

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

Complaint no.	:	2143/2018
Date of filing complaint:		12.12.2018
First date of hearing:		03.04.2019
Date of decision		19.04.2023

1. Aneeta Singh 2. Aditya Kumar Singh 3. Digvijay Singh R/O: D-92, Seema Apartments, Plot-7, Sector-11, Dwarka, New Delhi-110078	Complainants
Versus	
Experion Developers Private Limited R/o: Second Floor, Plot No.-18, Sector-32, Gurugram, Haryana	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Anuj Chauhan (Advocate) Sh. Neeraj Chamiyal (Advocate)	Complainants
Ms. Srijita Kundal AR	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 provisions of

2. The complaint has been received on 12.12.2018 and reply has been filed by the respondent. The complainant generated new proforma B by complaint No. 786 of 2021. The said complaint i.e. complaint No. 2143 of 2018 is clubbed with complaint No. 786 of 2021.

A. Unit and project related details

3. 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.No.	Heads	Information
1.	Name of the project	The westerlies, Sector 108 , Gurugram, Haryana.
2.	Nature of the project	Residential plotted colony (as per license issue annexure P-21 , page 132)
3.	DTCP License no.	57 of 2013
4.	Registered / not registered	103 of 2017 valid upto 23.08.2019.
5.	Allotment letter	25.11.2013
6.	Plot no.	A 2 / 17 (Annexure C1 and as per the information of complainant)
7.	Plot admeasuring	552 sq. yards. (Annexure C1 (bba)and as per the information of complainant)
8.	Date of execution of plot buyer's agreement	05.08.2014 (page 13 of complaint)
9.	Possession clause	Article IX: COMPETION OF THE VILLA



1. Possession

Subject to the terms and conditions of this Agreement, the Developer estimates completing the construction of the Villa and issue the Possession Notice of the Villa **within 4 (Four) years** from the date of receipt of the last of all the Project Approvals for the commencement of development of the Villa from the Governmental Authorities or within such other timelines as may be directed by the concerned Governmental Authorities ("Commitment Period"). The Buyer further agrees and understands that the Developer shall be entitled to a further **period of 6 (Six) months ("Grace Period") after the expiry of the said Commitment Period**. Except for reasons of Force Majeure, if the Developer fails to offer possession of the Villa to the Buyer by the end of the Grace Period, it shall be liable to pay to the Buyer compensation calculated at the rate of Rs. 7.50/- (Rupees Seven and Paise Fifty only) per square feet of the Sale Area ("Delay Compensation") for every month of delay or part thereof from the date of expiry of the Grace Period until issuance of the Possession Notice. However, Delay Compensation shall be payable only if the Buyer has not defaulted in making any payment

		in terms hereof. The Buyer agrees that the payment/adjustment of any Delay Compensation shall be done only at the time of issuance of the Possession Notice or at the time of payment of the final instalment due under the Payment Plan. whichever is later. (Annexure C1, page 35).
10.	Due date of delivery of possession	05.11.2019 (Calculated from last approval as per submission of zonal plan on page 44 of reply Annexure R-4 i.e 05.11.2015)
11.	Total sale consideration	Rs. 3,74,39,590/- (As per complainant information.)
12.	Total amount paid by the complainants	Rs. 3,11,28,760/- (As per complainant information) (Inadvertently mentioned in the proceeding of the day dated 19.04.2023 as Rs. 47,15,269)
13.	Completion certificate	27.07.2017 and 31.07.2017
14.	Offer of possession	18.04.2018
15.	Surrender by complainant	11.04.2018 (Annexure C-4 page 77 of complaint)

B. Facts of the complaint:

4. That the complainant - allottee booked a plot namely in the project "The Westerlies" (hereinafter to be referred as the 'project') situated at sector-108, Gurugram Haryana, .The complainant was allotted plot No. A2/17 admeasuring 552 sq. yds.

