

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

Complaint no.	:	4278 of 2021
First date of hearing:		05.01.2022
Date of decision	:	11.04.2023

Sector – 113 Gatevida Developers Pvt. Ltd. Regd. office: - TRIL Commercial Center, Intellion Edge, Tower-A, First floor, Southern Peripheral Road, Sector- 72, Gurugram	Complainant- Builder
Versus	
1. Mohsin Raza Khan 2. Mohammed Raza Khan R/o – 154, NAV Sansad Vihar, Dwarka Sector – 22, New Delhi - 110075	Respondent- Allottees

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. Arun Kumar Yadav (Advocate)	Complainant-Builder
Sh. Utkarsh Thappar (Advocate)	Respondent-Allottees

ORDER

1. The present complaint dated 27.10.2021 has been filed by the complainant/builder 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 there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, sale consideration, the amount paid by the respondent-allottees, 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	"Gurgaon Gateway", Sector-112-113, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP license no. and validity status	105 of 2011 dated 11.12.2011 and 85,86/2012 dated 29.08.2012
4.	RERA registered/ not registered and validity status	Registered Registered vide no. 186 of 2017 dated 14.09.2017 Valid upto 31.12.2020
5.	Unit no.	A-0902 (Page 66 of complaint)
6.	Unit area admeasuring	1521 sq. ft.



		(Page 66 of complaint)
7.	Allotment letter	26.09.2016
8.	Date of buyer agreement	29.04.2017 (Page 63 of complaint)
9.	Possession clause	5.2 Possession <i>The promoter shall endeavour to give possession of the said apartment to the purchaser on or before March 2018 and subject to clause (b), (c), (d) and force majeure</i> (Emphasis Supplied) (Page 77 of the complaint).
10.	Due date of possession	30.09.2018
11.	Total sale consideration	Rs. 2,12,83,935/-
12.	Amount paid by the respondent-allottees	Rs. 44,07,605/-
13.	Occupation certificate	Obtained on 15.02.2019 (As per DTCP)
14.	Offer of possession	28.05.2019 (Page 123 of complaint)
15.	Email intimation for seeking cancellation of allotment and refund	03.09.2019 (Page 5 of reply)

B. Facts of the complaint

3. The complainant-builder have made the following submissions: -

- I. This complaint pertains to apartment no. 0908 in Gurgaon Gateway Sector 112-113, Gurugram. The respondent-allottees approached the complainant-builder and were not influenced by brochure or any advertisement and after satisfying themselves they applied for the booking. They issued an allotment letter on 26.09.2016 and even the buyer agreement has also been executed between the parties on 29.04.2017.
- II. The proposed estimated time of handing over of possession is 31.03.2018 + 6 months of grace period. An occupation certificate and notice for offer of possession has already been received on 15.02.2019 and 28.05.2019 respectively. That they have also failed to take the possession of the said apartment till date.
- III. They have constructed the apartment in question on the representation of the respondent that they will complete and fulfil their obligations envisaged under the agreement and now that the possession has been offered so respondent-allottees are obligated to clear the outstanding dues with interest and also take the possession of the said apartment and cannot be allowed to wriggle out of terms and conditions.

- IV. That all the queries of respondent were duly addressed, and legal notice dated 05.09.2020 was duly replied on 05.10.2020. however, they failed to make the outstanding dues and take possession of the said apartment. Those various charges namely TDS, maintenance charges etc are outstanding and in addition to these charges there are other charges as reflected in statement of account sent with notice of possession which are also outstanding and the same is to be paid by them.
- V. That cause of action for filing present complaint arose on 28.05.2019 when the possession of the said apartment was offered and later, on various other dates. The cause of action is continuing and still subsisting as respondent have not yet made the payment of the outstanding dues and took the possession.

C. Relief sought by the complainant-builder:

4. The complainant-builder have sought following relief(s):
- I. Direct the respondent to pay the outstanding dues of Rs. 1,76,77,824/- after TDS (after adjustment of Rs. 4,89,703/- towards delay possession charges), as reflected in the statement of account sent with the notice of possession.
 - II. Direct the respondent to pay the maintenance charges of Rs. 1,55,854/- (total maintenance charges of Rs. 2,81,312/- till October

2021 less maintenance charges of Rs. 1,25,458/- already captured in the notice of possession).

- III. Direct the respondent to pay the delay payment charges/interest (as prescribed under RERA) on the above-mentioned outstanding dues, from the date of offer of possession i.e., 28.05.2019 till the date of payment.
 - IV. Direct the respondent be directed to pay the pay the stamp duty, registration and other ancillary charges, as reflected in the statement of account sent with the notice of possession.
 - V. Direct the respondent be directed to take possession of the said apartment within 30 days of making the payment of outstanding dues, maintenance charges and delay payment charges/interest.
 - VI. Direct the respondent be directed to execute the conveyance deed of the said apartment.
5. On the date of hearing, the authority explained to the respondent/allottees 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-allottees

6. The respondent has contested the complaint on the following grounds.
 - I. That the complainant-builder has presented misleading information and has approached this authority with unclean hands and is therefore not entitled for the relief as sought by way of complaint.



