

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

Complaint no. :	6348 of 2022
Date of filing complaint:	20.09.2022
First date of hearing:	12.01.2023
Date of decision :	27.04.2023

1. Sh. Dinesh Chandra Suri S/o Sh. Romesh Chandra 2. Smt. Sangeeta Suri W/o Sh. Dinesh Chandra Suri 3. Sh. Uday Suri S/o Sh. Dinesh Chandra Suri R/O: C-625, Opposite Gurudwara, New Friends Colony, South Delhi, Delhi-110025	Complainants
Versus	
M/s Angle Infrastructure Private Limited Regd. office: 406, 4 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi-110025	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant-in-person with Sh. Naveen Single (Advocate)	Complainants
Sh. Shivam Rajpal (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
5.	Allotment letter	23.01.2013 [As per page no. 16 of complaint]
6.	Unit no.	E-1402 on 13 th floor of tower E [As per page no. 21 of complaint]
7.	Unit area admeasuring	1865 sq. ft. [Super area] [As per page no. 21 of complaint]

8.	Date of apartment buyer agreement	28.11.2013 [As per page no. 18 of complaint]
9.	Payment plan	Construction linked plan [As per customer ledger on page no. 57-58 of complaint]
10.	Total sale consideration	Rs. 1,01,64,250/- (BSP) Rs. 1,13,40,000/- (TSC) [As per customer ledger on page no. 57-58 of complaint]
11.	Amount paid by the complainant	Rs. 88,53,994/- [As per customer ledger dated 18.07.2022 on page no. 57-58 of complaint]
12.	Possession clause	Clause 3.1 <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchasers) <u>within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or</u></i>

		<u>approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course....</u>
13.	Building plan approvals	Not available on record
14.	Environmental clearance	15.10.2013 [As per page no. 11 of reply]
15.	Commencement of construction	01.06.2013 [As per customer ledger on page no. 57 of complaint]
16.	Due date of possession	28.08.2018 [Calculated from the date of buyer's agreement i.e., 28.11.2013, being later + grace period of 9 months] Grace period of 9 months is allowed.
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants came across luring advertisements by the respondent-company and claimed itself as a renowned developer having pan India presence. Based on representations of the officials of the respondent that the project would be developed completely in 4-5 years,

booked a unit on 13th floor on 11.10.2012 in the project floated by the respondent namely, "Krrish Florence Estate" in Sector 70, Gurugram, Haryana and paid booking amount of Rs.10,00,000/- vide cheque bearing no.s 443463 & 443464 dated 01.09.2012.

4. That on 23.01.2013, the respondent sent an allotment letter to the complainants wherein allotting allotted unit bearing no. E - 1402, admeasuring 1865 sq. ft. on 13th floor. Further, a flat buyer's agreement on 28.11.2013 was executed between the parties.
5. That the complainants took home loan for the purchase of said flat unit from the ICICI Bank and the respondent gave a letter for permission to mortgage dated 30.11.2013 to the ICICI Bank.
6. That the total sale consideration of the flat was Rs. 1,13,40,000/- out of which they have paid Rs. 88,53,994/- till date. It is a matter of record that the complainants have paid instalments as per demands raised by the respondent. The subject unit was booked under construction linked payment plan and despite absence of any construction at the site, whenever the respondents raised any demand, they timely paid those instalments. The complainants were ready and willing and had resources to pay the balance amount if any, computed and found payable after taking into consideration the compensation receivable by the complainants. It was also submitted that as per clause 10 of minutes of the meeting dated 03.07.2022, it was recorded that "Tower D&E tower construction will start after completion of 1st phase."