5. The buyer's agreement was executed between the parties on 05.08.2014 for a total sale consideration of Rs. 3,74,39,590/- The buyer's agreement was executed 8 months after the date of booking the said plot.
6. That the complainants till now had made payments of Rs. 3,11,28,760/- inclusive of TDS which amounts to more than 80% of the total sale considerations. The payments were timely made by the complainants and were also duly acknowledged by the respondents through issuance of various receipts.
7. That the complainants have paid extra PLC charges for preferred area but a gate has been installed which is a cause of huge nuisance to the complainants even after paying extra. That the respondent failed to provide the plot as per the approved maps and gated security which they assured on the basis of which the complainants made the said purchase.
8. That the complainants approached the respondents on various occasions for redressal of their grievances including the installation of permanent gates and structures by the Raheja Developers in front of their allotted plot but the respondent did not pay any heed to the request of the complainant. Having no other option left, the complainants sent the respondents a legal notice dated 11.04.2018 stating the grievances faced and request the respondent to redress their grievances or grant refund of the payments made to the Respondent along with interest.
9. That the respondents in reply to the legal notice dated 16.05.2018 gave unreasonable explanations for the installation of the gate.



10. That after the construction of the permanent structure and gates by the Raheja Developers for the project adjacent to the plot of the complainants the said road and the gate , the plot allotted to the complainants has become the unhealthiest and most disturbing spot of the project.
11. That the air pollution and the noise pollution at the plot of the complainants has increased considerably as the cars shall be entering the Raheja's project thousands times a day which shall be increasing the air pollution and honking horns of the cars shall create a noise pollution which shall cause grievous health issues to the senior citizen complainants.
12. That the complainants no. 1 and her husband are senior citizens and are suffering various health ailments. The purpose of booking .the plot has been defeated and the respondents cannot force the complainants to take the plot.
13. The construction of the project VEDANTA by Raheja Developers have been completed long ago and temporary access was only sought by Raheja to allow access to its residents after delivery of possession. The possession has been delivered long ago but till date the Raheja developers has failed to complete the construction of the said 25 meters road. It shall not be wrong to state that the Raheja developer has abandoned the construction of the said 25m road and the respondent is also now allowing Raheja developers to continue as permanent arrangement.
14. All the residents of VEDANTA are using the said 15m road which has been developed by the respondent at the cost of the complainants. The respondent is reaping benefits of the amount deposited by the complainants.

15. That the respondents even after taking timely payments against the plot purchase have failed to provide possession as per the agreement and thus infringed the rights of the complainants who have put their hard-earned money in the said purchase.
16. Therefore, the complainant seeks refund of the amount that has been given to the respondent as well as the compensation for the financial and emotional loss suffered by the complainant.
17. That the complainants thereby wishes to withdraw from the project and demands refund of the entire amount already paid by him to the respondents in terms of Section 18 of the Real Estate (Regulation & Development) Act, 2016.
18. The complainants written submissions have been taken on record.

C. Relief sought by the complainants:

19. The complainants have sought the following relief(s):
 - i. Direct the respondent – builder to refund the amount paid by the complainants

D. Reply by respondent no. 1:

The answering respondent by way of written reply made the following submissions:

20. That the complainants are allottee of the above-mentioned unit for a total sale consideration of Rs. 3,74,39,590/- and had applied for allotment of a plot.
21. The respondent – builder allotted the plot no. A 2 / 17 of 552 sq. yards. The buyer's agreement was executed between the parties on .05 08..2014. As per clause IX of the agreement the due date was calculated from within 4 years from the date of receipt of the last

of all the Project Approvals for the commencement of development of the Villa from the Governmental Authorities. The last approval was the zoning plan that was issued to the respondent by the Authority on 05.11.2015. Therefore, the due date comes out to be 05.11.2019.

22. That the respondent has obeyed the legal obligations and also complied with provisions of law . The said plotted colony is spread over an area of 100.48125 Acre approx. The respondent has obtained part completion certificate for two phases of the project. The part completion certificate for phase 1 was applied on 10.04.2017 and has been granted by DGTCP, Haryana vide letter dated 31.07.2017 and for phase 2 the part completion certificate was applied on 27.07.2017 and has been obtained by DGTCP , Haryana v ide letter dated 22.03.2018 .
23. The plot booked by the complainants falls under phase 1 of the project. The development of the said plot has been completed and the DGTCP has granted part completion certificate on 31.07.2017 . Accordingly the respondent has offered the possession to the complainants on 18.04.2018.
24. That the complainants have been wilful defaulters and as per the records an amount of Rs. 78, 06, 651. 2018 is due as on 26.12.2018 which the complainants are liable to pay alongwith delayed payments charges and other applicable charges. The complainants, after receiving notice of possession, instead of making payments of due amounts and taking the possession of the plot, are trying to wriggle out of their contractual obligations by making false, frivolous and baseless grounds.

