the said unit is shown to have changed from unit no. D5-1002 to D5-1402 and increased its area and thereby caused increase in cost of the said unit by a sum of Rs.4,41,000/-.
- VI. That the respondent is also guilty of making breach of the buyer's agreement as it has required the complainant to do the pending flooring work, A.C fitting and piping, glass fixing, sanitary fittings, modular kitchen construction work, electric work, internal painting, installing flush doors, etc. Towards that account, the respondent has arbitrarily proposed to rebate an amount of Rs.8,69,000/-, whereas it is the responsibility of the respondent to accomplish the above mentioned works.
- VII. That the respondent is further guilty of making breach of the key terms and conditions of the buyer's agreement and has illegally and unlawfully charged various unfounded and unjustified amount from the complainant for which it was not legally entitled.
- VIII. That owing to such deceitful and fraudulent conduct of the respondent, the complainant has already lost its valuable trust upon it and wishes to withdraw from the project as more than 9 years have already been elapsed, but the unit allotted is far away from completion. Accordingly,





the complainant is seeking refund of total paid-up amount along with prevailing rate of interest as provided under the Act.

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

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

I. To refund the entire amount of Rs.1,37,66,000/- (Rupees One Crore Thirty-Seven Lac Sixty-Six Thousand only) along with prescribed rate of interest.

5. 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.**

6. The respondent has contested the complaint by way of reply dated 31.10.2022 on the following grounds: -

i) That the construction of the project is already complete and the competent authority has already granted Occupancy Certificate (OC) for the part of the project comprising of 11 towers and only 5 towers remains awaited for OC from the competent authority.

ii) That Tower D-5 in which the flat of the complainant is located, stands complete and it has offered the same for fit out purposes to the complainant along with FSA reflecting the special rebate or delay compensation from the period April 2010 to October 2011 for a period of 19 months amounting to Rs.6,50,750/- vide letter no. PDL/Exotica/D5-1402PH/2258 dated 01.05.2015 and all the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site.

- iii) That the construction could not be completed within the stipulated timeline due to reasons beyond the control of the respondent. The respondent has also adjusted the delay compensation in the account of the complainant for the delay in delivering the possession of the said unit.
- iv) That the complainant had been duly informed regarding the change of unit in the said project vide letters dated 02.11.2010 and 26.11.2010. Hence, the relief sought by the complainant is neither maintainable nor tenable at this very advanced stage of development.
- v) That the Hon'ble Supreme Court of India in Civil Appeal bearing Diary No. 13163 of 2019 titled as "Parsvnath Developers Limited Versus Malika Raghavan" vide order dated 21.01.2022 issued notice to the Director of Town and Country Planning, Haryana who submitted a status report wherein it was stated that the due to non-construction of the EWS tower by the respondent, the occupancy certificate was not granted. Therefore, the complaint may be kept in abeyance till the issue with respect to the compensation is decided by the Hon'ble Supreme Court of India.
- vi) That the complainant is a chronic defaulter in making payment on time contrary to the agreed terms. In this regard, the respondent has issued many reminders to the complainant.
- vii) All other averments made in the complaint are denied in toto.
7. 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 those undisputed documents and submission made by the parties.



**E. Jurisdiction of the authority**

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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**

8. 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**

9. 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) 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.*



10. 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.
11. 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. 2021-2022(1) RCR(C), 357 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."*

12. 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 To refund the entire amount of Rs.1,37,66,000/- paid by the complainant with prescribed rate of interest.**

13. The complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation.***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*

*(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

14. As per possession clause 10(a) of the buyer's agreement annexed in complaint provides for handing over of the possession and the same is reproduced below:

**10 (a)** *Construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approval*



*of all concerned authorities including the Fire Service Deptt.....".*

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 31.03.2008, along with a grace period of 6 months. On consideration of the circumstances, the documents, submissions and based on the findings of the authority, the authority allows the grace period of 6 months being unqualified. Therefore, the due date of handing over possession is 01.10.2008.
16. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by it in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*
- Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date i.e., 21.04.2023 is **08.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

19. The authority has further, observes that even after a passage of more than 16 years (i.e., from the date of allotment till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. Further, the authority observes that the respondent has not obtained occupation certificate of Tower D-5 from the competent authority in which the unit allotted is situated. In view of the above-mentioned fact, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which it has paid a considerable amount of money towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

20. 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. reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra)***, 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."*

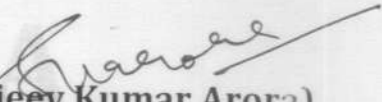
21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to 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 it wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondent/promoter in respect of the unit with interest at such rate as may be prescribed.
22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by it at the prescribed rate of interest i.e., @8.70% p.a. (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.*





**H. Directions of the authority**

23. 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 amount received by it i.e., Rs.1,37,66,000/- 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 deposited amount after adjusting the amount already paid by respondent if any.
  - 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.
24. Complaint stands disposed of.
25. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2023