

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

Complaint no. : 173 of 2019
First date of hearing: 10.10.2019
Date of decision : 03.03.2023

M.K. Goyal
R/o 1350, Priyanka Sada, Khati Baba, Jhansi,
U.P-284003

Complainant

Versus

1. M/S Mahendra Promoters Private Limited
**R/o: Flat No 410, N-5 Pocket-6, Sector-D Vasant
Kunj New Delhi-110070 & its Corporate Office At:
MS-19, Mega Mall, DLF City, Phase-I, Gurugram,
Haryana- 122002**
2. K.S.D.Land Trades Private Limited **जयते**
(Directors - Mr. Khajan Singh Dalal, Sachin Dalal,
Anju Dalal) **Having Its Registered Office at SCO-
35, First Floor, Sector-15, Part-2, Gurugram,
Haryana- 122001**
3. My Group Bargain
Through Mr. Sachin Dalal Office At SCO-35, First
Floor, Sector-15, Part-2, Gurugram, Haryana-
122001

Respondents

CORAM:
Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Complainant in person
None

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. The present complaint has been filed on 22.01.2019 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 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 the parties.

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 of the project	Shantima, Sector-91, Gurugram
2.	Project area	N/A
3.	Nature of the project	Affordable group housing
4.	Unit no.	N/A
5.	Unit area measuring	500 sq. ft.
6.	Application form	30/09/2014 As the application form is undated so the date of application form is taking from the 1 st cheque where the complainant had paid advance amount to the respondent
7.	Allotment letter	16.12.2014 [page 40 of complaint]
8.	Possession clause	6. POSSESSION

6.1 Subject to the grant of occupation certificate by the competent governmental authority and other situations beyond the reasonable control of the Company and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer's Agreement, the Company shall offer to handover the possession of the Apartment within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later.

9	Date of approval of building plans	N/A
10	Date of environment clearance	N/A
11	Due date of possession	16.12.2018 (As stated by the complainant)
12	Basic sale consideration	Rs. 20,000,00/- (As per allotment letter)
13	Amount paid by the complainant	Rs. 7,50,000/- as stated by the complainant in his pleading
14	Occupation certificate /Completion certificate	N/A
15	Offer of possession	N/A

16	Legal notice send by the complainant for refund on	01.11.2018 [page 47 of complaint]
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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the respondent no.1 come up with its first affordable homes project Shantima In Sector-91 Gurgaon, with 1BHK and 2BHK apartments therefore the authority has the jurisdiction to try the present complaint.
- ii. That as per advertisement these apartments provide an excellent living space with modern day requirement of convenience and tranquility and a home closer to everything which is well-connected from NH-8 and Manesar. That complainant who is retired bank employee & for his urgent requirement to settle his daughter in Gurugram required a residential flat in Gurugram and therefore complainant contacted respondent no.2 who is real estate broker in Gurugram. That both respondent no.2 (company) & respondent no.3 (Proprietor firm) are actively managed & operated by same person i.e. Shri Sachin Dalal. That official of respondent no.2 namely Kumar Sanjeev who is Marketing Manager of Respondent no.2 & 3 contacted complainant to invest in residential flat scheme launched by respondent no.1 in Gurugram, Haryana. That respondent no.2 also informed complainant that respondent no. 1 is very well-known real estate company who stick to their deadline and he assures that he

personally know about them and they had always completed their projects within time.

- iii. That the Respondent no. 1 being real estate company having many real estate projects is very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in Gurugram, the key factor to sell any dwelling unit is the delivery of completed house within the agreed timeline and that is the prime factor which a consumer would see while purchasing his/her dream home. Then complainant acting on the advice of respondent no.2 & 3, booked one 2BHK flat admeasuring 500 sq ft for total consideration of Rs 20 lakhs (500 sq ft x Rs 4000 per sq ft = Rs 20,00,000/-) in the SHANTIMA housing project launched by respondent no. 1 in Sector- 91 That complainant subsequently on the direction of Kumar Sanjeev, Marketing Manager of Respondent no.2 & 3, issued a cheque amounting to Rs 2,00,000/- cheque no. 007663 dated 01.10.2014 drawn on Allahabad Bank and Rs 4,50,000/- through cheque no. 007666 dated 13.12.2014 drawn on Allahabad Bank paid to respondent no. 1 through respondent no.3.
- iv. That Kumar Sanjeev who is the officials of respondent no.2 & 3 received the aforesaid cheques from complainant. The respondents stated that the said amount will be adjusted in the balance That respondent no.1 issued allotment letter dated 16.12.2014. That respondent no.1 even at the time of issuance of allotment letter again assures that project construction will be started within a period of 2 months from today and will be completed within 2 years. That in the allotment letter it was

