

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

Complaint no.	:	5127 of 2021
Date of filing complaint:		03.01.2022
First date of hearing	:	01.06.2022
Date of decision	:	28.03.2023

Rajesh Kumar Aggarwal and Prem Kumari Aggarwal through legal heirs R/O: C/o Vijay Kumar Aggarwal, 2231 Star Enclave, Sector - 48C, Chandigarh 160047	Complainants
Versus	
1. M/s KNS Infracon Private Limited Regd. office: Penthouse, 18 th floor, Narain Manzil 23 Barakhamba Road, Connaught Place New Delhi - 110001 2. M/s Tashee Land Developers Private Limited Regd. office: 3rd floor, Harsha Bhawan, Plot no. 13 29 E Block, Connaught Place, New Delhi- 110001	Respondents

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainants
Sh. Rishabh Jain (Advocate)	Respondents

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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	RERA registered/ not registered	Registered vide regd. No. 12 of 2018 dated 10.01.2018
7.	Unit no.	401, 4 th floor tower I (Page 41 of complaint)
8.	Date of execution of buyers' agreement	18.04.2013 (Page 39 of the complaint)
9.	Payment plan	Construction linked payment plan
10.	Total sale consideration	Rs. 75,24,775/- (Page 43 of complaint)

		Rs. 91,24,100/- (As mentioned by complainants as total cost)
11.	Total amount paid by the complainants	Rs. 34,71,914/- (Page 22 of complaint)
12.	Due date of delivery of possession (As per clause 2.9 and 2.1)	18.04.2016 (Calculated from date of execution of agreement as date of sanction of building plan is not available)
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. That the complainants are law-abiding and peace-loving person. The respondent no. 1, K N S Infracon Private Limited is a company incorporated under the Companies Act 1956 having Registered office at Penthouse, 18th Floor, Narain Manzil 23, Barakhamba Road, Connaught Place, New Delhi - 110001(hereinafter called the License Holder/Confirming Party). It was represented by Respondents that the K N S Infracon Pvt. Ltd. and Krishna Kaur, Manjit Singh, Narendra Singh are landlords of project land admeasuring 10.462 Acres. And procured the license bearing No. 34 of 2011 from Director Town & Country Planning for the joint development of the group Housing Colony.
4. That the respondent no. 2 Tashee Land Developers Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having registered office at 3rd Floor, Harsha Bhawan, Plot No. 13-29, E-Block, Connaught Place, New

Delhi - 110001, (hereinafter called the developer/promoter/builder/respondent no. 2).

5. That both the respondents have joint as well as several liabilities towards the complainant(s).
6. That in December 2010 Mr. Pawan Kumar (original allottee) booked a residential flat bearing No. 401, on 4th Floor on Tower – I, having a super area of 2675 sq. Ft. in project “Capital Gateway”, Sector – 111, Gurugram for a total BSP Rs. 75,24,775/- and paid the application money. That on 27.04.2012, the complainants, Rajesh Kumar Aggarwal & Mrs. Prem Kumari Aggarwal purchased the said flat from the original allottee, with the permission of the respondents. They paid Rs. 18,81,194/- to the original allottee and the respondents endorsed the name of the complainants in its record. That after a long follow-up on 18.04.2013, a pre-printed, unilateral, arbitrary agreement was executed inter-se the respondent No. 1 & 2 and the complainants. According to Clause 2.1 of the flat buyer agreement, the respondents have to give possession of the said flat within a period of 36 months from the date of sanction of building plans of the said colony. It is pertinent to mention here that the building plans were approved on 02.06.2012, therefore the due date of possession was 02.06.2015. Thereafter they continued to pay the demands as and when raised by the respondent(s) and paid Rs. 34,71,914/- i.e., 38% of the total cost. It is pertinent to mention here that the total cost of the flat was Rs. 91,24,100/-
7. That on 05.03.2018, they sent an email to the respondents and requested for refund of the paid amount. That there was no progress on the construction of the Tower – I, therefore, on 21.06.2018 they served a

letter to the respondents for a refund of the paid amount and handed over the original documents to the respondent. They send 21 reminders to the respondents and asked for a refund of paid money. Thereafter, respondents replied through email on 23.11.2018, stating that "As discussed with you earlier also that we will refund your amount which we have received against your flat No. 1/401 but for refund of money, there is a process and signing of some document for releasing refund, so your presence is required. You are once again requested to come at our office to complete the formalities and we will hand over the refund cheque to you on the Same Day". That after a long follow-up the respondents issued 8 cheques of Rs. 3,90,590/- each in favour of complainant namely Rajesh Kumar Aggarwal. It is pertinent to mention here that the complainants presented two cheques for encashment and said cheques have been dishonoured. It is further pertinent to mention here that till date respondents did not repay the money.

