

PROCEEDINGS OF THE DAY		17
Day and Date	Wednesday and 24.05.2023	
Complaint No.	CR/887/2020 Case titled as MRS VIJAY RANA AND AARUSHI SINHA Vs ILD MILLENNIUM PVT LTD	
Complainant	MRS VIJAY RANA AND AARUSHI SINHA	
Represented through	None	
Respondent	ILD MILLENNIUM PVT LTD	
Respondent Represented	Shri Aradhya AR of the respondent company	
Last date of hearing	Rectification application	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint was disposed off vide order dated 14.09.2022 with a direction to the respondent to refund the amount paid by the complainant after deducting 10% of the sale consideration with interest @ 10% p.a. on the refundable amount from the date of letter of surrender i.e., 17.07.2017 till the actual date of refund of the amount.

The complainant has filed an application of rectification under section 39 of the Act on 29.09.2022 stating that the order dated 14.09.2022 may be rectified and the amount paid by complainants may be refunded from the respective payments therein till realisation without deduction of any amount since it was not considered that the failure to execute the BBA resulted in issuance of surrender letter dated 17.07.2017.

The authority observes that section 39 deals with the *rectification of orders* which empowers the authority to make rectification within a period of 2 years from the date of order made under this Act. The authority may rectify any mistake apparent from the record and make such amendment, if the mistake is brought to its notice by the parties. However, **rectification cannot be allowed in two cases, firstly**, orders against which appeal has been preferred,



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण गुरुग्राम

24/05/2023

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

secondly, to amend substantive part of the order. The relevant portion of said section is reproduced below.

Section 39: Rectification of orders

"The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act."

Since the present application involves amendment of substantive part of the order by seeking relief of allowing the refund the respective payments till realisation without deduction of any amount. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016.

Thus, in view of the legal position discussed above, there is no merit in the application dated 29.09.2022 filed by the complainant for rectification of order dated 14.09.2022 passed by the authority and the same is hereby declined. File be consigned to the registry.

Ashok Sangwan
Member
24.05.2023



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

Complaint no.	887 of 2020
Date of filing complaint	26.02.2020
First date of hearing	07.04.2020
Date of decision	14.09.2022

1. Mrs Vijay Rana 2. Aarushi Sinha Both R/o: House no. 12A, Turner Road, Clement Town, Dehradun-248002, Uttarakhand	Complainants
Versus	
M/s ILD Millenium Pvt. Ltd. Regd. office: 9 th Floor, ILD Trade Centre, Sector 47, Sohna Road, Gurugram-122018, Haryana	Respondent

CORAM:	
Dr K.K. Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
None	Complainant
Sh. Pankaj Chandola (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 complainants, 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 and location of the project	"Grand Centra", Sector 37C, Gurugram	
2.	Nature of the project	Group Housing Colony	
3.	Project area	15.48 acres	
4.	DTCP license no.	13 of 2008 dated 31.01.2008	
5.	Name of licensee	Jubliant Malls Pvt. Ltd and 3 others	
6.	RERA Registered/ not registered	62 of 2017 dated 17.08.2017 valid upto 17.02.2020	
7.	Application for Booking	Initial Unit	New Unit
		13.09.2014 (Page 25 of complaint)	Not specified
8.	Unit no.	Initial Unit	New Unit
		1105, B Block (Page 25 of complaint)	1104, B Block (Page 30 of complaint)
9.	Unit area admeasuring (super area)	New Unit 1745 sq. ft. (Page 30 of complaint)	
10.	Date of apartment buyer agreement	Not Executed	
11.	Date of first payment	15.09.2014 (Page 32 of complaint)	



12.	Possession clause	N/A
13.	Due date of possession	13.09.2017 (Taken as 3 years from date of signing of application form in accordance with Hon'ble Supreme Court judgment on the subject)
14.	Total sale consideration	Rs. 81,14,250/- (As alleged by complainant on page 17 of complaint)
15.	Amount paid by the complainants	Rs. 20,93,268/- (As per SOA at annexure C7)
16.	Surrender Letter	17.07.2017 (Page 44 at annexure C5)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That the present complaint is being filed by the complainants against the respondent company who has failed to hand over the possession of the residential unit in project 'GRAND CENTRA', situated in Sector 37-C, Gurgaon, as per the assurances and promises made it.
4. That in the year of 2014, the complainants, based on the advertisement both in paper and multimedia, visited the project site namely '**GRAND CENTRA**' and were attracted by the brochures and catalogues shown by the officials/representatives of the respondent company. The complainants, convinced by the representations made by the respondent company showing that the project namely '**GRAND CENTRA**' as one of its kind, and

also by the verbal representations made by its officials that the possession would be given within 36 months of the signing of the application form, decided to book residential unit in question.