7. That the respondent was under obligation to handover the physical possession of the unit to the complainants within a period of 4 years & 9 months including the grace period from the date of execution of buyer's agreement. However, till date i.e. September 2022, the construction and development works of tower E, have not commenced at the site in which their unit was proposed even after passing of more than 9 years from the allotment of the said flat unit only, and bare tower is constructed. It has been learnt that the respondent is not in possession of statutory permissions and approvals and in absence thereof is unable to start development work at the site.
8. That at the site, there is no development, the project is far from completion and the complainants are suffering because of undue delay on the part of the respondent in handing over of the physical possession of the flat.
9. That the respondent has failed to abide by the contractual terms stipulated in the buyer's agreement and it is in breach whereas they have diligently discharged all his obligations as per the flat buyer agreement, whereas, it has failed to perform its obligations stipulated in the contract.
10. That the respondent has failed to develop the project and is misusing unilateral and one-sided terms of the buyer's agreement to further harass the complainants. It is stated that clause 2.21 of the agreement stipulated for interest payable by the allottee @ 24% p.a. where there is delay of three months in making payment towards consideration of allotted unit but if the delay is beyond three months then the interest shall be payable @ 24% p.a.

compounded quarterly. Therefore, in terms of RERA, the complainants are also entitled to same rate of interest for delay period in handling over of the physical possession of the flat.

11. That it be noted that as per clause 2.21 of the buyer's agreement inter alia, stipulates that the respondent is entitled to charge up to 24% compound interest on the delayed payments/sale consideration, whereas, there is no clause where colonizer-developer is made liable to pay compensation for delay in handing over of possession. The aforesaid condition is unilateral and arbitrary and the provisions of RERA should be read into the agreement and hence, reference to Section 18 of Act shall be made.
12. That further Section 2(za) should be read into the buyer's agreement and the respondent should be held liable to pay compound interest @24% from the due date of delivery of possession till actual handing over of physical possession. The interest is payable on the instalments/sale consideration from the date of receipt of the respective instalments by the respondent.
13. That since the respondent is unable to develop the project and handover physical possession of the flat, the petitioner is entitled to withdraw from the project and for refund of the entire sale consideration and other charges along with 24% compound interest from the date of respective payments.

C. Relief sought by the complainant:

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

- i. Direct to the respondent to refund the entire amount of Rs. 88,53,994/- along with interest as per HARERAR from the date of respective instalments/realization of the sale consideration by the respondent-promoter.
- ii. Direct the respondent to pay cost and litigation expenses of Rs. 1,50,000/-.
- iii. The RERA registration of the respondent be revoked under Section 7 of the era for violating the provisions of the Act.
- iv. In exercise of power under section 35 direct the respondent to place on record all statutory approvals and sanctions of the project
- v. In exercise of power under section 35 of Act and Rule 21, Direct the respondent to provide complete details of EDC/IDC and statutory dues to the competent authority pending, if any

D. Reply by respondent:

The respondent by way of written reply made following submissions

15. That M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and to sell groups housing project on the said project land.
16. That the respondent proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project").
17. That initially Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued a license bearing No. 170 of 2008

dated 22.09.2008 to M/s. Capital Builders for development of the said project on the said project land. M/s. Capital Builders subsequently transferred the license to the respondent. DTCP sanctioned the site plan on 14.05.2013 and State Environment Impact Assessment Authority, Haryana issued the environment clearance certificate dated 15.10.2013 to the respondent.

18. That after conducting own independent due diligence and being fully satisfied with the particulars of the said project, the complainant voluntarily approached and applied and expressed an interest in purchasing an apartment in the said project being.
19. That vide allotment letter dated 23.01.2013, the complainants were provisionally allotted unit no. 1402 on 13th of tower E admeasuring 1865 sq. ft. saleable area in for a total basic sale consideration of Rs. 1,19,46,746/-. Thereafter, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated 28.11.2013 was executed between the parties. The complainants have made a total payment of Rs. 88,53,994/- to the respondent till date.
20. That sometime in the year 2013, one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said project of the respondent herein. In view of the aforesaid order

passed by the Hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still.

21. That the Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition. In view of the said order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the respondent was forced to keep in hold the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.
22. That certain disputes arose between M/s. Capital Builders and the respondent. In an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the respondent herein from creating any third-party interest in respect unsold flats. The Hon'ble High Court vide order dated 08.05.2019 modified the earlier order dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order.
23. That the Authority has granted registration of the said project under the Act of 2016. The respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.

