

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

<b>Complaint no.</b>	:	<b>236 of 2021</b>
<b>Date of filing complaint:</b>		<b>14.01.2021</b>
<b>First date of hearing:</b>		<b>19.02.2021</b>
<b>Date of decision</b>	:	<b>18.01.2023</b>

1.	Sh. Sameer Suhag S /o Sh. Gulshan Chauhan	<b>Complainants</b>
2.	Smt. Suman Suhag W/o Sh. Sunil Singh Suhag <b>Both R/o:</b> C2/1, Tilak Lane, New Delhi- 110011	
Versus		
1.	M/s Aaliyah Real Estates Private Limited	<b>Respondents</b>
2.	Virendra Kumar Bhatia (Director)	
3.	Saahil Bhatia (Director) <b>Regd. office:</b> N-71, Panchsheel Park, New Delhi	

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. K.K. Kohli (Advocate)	Complainants
Sh. Somesh Arora (Advocate)	Respondents

**ORDER**

- 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 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.n.	Particulars	Details		
1.	Name of the project	"Baani City Centre"		
2.	Project location	Sector 63, Village Maidawas, Gurugram, Haryana		
3.	Nature of the project	Commercial Colony		
4.	DTCP license no. and validity status	80 of 2010 dated 15.10.2010		
		Valid up to 14.10.2023		
5.	Name of licensee	M/s Aaliyah Real Estate Pvt. Ltd. (BIP Holder vide order dated 04.01.2016)		
6.	RERA registration details	Applied on 28.01.2022		
7.	Allotment letter	10.03.2013 [As per annexure R9, page no. 50 of reply]		
8.	Unit details			
	S.no.	Unit No.	Unit Area	Documentary proof
	a.	312 in IKON Tower	1179 sq. ft.	As per allotment letter dated 10.03.2013 at page no. 50 of reply
	b.	508, 5 <sup>th</sup> floor	1180 sq. ft.	As per letter dated 14.08.2013 at page no. 112 of complaint



	c.	801, floor	8 <sup>th</sup>	1180 sq. ft.	As per reminder dated 12.09.2013 at page no. 114 of complaint
9.	Date of apartment buyer's buyer agreement				Not executed
10.	Possession clause				<b>2. Possession</b> <b>2.1</b> <i>The intending seller, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the commercial space <b>within a period of forty-two (42) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement, whichever is later</b> ("commitment period"). Should the possession of the commercial unit not be given within the commitment period due to any reason (except delays mentioned in clause 9 below), the intending purchaser agrees to an extension of one hundred and eighty (180) days ("grace period") after expiry of the commitment period for handing over the possession of the commercial unit.</i> <i>[Possession clause taken from the BBA annexed in complaint no. 220-2021 of the same project being developed by the same promoter]</i>
11.	Date of building plan				24.01.2013 [As per annexure R-10, page no. 51 of the reply]
12.	Due date of possession				<b>24.01.2017</b> [In the present case, no buyer's agreement has been executed inter-se parties. Therefore, the due date of possession is calculated from date of building plan approval i.e., 24.01.2013.]



		<i>Grace period of 180 days is allowed</i>
13.	Total sale consideration	Rs. 1,10,13,790/- [BSP] [As per payment plan annexed at page no. 113 of the complaint]
14.	Amount paid by the complainants	Rs. 32,00,000/- [As per payment plan annexed at page no. 113 of the complaint]
15.	Surrender request by E-mail	11.01.2014 [As per page no. 117 of complaint] <i>(The said request was made by the complainants on account that due to change in unit thrice, do not wish to continue with the project.)</i>
16.	Request for surrender of unit	09.12.2014 [As alleged by the respondent in para 8 of written arguments dated 10.06.2022] <i>(Although the said letter is not placed on record. Therefore, reliance has been made on surrender letter dated 11.01.2014 placed on record by the complainant.)</i>
17.	Cancellation letter	12.12.2014 [As per annexure C11, page no. 119 of complaint]
18.	Amount refunded along with cancellation letter dated 12.12.2014	14,10,105/- [An amount of Rs. 17,89,895/- constituting 16.25% of basic sale consideration (BSP) was forfeited as terms and conditions of application /allotment letter, in the absence of buyer's agreement between the parties]