8. Thereafter they sent more than 50 reminders to get a refund of the paid amount, but respondents did not pay any heed to the just and reasonable demand of theirs. That on 02.09.2020, the co-applicant namely Mrs. Prem Kumari Aggarwal passed away. That the main grievance of the complainant(s) in the present complaint is that despite the complainant(s) paid more than 38% of the actual amounts of the flat and is ready and willing to pay the remaining amount (due if any), the respondents have failed to deliver the possession of the flat along with the promised amenities. That, since 2018 the complainant(s) is contacting the respondents and has sent various reminder emails to the respondents and asked to refund the total paid amount to the complainant(s). Despite

several requests by the complainant(s), the respondents till today has not refunded the total paid amount.

9. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainant(s) and others and is prima facie clear on the part of the respondents which makes them liable to answer this Hon'ble Authority. That for the first-time cause of action for the present complaint arose in April 2013, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on complainant(s). The second time cause of action arose in April 2016, when the respondents failed to hand over the possession of the unit as per the buyer agreement. Further, the cause of action again arose on various occasions, including on a) May 2018; b) August 2019; c) February 2020, d) June 2020, e) Jan. 2021, f) November 2021, and on many times till date, when the protests were lodged with the respondents regarding the cancellation of the unit & refund of the total paid amount. The cause of action is alive and continuing and will continue to subsist till such time, as this Hon'ble Authority restrains the respondents by an order of injunction and/or passes the necessary orders.
10. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainants:

11. The complainants have sought following relief(s):

a) Direct the respondents to refund of the whole paid amount i.e., Rs.

34,71,914/- along with interest from the date of payment till realization of money.

b) Direct the respondents to refrain from giving effect to the unfair clauses unilaterally incorporated in the agreement.

12. Though, the respondents put in appearance through its counsel Sh. Rishabh Jain but failed to file any written reply despite giving a number of opportunities. So, in such a situation the authority was left with no alternative but to struck off the defence of the respondent.
13. 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 those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

D. Jurisdiction of the authority:

14. 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, 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.

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.

15. 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 cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1) RCR(C), 357 & ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 and wherein it was held 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."

16. 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.

E. Findings on the relief sought by the complainants.

E. I Direct the respondents to refund the paid amount along with interest.

17. The complainants booked a unit in the project of the respondents namely "Capital Gateway", situated in Sector 111, Gurugram and the same led to execution of agreement vide agreement dated 18.04.2013. The complainants paid a total sum of Rs. 34,71,914/- against the total sale consideration of Rs. 91,24,100/- to the respondents which is almost 38.05% of the total sale consideration. Subsequently, on 05.03.2018, they sent an email to the respondents and requested for refund of the paid amount as there was no progress on the construction of the tower in which the subject unit is situated, thereafter, on 21.06.2018 they sent a

letter to the respondents for refund of the paid amount and handed over the original documents to the respondents and the same was duly attested by the respondent. After sending numerous reminders for seeking refund, they received a mail from respondents, the content of the same is mentioned below -:

As discussed with you earlier also that we will refund your amount which we have received against your flat No. 1/401 but for refund of money, there is a process and signing of some document for releasing refund, so your presence is required. You are once again requested to come at our office to complete the formalities and we will hand over the refund cheque to you on the Same Day”.

18. That after waiting endlessly and even after a long follow-up, the respondents issued 8 cheques of Rs. 3,90,590/- each in favour of one of the complainants i.e., namely Rajesh Kumar Aggarwal. Initially complainants presented two cheques for encashment, but the said cheques were dishonoured (the return memo has also been placed in file). Till date, the respondents have not refunded the amount.
19. Keeping in view the fact that the allottees/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 its failure to complete or inability to give possession of the unit in accordance with the terms of allotment/agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
20. The due date of possession as per buyer agreement as mentioned in the table above is 02.06.2015. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that

the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount 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....."

21. 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. (supra)*** 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. It was observed:

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

22. 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). The promoter has failed to complete or 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 allottees, as they wish 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.

23. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
24. The authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 34,71,914/- 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 realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F. Directions of the authority

25. 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 respondents are directed to refund the entire amount of Rs. 34,71,914/- paid by the complainants along with prescribed rate of

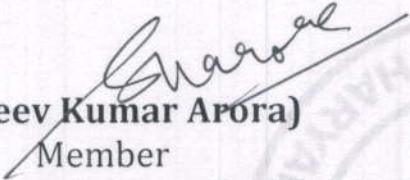


interest @ 10.70% p.a. from the date of each payment till the actual date of realization of the amount.

- 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.

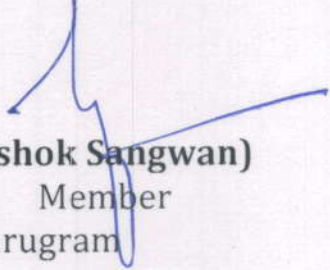
26. Complaint stands disposed of.

27. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 28.03 .2023