24. That the complainants have failed to pay according to the payment plan and due to their persistent default, it was compelled to issue demand notices, reminder etc., calling upon them to make payment of outstanding amounts payable by them under the payment plan opted by them.
25. That the respondent was unable to complete the project on time due to force majeure circumstances and for other reasons which are beyond the control of the respondent, hence the respondent is entitled to reasonable extension of time for completion of the project and delivery of the units. It is most respectfully submitted that in view of the circumstances beyond its control, it was unable to complete the construction and deliver the possession of the unit within the stipulated period of time. It is most respectfully submitted that in view of the aforementioned facts and force majeure circumstances, there is no failure on the part of the respondent in completing the construction and delivering the possession of the apartment and further there is no deficiency of service on its part, as such the present complaint is not maintainable. The respondent is not liable to pay any amounts to the complainants.
26. That the present complaint along with the reliefs sought for is not maintainable before the Authority as it does not have the jurisdiction to award any reliefs prayed for in the complaint. As such the present complaint is not maintainable.
27. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

28. 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee 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.

29. 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.*** "SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matters noted above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by her.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions.

31. The respondent-promoter pleaded that there was no delay on its part in completing the project and handing over the possession of the allotted unit and which was on account of force majeure circumstances such as stay on transfer and construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013). The respondent pleaded that such period should not be considered vide calculating the delay in completion of the subject unit. The Authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling its obligations but the respondent has failed to place on record any such document/order of any competent Authority/forum wherein such period was declared as "zero-period". Hence, the plea of the respondent on that count is not tenable. Moreover, grace period of nine months has already been allowed to the respondent-company being unconditional. Thus, no further grace period or leniency can be allowed to the respondent.

G. Entitlement of the complainants for refund:

G.I Direct to the respondent to refund the entire amount of Rs. 88,53,994/- along with interest as per HARERA from the date of respective instalments/realization of the sale consideration by the respondent-promoter..

32. The project detailed above was launched by the respondent as group housing complex and the complainants were allotted the subject unit in tower E on 23.01.2013 against total sale consideration of Rs. 1,01,64,250/-. It led to execution of builder buyer agreement between the parties on 28.11.2013, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions and the due date of possession, etc. A period of 4 years along with grace period of 9 months was allowed to the respondent for completion of the project and that period has admittedly expired on 28.08.2018. It has come on record that against the total sale consideration of Rs. 1,01,64,250/- the complainants have paid a sum of Rs. 88,53,994/- to the respondent.
33. The complainants submitted that the present complaint is filed on 20.09.2022 on ground that the construction of the tower in which the unit of the complainant is situated is far from the completion and only bare structure of the tower is constructed till now. It was confirmed by the counsel of respondent during course of proceedings dated 27.04.2023, that the occupation certificate is not obtained till date. Thus, keeping in view the fact that the complainant-allottees wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **28.08.2018** and

there is delay of 04 years 23 days on the date of filing of the complaint i.e. 20.09.2022.

34. 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 allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have 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 allottee 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....."

35. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)** 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 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

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 allottee, as the allottees 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.

36. 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.

The authority hereby directs the promoter to return the amount received by him i.e., **Rs. 88,53,994/-** 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 to the complainants 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*.

G.II Direct the respondent to pay cost and litigation expenses of Rs. 1,50,000/-.

37. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. 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., 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G.III The RERA registration of the respondent be revoked under Section 7 of the era for violating the provisions of the Act.

G.IV In exercise of power under section 35 direct the respondent to place on record all statutory approvals and sanctions of the project

G.V In exercise of power under section 35 of Act and Rule 21, Direct the respondent to provide complete details of EDC/IDC and statutory dues to the competent authority pending, if any

38. In view of findings of refund above, the aforesaid reliefs sought by the complainants from G.III, G.IV & G.V becomes redundant.


H. Directions of the Authority:

39. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e. **Rs. 88,53,994/-** received by him from the complainants 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 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.

40. Complaint stands disposed of.

41. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.04.2023