19.	Part occupation certificate	16.01.2018 [As per annexure R-4, page no. 30 of reply]
20.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the respondent no. 1 (hereinafter referred as "respondent-builder") thereby invited applications from prospective buyers for purchase of the commercial space/offices/shop/flat in its project. The complainants were caught in the web of false promises of the representatives of the respondent-builder booked a serviced apartment in IKON tower of the project "Baani City Centre", Sector 63, admeasuring 1179 sq. ft for basic sale price of Rs 1,06,20,000/- being calculated @ Rs. 9000/-per sq. ft. for 1179 sq. ft. super area exclusive of other charges such as IDC, EDC, PLC, car parking charges, stamp duty charges, registration fee, interest free maintenance security, monthly maintenance charges, power back up charges, service tax & any other government taxes/charges levied/leviable.
4. That the complainants applied for allotment of unit vide application dated 01.03.2013 and was allotted commercial space no. 312 in IKON tower of the respondent-company's project "Baani City Center", Sector 63, Gurugram vide provisional allotment letter dated 10.03.2013. The said allotment letter dated 10.03.2013 was one-sided wherein laying conditions that the location so given was tentative and can be changed at the sole discretion of the builder, without specifying any reasons. It further stated that the provisional

allotment letter was subject to the complainants signing the commercial space commercial space buyers' agreement and agreeing to abide by the terms and conditions mentioned therein, which to be provided to them in due course.

5. That he made a payment of Rs. 32,00,000/- through different cheques and the same was duly acknowledged by it. The said unit bearing no. 312, which was on the third floor, as per preference, was subsequently changed to unit bearing no. 508 fifth floor, in August 2013 without informing the complainants and the size of the same was increased to 1180 sq. ft. He strongly objected to the act of the respondent but unfortunately it cited some technical reason, which was much beyond its control. However, the new unit was forced on him in spite of objecting to the same and a demand of Rs. 12,05,506/- was raised in this regard.
6. That the said payment was made but to the surprise, the unit number no. 508 was further changed to unit no. 801 in the month of September 2013, and the complainants came to know through a reminder to the due instalment dated 12.09.2013. Once again, he was not consulted on the change of the apartment & the floor and the complainants' wishes and consent was not sought for or taken into consideration. In essence, the fourth instalment was also being shoved down the throats of the complainants forcefully. Now, that was the limit and the complainants being family of a serving Army Officer did not like at all and was never interested on the 8th floor, hence refused to make any further payments.

7. That he requested the respondent through a visit to their office in September 2013 & October 2013 and telephonically and through personal meetings in November 2013 to kindly refund the amount with interest as he was not interested in buying the property anymore due to its uncertain attitude as evident from the different changes provided above.
8. That the respondent was going ahead with one agenda and was asking payment of Rs. 12,05,516/- which the complainants was never interested in paying and instead he asked for the refund. So, it started giving one reminder after the other for the payment of Rs. 12,05, 516/- vide letter dated 26.11.2013 and further, threatened to cancel the allotment. On 29.12.2013, he once again requested it for the refund through an e mail.
9. That the respondent-builder through its Manager (CRM) Ms. Divya Jain sent an e-mail dated 06.01.2014 and wherein threatening him with a cancellation charge of 15% in case the complainants decided to go for the refund. The complainants was posted outside the town, and instead of refunding the amount as being requested by him, as the changed unit was on different floors which he was not interested in. The respondent threatened him with a cancellation charge of 15% while there was no agreement was executed between them and that the flats of the complainants are being repeatedly changed and further that the allotment letter so issued as stated above was subject to the allottee signing the space commercial space buyers' agreement and agreeing to abide by the terms and conditions mentioned therein which had to be provided to him in due course.

10. That the complainants already expressed desire not to carry on with the unit any more through e-mail dated 29.12.2013. It would therefore be evident that till the time, the complainants expressed the desire for refund, the buyer's agreement was not at all ready and that was almost after one year of having collected Rs. 32,00,000/- against a total payment of Rs. 1,00,00,000/- plus which means 26% of the total payment and needless to repeat that the allotment was subject to the allottee signing the space commercial space buyers' agreement and agreeing to abide by the terms and conditions mentioned therein, which had to be provided to the complainants in due course. Vide e-mail dated 11.1.2014, he once again requested the respondents to refund the amount.
11. That complainants visited the office of the respondent on 11.01.2014 and again on 24.1.2014 apart from verbal discussions with Mr. Rajneesh several times, for the refund of the amount. Since there was no response from the respondents, the complainants was left with no option but send an e mail to Shri Virendra Bhatia, Director of the respondent company, on 07.08.2014 for the refund of the amount. The complainants visited the office of the respondents for refund regularly and the respondents were providing false hopes to him that the amount would be interested with refund but unfortunately no such action was taken by the respondent.
12. That the respondent-builder once again sent an intimation dated 20.05.2014 for due instalment of Rs. 12,05, 516.00 whereas the complainants has repeatedly stated that he was not interested in the project at all and lost faith



in the builder and hence repeatedly asked for the refund. As such, he sent another message on 29.10.2014 to Shri Rajnish from the office of the respondent referring to the mail dated 11.01.2014, 01.08.2014, meeting of the complainants with Shri Rajnish in the office of Shri Virendra Bhatia, Director, respondent-builder and the telephonic conversation on 28.10.2014. In the said mail, the complainants categorically stated that he has been speaking to Shri Bhatia, Director of respondent-builder several times in the last few months. All these communications relate to refunding the amount as the complainants was never interested in the project. Hence the complainants made the requests in September 2013, October 2013 and Telephonically in November 2013, 29.12.2013, 11.1.2014, 24.1.2014, 1.8.2014, 7.8.2014, telephonically, 28.10.2014, 29.10.2014, 30.10.2014 and through innumerable personal visits in last one year.

