

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

Complaint no.	:	265 of 2021
Date of filing complaint:		18.01.2021
First date of hearing:		10.03.2021
Date of decision		23.05.2023

1. Rashmi Bedi 2. Vishal Bedi <b>Both R/O:</b> 219, Nai Sadak, Sastri Nagar, Sector-6 Meerut, UP	<b>Complainants</b>
Versus	
1. M/s Chirag Buildtech Pvt. Ltd. <b>Regd. office:</b> M-18, Third Floor, GK-II Market, South Delhi, 110048 2. M/s Plan Realty Consulting Firm <b>Regd. Office:</b> B-511, Welldone Tech Park, Malibu Town, Sohna, Gurgaon	<b>Respondents</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Akash Gupta (Advocate)	Complainants
Sh. Kapil Yadav Proxy (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 complainants, 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	"Rof Galleria" , Sector 95, Gurugram Haryana	
2.	Project Area	12.306 acres	
3.	Nature of the project	Commercial	
4.	DTCP license no. and validity status	17 of 2016 dated 25.10.2016 valid upto 28.02.2022	
5.	Name of licensee	Naryan Singh and 4others	
6.	Acres	5.04	
7.	RERA registration details	Not Registered	
8.	Shop No.	G-019 (Annexure P-3- page no. 11 of complaint)	D-1101 in ROF ANANDA
9.	Shop admeasuring	250 sq.ft. (Annexure P-3-page no. 11 of complaint)	
10.	Allotment Letter	11.07.2019 (Annexure P-3- page no. 11 of complaint)	10.07.2019 for the second unit (Annexure r-5 page 47 of reply)



11.	Date of execution of buyer's agreement	Not Executed
12.	Possession clause	Cannot be ascertained
13.	Due date of delivery of possession	The due date cannot be ascertained as no BBA is signed.  Therefore, the due date of handing over of the possession of the unit comes out to be 11.07.2022 and the same is calculated from the date of allotment
14.	Total sale consideration	24,75,000/- (As alleged by the complainants)
15.	Total amount paid by the complainant	5,50,000/- (As alleged by the complainants)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Surrender by complainant	18.09.2019 (Page 23 of the complaint)
19.	Cancellation by the respondent	07.07.2020 (Inadvertently mentioned in the proceeding of the day as 18.09.2020) (Page 51 of reply)

**B. Facts of the complaint:**

3. The complainants booked a commercial unit in the project namely "ROF Galleria located at sector 95, Gurugram and vide allotment letter dated 11.07.2019 was allotted a unit bearing G-019, ground floor admeasuring 250 sq. ft for a total sale consideration of Rs. 24,75,000/-.

4. That the respondent had raised various illegal demands dated 07.06.2019 and 11.07.2019, which was duly paid by them. Further, various banks rejected the loan of the complainants stating that the project is not RERA registered. Thereafter, the complainants were also offered to move their money to residential project in ROF Ananda, but the complainants refused to do the same.
5. That on 14.09.2019 the complainants sent an email seeking refund of the amount of Rs. 5,50,000/- paid by them. Later, the respondent sent demand letter dated 07.07.2020 followed by cancellation letter dated 07.07.2020.
6. That due to the above acts of the respondent and the unfair terms and conditions of the buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate them on account of the aforesaid act of unfair trade practices.
7. That the complainant stated that the bank rejected the loan of the complainants stating that the project is not RERA registered leading to filing this complaint seeking refund of the deposited amount along with other relief.

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

8. The complainants have sought following relief(s):
  - i. Direct the respondent to refund an amount of Rs. 5,50,000/- along with prescribed interest.
  - ii. Direct the respondent to give compensation of amount of Rs. 5,00,000/- on account of mental harassment, agony, physical pain, monetary loss.



