

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

<b>Complaint no.</b>	:	<b>946 of 2019</b>
<b>Date of filing complaint:</b>		<b>12.03.2019</b>
<b>First date of hearing</b>	:	<b>21.11.2019</b>
<b>Date of decision</b>	:	<b>05.04.2023</b>

Rishi Parkash <b>R/O:</b> Flat no. B-1002, The Gulistan CGHS Ltd. Plot no. - 1-B, Sector - 13, Dwarka N.S.I.T., Dwarka New Delhi- 110078	<b>Complainant</b>
Versus	
M/s Landmark Apartments Private Limited <b>Regd. office:</b> A-8, Chittranjan Park, South Delhi - 110019	<b>Respondent</b>
<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
None	Complainant
Sh. Jatin Sharma (AR)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions

under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Landmark - The residency", Sector 103, Gurgaon, Haryana
2.	Project area	10.868 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	33 of 2011 dated 16.04.2011
5.	Name of licensee	Roshan Lal and others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	Unit no. B-22 (PLC unit) (Page no. 58 of complaint) ✓ Originally, he booked two units but later on after inspecting the progress in the project he transferred the funds from both the units to only one unit.
8.	Unit area admeasuring	1350 sq. ft.



		(Page no. 58 of complaint)
9.	Date of allotment	13.03.2013 (Page no. 58 of complaint)
10.	Buyer agreement	Not Executed
11.	Possession clause (Taken from the BBA annexed in the file but not executed between the parties)	<b>10.1 Possession Time and Compensation</b> <i>"The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of four years (48 months) from the date of execution of this agreement unless there shall be delay..."</i> (Page 57 of reply)
12.	Due date of possession	13.03.2016 (Calculated from date of allotment)
13.	Total sale consideration	Rs. 77,42,900/- (As per page 7 of reply)
14.	Amount paid by the complainant	Rs. 39,41,500/- (As alleged by the complainant at page 9 of complaint)
15.	Occupation certificate	25.09.2020 for Tower A (As per page 84 of the Reply)

16.	Date of last and final reminder	15.11.2013 (As per page 101 of reply)
17.	Date of offer of possession	31.03.2021 (As per page 115 of reply)

**B. Facts of the complaint:**

3. That the respondent launched a residential group housing project. That in the month of August 2012, through two applications, the complainant booked two units having super area 1350.00 Sq. yards each in the project by paying booking amount of Rs.6,00,000/-, i.e., Rs.3,00,000/- each for two units. That it is pertinent to note that even after collecting six payments totalling to Rs. 39,41,500/-, which included booking amount and instalments, for two units till January 2013, the respondent allotted two units /apartments Total Sale Price of the apartment for Rs. 76,95,500/- each as per schedule of the payment.
4. That it was simultaneously assured by the respondent that the possession to the aforesaid units would be delivered within a period of 4 years (48 months) from the date of execution of the agreement with a grace period of 6 months for the purpose of fit outs and a further period of 6 months on account of grace over and above the period. That the complainant was curious regarding the progress/status of the aforesaid project so he himself inspected the project site and was shocked to see zilch development/ progress on the spot. Thus, due to delay in project, the complainant /applicant cancelled booking of one



of the aforesaid apartments i.e., bearing no. unit B-21 and diverted the entire paid amount till date into the **sale consideration of one unit** bearing no. B-22 having an approximate super area admeasuring 125.418 sq. meters (1350 sq. feet approximately) located on 2<sup>nd</sup> Floor in B block, Tower-C and for allotment of one covered Parking Space.

5. Thereafter the respondent has been making verbal promises to provide the complainant with the apartment buyer's agreement but till date no further steps have been taken by the respondent. That the respondent company has played a fraud upon the complainant and has cheated him fraudulently and dishonestly with a false promise to deliver the possession of the said plot in time. The complainant on the other hand has paid all the due instalments on time. The respondent till date is silent over the due date of the possession of the said booked plot. The respondent did not give any heed to the repeated requests of the complainant and hence the necessity of filing of the present complaint against the respondent arose.