13. That the present case is an excellent example of how an innocent buyer can be harassed, tortured, tired & exhausted by the respondents. He has been asking for refund for last one year and has been sending e mails, meeting personally, making calls and the exercise has been going for one year as per the dates and details provided above and was being assured that the refund would be given.
14. That finally, the builder played the usual trick of depriving the innocent exhausted complainants and make him sign a letter on the dotted lines knowing very well that he has not signed any agreement with the respondents and therefore, is entitled for full refund with interest. Hence,

he was forced to sign on a letter typed in the office of the respondent, where the complainants had gone to get the entire fund of Rs. 32,00,000/- with interest but stating that due to financial difficulties, they were unable to make payment and are now not in a position to make further payments & would like to surrender allotment and refund the balance amount after deduction of earnest money.

15. That in all the previous communications in writing or in personal meeting, totalling more than 20, during last one year, the complainants has been asking for refund and there is no communication from the complainants to state what has been stated above. All of a sudden how can the complainants ask the respondents that he is unable to pay when he had decided not to pay almost one year back and had been, since then, asking for refund.
16. That the complainants had not even signed the BBA as he never responded to the communication of the respondents on the BBA and hence, they now want to take shelter under the application for registration.
17. That the respondent has been intimidating the complainants, ignoring his visits and now under the garb of financial difficulty and taking shelter of the application for registration, is forcing the forfeiture of the earnest money of the innocent complainants. Such letter dated 09.08.2014 was typed in the office of the respondents, received in a future date of 11.12.2014 by a person of such a seniority Shri Rajnish, who had all these days been assuring full refund with interest and the refund was finally issued on the 12.12.2014 for

Rs 17,89,995/- after deducting Rs 14,10,105/- as the earnest money vide cheque no 486985 dated 12.12.2014.

18. That it is now a well-established law that no promoter can take a deposit or advance without first entering into agreement for sale. However, in the present case the respondent-builder did not send any agreement for sale which is normally called the commercial space buyers' agreement but also took an advance of Rs. 13,00,000/- even before getting the license in their favour which as per the records they got on 04.06.2013. Hence the respondent was wrong in collecting Rs. 13,00,000/- before getting the license and entering into an agreement for sale accepting a sum much more than 10% which is not permissible as per the Act of 2016.
19. That another demand was raised by the respondent-builder for payment of another 10% of the total sale consideration within 100 days of booking of the unit dated 27.04.2013 for an amount of Rs. 11,01,37/-. He paid a sum of Rs. 9,97,242.09/- vide cheque and the same was acknowledged by the respondent-builder.
20. That the respondent-builder vide letter dated 12.09.2013 raised a demand of Rs. 12,05,515.83/- and the subject of the reminder letter was "Reminder for Due Installment for Serviced Apartment" in commercial-project named as "Baani City Center" Sector 63, Gurgaon, through which the Unit No. 312 was changed to Unit No. 508 on their own without any intimation, any notice and any approval from the complainants. In the subject, it was mentioned as "revised unit with super area for unit no. 508 in our project "BAANI IKON

TOWERS". The size of the unit was increased from 1179 sq. ft. to 1180 sq. ft. Hence, the complainants are entirely at the mercy of the respondent-builder as if he was not buyer but "beggar".

21. That the complainants were never informed of the change in the plans of the unit and no approvals were even obtained from the office of the District Town Planner, Haryana. If at all, such approvals were taken from the Government of Haryana, the same should have first been taken from the buyers. To utter surprise of the complainants, he once again got another communication, without prior intimation, discussion or permission and the unit no. 508 as allotted stood changed to No. 801. The respondent-builder evaded sending over the commercial space buyers' agreement despite the timely and regular payments of the complainants and re-allotting their unit twice. They even asked the respondent to send over the commercial space buyers' agreement multiple times, however it gave some or the other reason to do so.
22. That the respondent-builder delayed sending over the commercial space buyers' agreement purposefully as it was aware that the due date of delivery of possession calculated from either the date of execution of commercial space buyers' agreement or from the date of approval of building plans of the commercial complex, whichever is later. That clause, in the commercial space buyers' agreement, was unjust as the complainants started making payments since April 2013 and were entitled to the due date of delivery of possession being counted from that date.