5. That based on the promises and information provided by the respondent, the complainants' filled the application form and deposited an amount of Rs. 4,00,000/- on 13.09.2014 as the booking amount. A receipt dated 15.09.2014, was issued to the complainants as an acknowledgement of the amount received by the respondent. Every time, the complainants requested for the execution of an agreement, the respondent company gave an excuse that builder buyer agreement would be executed only when 30% of the total sale price will be paid by the complainants.
6. That at the time of booking, the respondent company officials assured the complainants that the unit would be offered to complainants within 3 years however, even after passing of more than 5^{1/2} years neither the ABA has been executed nor possession has been offered.
7. It is pertinent to submit here that the respondent company has neither issued the allotment letter nor got the builder buyer agreement executed till this date. Thus, the act of the respondent in demanding more than 25% of the sale price of the unit even before signing of the agreement and indulging in illegal activities is in violation of the provisions of the Act of 2016.
8. It is pertinent to place true facts that the complainants visited the office of the respondent to upgrade the unit allotted from 2BHK to 3BHK and to delete the name of the Mr. Anshul Rana (co-applicant) and further add the



name of Mrs. Aarushi Sinha. That request was acknowledged by the respondent and the said changes were made on 23.05.2015. In this regard, the complainants made a payment amounting to Rs. 4,88,139/- (Rupees Four Lakh Eighty-Eight Thousand One Hundred and Thirty-Nine) dated 23.05.2015 to the respondent company and accordingly they were allotted a new unit GCB-1104, 3BHK, 1745 sq. ft.

9. But the respondent, even after passing of 22 months from the date of booking, failed to execute the builder buyer agreement. So, the complainants had no choice but to ask for the refund of the amount paid by them with interest as it was promised by the respondent that possession would be offered within 36 months from the date of booking i.e by 13.09.2017. The complainants visited the office of the respondent on 17.07.2017 and handed over an application for the refund of the amount paid till date along with interest and the same was acknowledged by it.
10. The officials of the respondent company assured the complainants that action would be taken on the application, and they would contact them for initiating the refund process. However, till date the refund has not been initiated.
11. That it is pertinent to mention here that the basic sale price of the unit in question is Rs. 81,14,250/- out of which the complainants had paid an amount of Rs. 20,93,268/-. However even after 5 years, there is no apartment buyer's agreement. The willful, malafide and illegal conduct of the respondent company is apparent from the facts as described and the

respondent company is liable to refund the amount paid along with interest applicable.

12. Since the respondent company has failed to handover the possession as per the assurance and promises made to offer the possession within 36 months from date of booking, the complainants wish to withdraw from the project as there has been a delay of more than 5 years to handover the unit in question.

C. Relief sought by the complainants:

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

- i) Direct the respondent company to refund the payment made till date by the complainants along with interest @ 18% per annum from the date of first payment till the date of disbursement of refund.
- ii) Direct the respondent company to pay a sum of Rs. 10 lacs towards damages for the physical and mental torture, agony, discomfort and undue hardship caused to the complainants as a result of the above acts and omissions on its part and an amount of Rs. 1,50,000/- as litigation expenses

D. Reply by respondent:

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

14. That the respondent is a leading real estate company aiming to provide state of art housing solutions to its customers and has achieved a reputation of excellence for itself in the real estate market.

banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affecting the progress of the project. The demonetization and new tax law i.e., GST, affected the development work of the project.

18. That the complainants have intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement. It is brought to the knowledge of the Hon'ble Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of its intention. The present complaint is devoid of merit and thus is liable to be dismissed.
19. All other averments were denied in toto.
20. Copies of all 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 submissions made by the parties.

E. Jurisdiction of the authority:

21. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

22. 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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

23. 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.

24. 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.

25. 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. 2020-2021 (1) RCR (c) 357* 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."

26. 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 company to refund the payment made till date by the complainants along with interest @ 18% per annum from the date of first payment till the date of disbursement of refund.**

27. In the present case, the complainants booked a unit in the project of the respondent named as "Grand Centra" situated at sector 37C, Gurgaon, Haryana for a total sale consideration of Rs. 81,14,250/- vide application form dated 13.09.2014. Thereafter, they were allotted unit no. 1105 in B Block. However, the allotted unit was subsequently changed to unit bearing no. 1104 in the same block admeasuring 1745 sq. ft. The complainants have in total paid an amount of Rs. 20,93,268/-.
28. It is an admitted fact that no buyer's agreement was executed between the parties. So, the due date for completion of the project and handing over possession of the allotted unit has been calculated in accordance with the Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018* wherein it was observed, "*a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract*". In view of the aforesaid judgment, the due date of possession has been calculated as three years from the date of signing of application form i.e., 13.09.2014 and the same comes out to be 13.09.2017. The complainants wanted to withdraw from the project and are seeking refund before the due date has expired. It has come in the pleadings that they sent a letter dated 17.07.2017 (Annexure C5, page 44) to the respondent seeking refund and withdrawal from the project but before the due date for completion of the project has expired.



29. The cancellation/surrender of any allotted unit by the respondent builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately.

30. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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."

31. Keeping in view the above-mentioned facts and since the allottees requested for cancellation of the allotment on 17.07.2017, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount after forfeiture of 10% of total sale consideration with interest at the rate of 10.00% (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 letter of surrender i.e.,

17.07.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

F.II. Legal Expenses and Compensation

32. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

G. Directions of the Authority:

33. 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 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 with interest @ 10.00% p.a. on the refundable from the date of letter of surrender i.e., 17.07.2017 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.



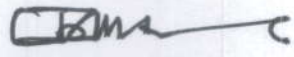
iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

34. Complaint stands disposed of.

35. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022