25. That the claims made by the complainants with respect to the change in the Preferential Location Charged attributes of the concerned Plot are false and misleading. It is submitted that the PLC attributes attached to the Plot in question are still same and there is no change in PLC of the Plot due to opening of the gate in the project as alleged by the complainants. In respect of opening of gate on 15 meter road it is submitted that there is a boundary wall of a project, constructed by Raheja Developers, adjacent to 15 meter road i.e. near to the Plot booked by the complainants, and only upon directions issued from the office of Director General Town & Country Planning, Haryana (*DGTCP"), a gate has been opened by Raheja Developers to provide temporary access to its allottees/residents. There is no approach road available to the project of Raheja Developers. Raheja Developers and its allottees applied to the DGTCP for grant of permission to open a gate on the said 15 meter road for ease of convenience. The DGTCP on humanitarian ground vide its Memo dated 22.09.2015 permitted them to provide temporary access and to open a gate on the said 15 meter road lying near the Plot booked by the complainants. The said gate has been opened by Raheja Developers upon specific directions of the DGTCP office and Respondent has no control over the same. Further, it is pertinent to note that the project in question is a township and all roads are public roads wherein access cannot be restricted by the Respondent. It is further submitted that the as per agreed terms of Plot Buyer Agreement the PLC attributes to the Plot in question were agreed as Green Abutting & Wide Road, N/E/NE Entry and Corner Plot, which was clearly specified in Schedule III of the Plot Buyer Agreement. It is submitted that the PLC attributes of the said Plot are still same as these were agreed

between the parties at the time of booking of said Plot. It is submitted that the Respondent has no liability to the works done upon the land adjacent to the Project by respective land owners or the work done upon directions/orders of the competent govt. authorities.

26. The complainants have breached their contractual obligations which were agreed by and between both the parties under the concluded Plot Buyer Agreement dated 05.08.2014. The complainants should be directed to make due payments, execute conveyance deed and take possession of the Plot no. A-2/17. The respondents have filed written submissions and the same has been taken on record.

27. All other averments made in the complaint were denied in toto.

28. 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:

29. 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

30. 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.

31. 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.

32. 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.”

33. 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 complainants:

F.I Direct the respondent - builder to refund the amount paid by the complainants.

34. The complainants were allotted a unit in the project of the respondent detailed above for a total sale consideration of Rs. 3,74,39,590/- The builder buyer’s agreement was executed on

05.08.2014. The possession of the subject unit was to be offered within 4 years from the date of receipt of the last of all the Project Approvals for the commencement of development of the Villa from the Governmental Authorities or within such other timelines as may be directed by the concerned Governmental Authorities . The due date of completion of project and offering possession of the plot comes out 05.11.2019. However, the complainants made request to the respondent-builder through legal notice dated 11.04.2018 i.e., before due date of handing over of possession seeking refund against the allotted unit as complainants approached the respondent on various occasions for redressal of their grievances including the installation of permanent gates and structures by the Raheja Developers in front of their allotted plot but the respondent did not pay any heed to the request of the complainant leading to sending the letter of surrender by the complainant.

35. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

36. It is evident from the above mentioned facts that the complainants paid a sum of Rs. 3,11,28,760/- against basic sale consideration of Rs.3,74,39,590/- of the plot. There is nothing on the record to show that the respondent acted on those representations of the complainants. Though the respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount but he did not pay heed to it.
37. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted plot and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit as per payment schedule and shall return the balance amount 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 i.e., 11.04.2018 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions issued the Authority:

38. 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 is directed to refund to the complainants the paid-up amount of Rs. 3,11,28,760/- after deducting 10% as earnest money of the basic sale consideration of Rs. 3,74,39,590/- with interest at the prescribed rate i.e., 10.70% is allowed on the balance amount, from the date of surrender i.e 11.04.2018 till date of actual refund. (Since it's a matter of surrender , in proceeding of the day dated 19.04.2023 the interest on refund is allowed inadvertently mentioned from the date of cancellation i.e 24.10.2018 till the actual date of refund)
- 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.

39. Complaint stands disposed of.

40. File be consigned to the Registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.04.2023