**C. Relief sought by the complainant:**

6. The complainant has sought following relief(s):
- Direct the respondent to refund the amount received from the complainant along with 24% p.a. of interest.
  - Direct the respondent to compensate the complainant towards loss of opportunity, mental pain, agony and harassment.

**D. Reply by respondent:**

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



7. The complaint is not maintainable as the transaction being contractual in nature and so, the same is to be adjudicated by a civil court.
8. That the complainant booked a unit in a project being developed by the respondent by the name "Landmark the residency" situated in sector 103 Gurugram for a total sale consideration of Rs. 77,42,900/- each. He had executed two application forms dated 1.08.2012 and 12.08.2012 and paid an amount of Rs. 39,41,500/-. He was allotted two units bearing no. B-21 and B-22 bearing allotment dated 13.03.2013. Thus, due to delay in project, the complainant /applicant cancelled booking of one of the aforesaid apartments bearing no. unit B-21 and diverted the entire paid amount till date into the sale consideration of one unit bearing no. B-22 having an approximate super area admeasuring 125.418 sq. meters (1350 sq. feet approximately) located on 2<sup>nd</sup> Floor in B block, Tower-C and for allotment of one covered Parking Space.
9. That the complainant cannot allowed to take advantage of its own wrongful acts/omissions as he has done various defaults in making of the payment in terms of allotment.
10. It is submitted that the complainant has miserably failed to adhere to the terms and conditions of the sample buyer's agreement and neither has executed the agreement with the respondent.
11. That the complainant has defaulted in making payment on time contrary to the agreed terms. It is submitted that on many occasions



repeated demand letters and reminders were issued to the complainant for payment. But he did not make the payments on time.

12. That the complainant has willfully agreed to the terms and condition of the allotment and is now at this belated stage has raised issues and concerns regarding his contractual obligations.
13. 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 on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

14. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objections regarding default in payment on behalf of the complainant:**

15. It was pleaded on behalf of respondent that the complainant failed to make timely payments of the subject unit. The authority observes that the complainant has paid Rs. 39,41,500/- as sale consideration for the unit and the same is evident from the pleadings and documents attached. The occupation certificate of the project has been received on 25.09.2020 much after from the due date of possession i.e., 13.03.2016 and also after initiation of complaint (which was filed on 12.03.2019).



It was the obligation on part of the respondent to complete the construction within time. When the complainant did not get any positive response w.r.t. completion of project, he stopped making further payments to the respondent and as per Section 18 of RERA Act, if a promoter fails to complete or is unable to give possession of an apartment/unit duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Therefore, the plea advanced by the respondent with regard to non-payment by the complainant is devoid of merit and hence, is rejected.

16. Also, in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (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*

**F.II Objections regarding entitlement of refund on account of complainants being investors.**

17. The respondent has objected that the complainant is investor and not the consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer only and he has paid total price of Rs. 39,41,500/- to the promoter towards purchase of an apartment/unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*



18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in ***appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount received from the complainant along with 24% p.a. of interest**

19. Keeping in view the fact that the allottee-complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter 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.
20. Though the occupation certificate of the building/tower where allotted unit of the complainant is situated is received but complainant-allottee



has already wished to withdraw from the project and he has become entitled to his right under section 18(1) and 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as he failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (supra)* decided on 12.05.2022 observed as it is the unqualified right and adjudication upon the same is well within the ambit of the authority
22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes 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.

This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for



adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.

23. The authority hereby directs the promoter to return the amount received by them i.e., Rs. 39,41,500/-with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

**G.II Direct the respondent to towards loss of opportunity, mental pain, agony and harassment.**

24. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, 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 complainant 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.



**H. Directions of the Authority:**

25. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the amount received by it from the complainant i.e., Rs. 39,41,500/- along with interest at the rate of 10.70% p.a. from the date of each deposit till date of realization of 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.

26. Complaint stands disposed of.

27. File be consigned to the registry.

**HARERA**  
GURUGRAM

  
Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 05.04.2023