- II. The project has fallen short of promised commitments and promises. Also, the builder started selling the flats at discounted rates because of the decline in the market value of the properties during the delay in the apartment's delivery.
- III. That in the year 2016, respondent-allottees was looking for a flat for their family to move in. They booked the unit with a booking of amount of Rs. 10,00,000/- and a 20:80 payment plan was to be used for remaining balance, whereby 20% of the entire sale consideration was to be paid prior to construction and the remaining 80% would be paid after delivery and after taking possession.
- IV. That complainant-builder has not delivered the possession on time as a result of which the prices of the property fell to a considerable extent. In fact, the complainant-builder has been selling the same apartments for an amount of Rs. 1,75,00,000/- thus they requested the complainant-builder for a discounted price. But no positive result has been received by them
- V. That to utter shock of the respondent, they have done material breach and deviations in the terms and conditions of the agreement. That owing to faults of complainant-builder, respondent have chosen to surrender their unit and seeking refund.
- VI. That an email has been sent for surrender of unit on 03.09.2019 to which complainant-builder replied through email dated 06.09.2019



that refund and cancellation is not possible as apartment is ready for occupancy.

VII. That it again on 25.08.2020, refused the respondent-allottees request for refund and cancellation.

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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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) 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.

11. 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.

12. 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. (Supra)*** 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."

13. 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-builder

G. Findings on the relief sought by the respondent

F. I Direct the respondent to pay the outstanding dues of Rs. 1,76,77,824/- after TDS (after adjustment of Rs. 4,89,703/- towards delay possession charges), as reflected in the statement of account sent with the notice of possession.

F.II Direct the respondent to pay the maintenance charges of Rs. 1,55,854/- (total maintenance charges of Rs. 2,81,312/- till October 2021 less maintenance charges of Rs. 1,25,458/- already captured in the notice of possession).

G.I Direct the complainant to refund the paid-up amount

14. The above-mentioned reliefs are interconnected, thus needs to be adjudicated altogether. The respondent-allottees were allotted a unit in the project of the complainant-builder detailed above on 26.09.2016 for a total sale consideration of Rs. 2,12,83,935/- The builder buyer's agreement was executed on 29.04.2017. The possession of the subject unit was to be offered by 31.03.2018 with a grace period of 6 months. The due date of completion of project and offering possession of the unit comes out 30.09.2018. But the respondent-allottees failed to make payments on time which led to complainant-builder filing the complaint. The complainant-builder have approached the authority on 27.10.2021 after the occupancy is available for the said unit. It is evident from the above-mentioned facts that the respondent-allottees paid a sum of Rs. 44,07,605/- against sale consideration of Rs. 2,12,83,935/- of the unit allotted on 26.09.2016.
15. However, they sent an email on 03.09.2019 w.r.t. surrender of the unit and seeking refund of the paid amount to which complainant-builder replied vide email dated 06.09.2019 that cancellation and refund are not possible as apartment is ready for occupancy. There is nothing on the record to show that the complainant-builder has accepted the request of surrender made by respondent-allottees in fact it denied the same. Though the amount paid by them against the allotted unit is about 20.7% of the sale consideration but the complainant-builder was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount.

16. The complainant-builder has received the occupation certificate for the unit on 15.02.2019 and it offered the unit to respondent-allottees on 28.05.2019, but then there must be an equitable balance of rights and interest between the parties so looking at the other side of the case, it cannot hinder respondent-allottees from exercising their right by seeking refund.
17. Also, the counsel for complainant-builder stated at bar that if the promoter is ready to waive off the interest on delayed payments, the respondent-allottees are ready to take possession. Keeping in view of the facts and relevant provisions, the respondent-allottees are directed to make the payment of outstanding amount along with prescribed rate of interest as OC of the unit has already been received on 15.02.2019 and thereafter a valid offer already stands made on 28.05.2019. The above said payment is to be made after adjusting the interest in delay in offer of possession.
18. The complainant-builder is also directed to issue a revised statement of account as per above within two weeks and the respondent-allottees to make the above outstanding payment in next four weeks failing which the complainant-builder to initiate action for cancellation of the unit and refund of the deposited amount i.e., Rs. 44,07,605/- after deduction of 10% earnest money of the sale consideration of Rs. 2,12,83,935/- 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 surrender i.e., 03.09.2019 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

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 function entrusted to the authority under section 34(f):

- i. The respondent-allottees are directed to make the payment of outstanding amount along with prescribed rate of interest, the said payment is to be made after adjusting the interest w.r.t. delay in offer of possession.
- ii. The equitable rate of interest i.e., 10.70% shall be charged from the respondent-allottees for the delayed payment and from the complainant-builder for the delayed period in offering the possession.
- iii. The complainant-builder is also directed to issue a revised statement of account as per above within two weeks and the respondent-allottees to make the above outstanding payment in next four weeks failing which the complainant-builder to initiate



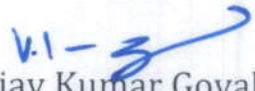
action for cancellation of the unit and refund of the deposited amount i.e., Rs. 44,07,605/- after deduction of 10% earnest money with interest at the rate of 10.70% from the date of surrender i.e., 03.09.2019 till the actual date of refund of the amount.

20. Complaint stands disposed of.

21. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.04.2023

HARERA
GURUGRAM