**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

9. That the complainants approached the respondent to purchase a commercial shop in the project and on 03.06.2019 through application form the complainants by paying an amount of Rs. 2,77,202/- booked their unit. Thereafter, various demand letters dated 07.06.2019, 04.07.2019 and 11.07.2019 were sent as per the construction linked plan.
10. That thereafter intimation of next demand becoming due vide demand letter of Rs.7,58,000/- was sent dated 07.06.2019 was sent as per the Construction linked plan, agreed and taken up by complainants, which is duly signed in Buyer's Agreement by the complainants i.e. 20 % of Basic Sale Price within 30 days of booking i.e. Rs. 5,54,402/- (including taxes) + Rs. 2,77,202/- i.e. 10% of Basic Sale Price i.e. Rs. 2,77,202 /- (including taxes) On Start of Excavation minus Rs. 72,798/-, already extra paid by the complainant at the time of the booking amount which comes Rs. Rs.7,58,000/-.
11. That an allotment letter dated 11.07.2019 was issued to the complainant by the respondent for the second unit. Another demand letter dated 04.07.2019 was sent to the Complainant whereupon made a payment to the respondent a sum of **Rs.2,00,000/-** only against the total demand of Rs.5, 54,402 - 72,798 (paid extra at the time of booking) = 4, 78,604/- as per the payment plan, chosen by the complainant.
12. That the respondent again raised a demand of Rs. 5,58,806 -via a demand letter dated 11.07.2019. This demand was in consonance with the

Agreement between both the parties but was not honoured by the complainant.

13. That it was agreed in the agreement, that complainant shall make payments according to payment plan set out in Agreement, but it is evident that the complainant made payments at per their desire and did not honour their commitment as per the Agreement.
14. That the respondent and the complainant had communication via emails dated 18.09.2019, regarding cancellation of shop. That the respondent was forced by the complainant to make adjustment of the amount paid for shop towards the residential property purchased by them in ROF Anand a Project of the respondent despite their loan has been sanctioned from ICICI dated 31.07.2019 and permission to mortgage for the same is issued by the respondent.
15. That the complainant was sent a final demand notice on 11.06.2020 regarding payment of outstanding/overdue amount of Rs.6,38,199.
16. That the respondent went ahead with cancellation of the shop via there letter dated 07.7.2020 addressed to the complainant wherein categorically it has been mentioned that the complainant had defaulted in timely payments of all instalments according to the agreement. Nevertheless, the complainant was given an opportunity to collect his cheque towards refund for cancellation of allotment of the Shop after completing certain required formalities.
17. All other averments made in the complaint were denied in toto.



18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

19. 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**

20. 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, 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.

21. 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.

22. 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."*

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

**F.I Direct the respondent refund an amount of Rs. 5,50,000/- along with prescribed interest.**

24. The complainants are admittedly the allottees of respondent - builder of a commercial shop on the basis of letter of allotment dated 11.07.2019 for the shop G-019 in the project of the respondent known as " ROF GALLERIA". No buyer's agreement was executed between the parties in this regard. The complainants had paid total amount of Rs. 5,50,000/- against the allotted unit. The due date cannot be ascertain as no BBA is signed.

25. The date of signing of allotment letter, is ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 11.07.2022 . No occupation certificate has been received by the respondent. No possession has been done by the respondent till date.

26. That the complainants - allottees wanted to avail the loan but various banks rejected the loan stating that the project is not RERA registered. On

18.09.2019 the complainant as sent a email regarding surrender of the booked unit and the same is evident from the page no. 23 of the complaint.

27. The plea of the respondents is that the respondents has cancelled the booked unit of the complainants – allottees on 07.07.2020 on account of non-payment of dues followed by various demand letters dated 07.06.2019, 09.07.2019 , 11.07.2019 and 11.06.2020 . In the said cancellation letter, it was stated that the complainants may collect their cheque towards refund for cancellation after completing the formalities. But the complainants – allottees did not approach the office of the respondent. However, the complainants send an email on 18.09.2019 regarding surrender of the booked unit and the said email was sent before the due date of possession i.e 11.07.2022 . The said email sent by the complainants is evident from the page no. 23 of the complaint.

28. The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

**"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"*

29. In view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being



earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.70% p.a. on the refundable amount, from the date of surrender 18.09.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**F.II Direct the respondent to give compensation of amount of Rs. 5,00,000/- on account of mental harassment, agony, physical pain, monetary loss.**

30. The the complainant is seeking above mentioned relief w.r.t. compensation. 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. 2021-2022 (1) RCR (c) 357*, 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, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the Authority:**

31. Hence, the authority hereby passes this order and issue 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-promoter is directed to refund the paid up amount of Rs. 5,50,000/- after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e 18.09.2019 till the actual date of refund of the amount.
  - 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.
32. Complaint stands disposed of.
33. File be consigned to the registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.05.2023