informed that flat/unit no. will be given at the time of scheduled draw of lots and other facilities as per Affordable Housing Policy 2013. That all payments shall be made in accordance with the manner specified for payment. In the event of delayed payment interest shall be charged @ 15% p.a.

- v. That complainant asked respondent no. 1 about the status of project in year 2016, no satisfactory reply has been given by respondent no. 1. Therefore complainant visited the site of project itself and after visiting the site, complainant was shocked to see that not even a single brick has been installed at the site, infact, neither construction material nor any construction workers are there at the site, the site is completely plain and there was no construction activity at all. That the complainant several times requested the respondents telephonically as well as personal visits at the office for the delivering the possession of the Apartment and met with the officials of respondents in this regard but despite that the officials of Respondent's Company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the other and refused to refund the amount already invested by complainant.
- vi. That complainant through his counsel issue a notice dated 26.07.2016 to respondent no. 1 that he wants to withdraw from the said project and request to refund the amount paid by complainant. Based on the aforesaid assurance & oral assurance telephonically given by officials of respondent no. 1 that project will be completed within 2 years and there was some technical difficulty regarding some compliance from Government



department in starting the project and the same was removed and now the project will be completed within 2 years and flat will be delivered to you by November 2018. That complainant has been confirmed by the trustworthy sources that no license has been issued to start the construction to respondent no. 1 by the Haryana Government. That Shri Sachin Dalal, proprietor of respondent no.3 and Mahendra Singh Yadav, promoter & Director of respondent no. 1 jointly took Rs 7,50,000/- from complainant.

viii. Since respondent no. 1 failed to deliver the flat within the prescribed time, therefore complainant through his counsel issued another notice to respondents to 01.11.2018 to refund the amount already paid by complainant. Thus, it is clear that respondent no. 1 by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully with connivance with respondent no.2 & 3 induced the complainant to deposit his hard-earned money in their housing project, with sole Dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gains wrongfully.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - i. Direct the respondent to refund of Rs. 7,50,000/- along with interest from 30.09.2014 as per the terms and condition of agreement.
 - ii. Litigation expenses
5. The authority issued a notice dated 23.01.2019 of the complaint to the respondent by speed post and also on the given email address at

mahendersinghyadav@gmail.com. The delivery reports have been placed in the file. Despite service of notice, the respondent has 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.

6. 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority

7. 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. The 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.

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.

10. 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(Civil), 357 and reiterated in case of *M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other 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."

11. 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.1 Direct the respondent to refund of Rs. 7,50,000/- along with interest from 30.09.2014 as per the terms and condition of agreement.

12. Some of the admitted facts of the case are that vide application which is undated the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. He is being successful was allotted unit type two-bedroom admeasuring 500 sq. ft. by the respondent for a total sum of Rs. 20,00,000/-. As per the application form various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is also not disputed that on the basis of that application the complainant started making various payments against the allotted unit type and paid a total sum of Rs. 7,50,000/- till date. Further the complainant sent a legal notice to the respondent for refund on 01.11.2018.
13. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(III) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".

14. The respondent/promoter is directed to refund the paid-up amount after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with

interest @10.70% per annum from the date surrender/withdraw i.e., 01.11.2018 of allotment till the actual realization of the amount.

F. II. Compensation & litigation expenses.

15. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

G. Directions of the Authority:

16. 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):
- The respondent/promoter is directed to refund the paid-up amount after retaining a sum of Rs. 25,000/- along 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 till the date of actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

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.

17. The Complaint stands disposed of.

18. File be consigned to registry.

Dated: 03.03.2023




(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM