



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

Complaint no.	:	3588 of 2021
Date of filing complaint:		01.09.2021
First date of hearing:		21.09.2021
Date of decision	:	06.10.2022

Geetu Thakur and Karan Singh Thakur Both R/O: A-167, Ground Floor, Sushant Lok-III, Sector-	Complainants
Versus	
M/s Godrej Projects Development Pvt. Ltd. Regd. office: Godrej One, 5 th floor, Pirojshanagar, eastern expressway highway, Vikhroli, Mumbai-400079	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Complainant in person with Advocate Rahul Sharma	Complainants
Ms. Amrita Tonk (Advocate)	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 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	"Godrej Habitat", Sector 3, Gurugram
2.	Project area	7.46875 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	18 of 2018 dated 26.02.2018 valid upto 25.03.2023
5.	Name of licensee	Sh. Narender Singh Dhingra and 1 other
6.	RERA Registered/ not registered	Registered vide 11 of 2018 dated 08.03.2019
7.	RERA registration valid up to	25.02.2023
8.	Allotment Letter	20.01.2021 (Page 93 of the complaint)
9.	Unit no.	Unit no. 2-1004, 10 th Floor, Tower 2 (Page 104 of the complaint)



10.	Unit area admeasuring	1234.943 sq. ft. (carpet area) (Page 104 of the Complaint)
11.	Date of execution of Flat Buyer's Agreement	Not Executed
12.	Possession clause (Taken from unexecuted BBA)	16.1. Schedule for possession of the said Unit <i>"The Developer shall offer possession of the units falling in the Project on or before February 25, 2023 with additional grace period of upto 12 (twelve) months as may be approved by Real Estate Regulatory Authority ("RERA") or such extended period as may be granted by RERA ("Completion Time Period") as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project, reasons beyond the control of the Developer and/or its agents, due to non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Unit".</i>
14.	Due date of possession	25.02.2023

15.	Total sale consideration	Rs. 1,31,01,393/- (As per BBA on page 105 of the complaint) Inadvertently recorded as 1,16,80,100/- in the proceeding of 06.10.2022
16.	Amount paid by the complainants	Rs. 13,10,140/- (As alleged by the complainants on page 25 of reply)
17.	Occupation certificate /Completion certificate	Not obtained
18.	Offer of Possession	Not offered
19.	Surrender of Unit	17.03.2021 (Page 157 of the complaint)

B. Facts of the complaint:

- That the complainants booked a unit in the project namely "Godrej Habitat", Sector 3, Gurugram and paid booking amount of Rs. 1,00,000/- Subsequently, they were allotted a unit bearing no. 1004 on 10th floor admeasuring 1234.943 sq.ft. in tower-2 for a total sale consideration of Rs. 1,31,01,393/-.
- That the complainants paid a total sum of Rs. 13,10,140/- which is 10% of the total sale consideration to the respondent. On 20.01.2021, an allotment letter along with agreement to sale was issued by the respondent.



5. That all the communication between the parties have been done through email, personal visit to the site and office. On 07.02.2021, the complainants sent an email regarding their concerns and issues in agreement of sale issued by the respondent. They were in utter shock that the key features showed to them at the time of booking through brochure and presentations were not there in the agreement.
6. That the complainants sent various emails dated 08.02.2021, 09.02.2021, 10.02.2021 and 12.02.2021 to seek some satisfactory reply. And finally wrote an email dated 17.03.2021 wherein stating their willingness to withdraw from the project and requested to refund the amount paid by them.
7. The complainants wrote many emails dated 23.04.2021, 30.05.2021 and 01.06.2021 to get their refund of the amount paid but till date they have not received any refund. The complainants were left with no option but to approach the Authority.

C. Relief sought by the complainant:

8. The complainants have sought following relief(s):
- Direct the respondent to refund an amount of Rs. 13,10,140/- along with interest.
 - Direct the respondent to pay Rs. 5,00,000/- for mental agony and financial loss suffered by the complainants.
 - Direct the respondent to pay cost of litigation.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

9. That the complainants during pandemic showed their willingness to book a residential unit in project vide an email dated 15.12.2020. Hence, all the documents between the parties were executed online.
10. That the complainants made the booking after going through all the terms and conditions as mentioned in the online allotment letter dated 20.01.2021 and were allotted unit bearing no. 1004 on 10th floor in tower -2.
11. That the complainants, thereafter, began bringing up frivolous grounds stating that the project was not being developed in accordance to how it was advertised and began harassing the respondents to change the terms and conditions of the apartment buyer agreement. It is humbly submitted that the project in question is yet to be completed and there is no way by which the complainants could have ascertained that the representations and warranties guaranteed in the advertisements were not provided for.
12. That considering the pandemic, the offices of the respondents were shut, however the complainants with their inconsiderate and inhumane attitude kept on insisting that the respondents hold in-person meetings during spread of the second wave of the pandemic. That, thereafter the complainants on their own accord and wishes proceeded to withdraw their booking in the project and demanded

refund of the booking amount. That strictly as per the contractual terms of the application form / allotment letter, as has been stated above, the complainants are not entitled to refund, which fact had been communicated to them vide email dated 20.04.2021.

13. All the averments made by the complainants are denied in toto.

14. 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:

15. 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 complainants at a later stage.

16. 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. 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. Entitlement of the complainants for refund:

F.I Direct to the respondent to refund an amount of Rs. 13,10,140/- along with interest.

17. The complainants were allotted a unit in the project of respondent "Godrej Habitat", in Sector 3, Gurugram vide allotment letter dated 20.01.2021 for a total sum of Rs. 1,31,01,393/-. Though no buyer's agreement was executed between the parties, but the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 13,10,140/-. On 07.02.2021, the complainants sent an email regarding their concerns and issues in agreement of sale issued by the respondent to them. The complainants were in utter shock that the key features showed to them at the time of booking through brochure and presentations were not there in the agreement
18. They sent various emails dated 08.02.2021, 09.02.2021, 10.02.2021 and 12.02.2021 to seek some satisfactory reply and finally wrote an email dated 17.03.2021 stating to withdraw from the project and requested to refund the amount paid by them.



19. It is evident from the above mentioned facts that the complainants paid a sum of Rs.13,10,140/- against basic sale consideration of Rs. 1,31,01,393/- of the unit allotted to them on 20.01.2021. The respondent failed to respond to any emails dated 08.02.2021, 09.02.2021, 10.02.2021 and 12.02.2021. Subsequently an email dated 17.03.2021 has been placed in file wherein which the complainants stated that they want to surrender their unit and sought refund of the amount paid. To which the respondent replied through email dated 20.04.2021 which states that they had already clarified their stance that the complainants are not entitled to refund as according to clause 11 of Annexure A (terms and conditions) of the application form the respondent-builder is entitled to forfeit the entire booking amount.
20. However, no provision of any agreement between the party is above any law. 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."

21. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the amount paid by the complainants against the allotted unit as it is both the earnest money and 10% of the consideration amount. So same is liable to be forfeited as per clause 11 of Application form and Haryana Real Estate Regulatory Authority Regulation 11(5). However, the amount paid by the complainants i.e., Rs. 13,10,140/- constitutes 10% of sale consideration of Rs. 1,31,01,393/-. Thus, no direction to this effect.

F. II Direct the respondent to cost of litigation and mental agony.

22. The complainants are seeking relief w.r.t compensation in the aforesaid 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* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

23. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest

is made out. Hence, the complaint is liable to be dismissed and as such is rejected.

24. Complaint stands disposed of.
25. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022

HARERA