23. That the complainants did not sign the commercial space buyers' agreement as it contained one sided clause which favoured the respondents and not the buyers. They realized that in spite of having paid 26% of the total payment, there was no progress at the site and they felt that they had been cheated, as they were in tough spot having invested their life's savings in that project and now, they had nowhere to turn.
24. That the respondent-builder sent a final notice for payment of overdue installments dated 26.11.2013 to the complainants for clearance of outstanding dues of Rs. 12,05,516/- along with interest and applicable taxes within 15 days from the date of issue of this letter with respect to the unit no. 801 which they did not want to pay for the reasons of the family circumstances that compelled them not to continue with this scheme.
25. That the complainants received a mail from Ms. Divya Jain, Dy. Manager (CRM) of the respondent-builder on 06.01.2014 stating that if they intended to go for a refund, then as per the terms of the booking, 15% of the total sale consideration would be deducted towards earnest money deduction. They contacted her vide letter dated 11.01.2014 and requested to refund the entire amount paid by them well in time. The complainants felt they were entitled to the complete refund as they had made timely payments and the respondents had not held up their end of the bargain and had re-allotted their unit twice.
26. That the respondent no. 1 sent a reminder letter dated 20.05.2014 with subject "Intimation of Due Installment for Serviced Apartment No. 801 of

area 1180 sq. ft. for due installment with service tax of Rs. 12,05,515.83/-.

But the complainants received a letter dated 12.12.2014 from the respondent-builder in reference to the serviced apartment no. 801, admeasuring 1180 sq. ft. super area in IKON TOWER for cancelling the allotment and refunding the amount paid by them.

27. That after due deliberation on the complainants' request, the respondent no. 1 cancelled the allotment of serviced apartment no. 801 after forfeiting the earnest money amounting to Rs. 17,89,895/- including applicable taxes. The respondent-builder issued a cheque no. 486985 dated 12.12.2014 drawn on Axis Bank Ltd., K-12, Green Park, New Delhi for Rs. 14,10,105.00 towards refund of the balanced money received by them against the re-allotted unit.
28. That the building plans were approved provisionally vide office memo no. 23390 dated 30.11.2015 for the purposes of inviting objections and suggestion. Therefore, the entire set of the building plans has been revised and obviously till the objections/suggestions received are attended to and the no objection was issued by all the objectors the project cannot be proceeded ahead with. It is worth noting here that the initial deposit to the tune of more than Rs. 2,60,000.00 was collected by the respondent-builder and after more than 28 months, the building plans were being submitted to re-erect the building with modifications. They visited the office of the respondents many times and pursued the refund with the representatives of the respondent-builder, but they never responded and only kept on asking money from the complainants through different demand notes. In spite of

their very clear message to the customer relations manager that they are not interested in paying unless he sees the corresponding matching construction on the site.

29. That the fact that the payments were made under the construction linked plan for which the corresponding construction has not taken place. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents are filing the present complaint seeking refund of the paid-up amount and having no effect of the complaints moved with different Authorities.

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

30. The complainants have sought following relief(s):
- i. Direct the respondent-builder to refund the entire amount of Rs. 32,00,000/- along with the interest.
  - ii. Direct the respondents not to raise any fresh demand as the complainants are interested in refund of the amount paid.
  - iii. Direct the respondents to pay Rs. 3,00,000/- for mental and physical hardships and trauma to the complainants.
  - iv. Direct the respondents to pay Rs. 15,00,000/- to compensate for loss as the complainants have been deprived of the benefit of the escalation of price of the flat.
  - v. The authority to take suo-motu action against the respondents for not registering the said project with the authority within the period specified in Section 3 of Act as this is an ongoing project.
31. No reply on behalf of respondent no. 2 & 3 was received.

**D. Reply by respondent-builder:**

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

32. That the complainants have not signed the commercial space buyer's agreement (hereinafter, the "agreement") with the respondents and vide letter dated 09.12.2014 themselves requested for refund of balance amount from them respondents after deduction of earnest money in accordance with terms and condition of their application. The said request of the complainants was acceded by the respondents and an amount of Rs. 14,10,105/- was refunded to them after forfeiture of the earnest money plus applicable taxes and same has been accepted them without any demur or objection of any kind whatsoever vide cheque bearing no. 486985 dated 12.12.2014 drawn on Axis Bank Ltd. Therefore, the present complaint is only an abuse of the process of law.
33. That the contents of the complaint filed by the complainants, averments made, facts stated, and allegations levelled against the respondents are wrong, false, frivolous and denied being factual incorrect as the they had requested for refund and refused to sign the agreement. The said request was accepted by the respondents and the amount was refunded after the forfeiture of earnest money plus applicable taxes in terms of the terms and conditions contained in application and the same was also accepted by them.



34. That the present complaint is a sheer abuse of the provision of Act and Rules as the amount was refunded after the forfeiture and the same was also accepted to by the complainants without any demur, protest and/or objections of any kind.
35. That the averments of the complainants are false, frivolous and concocted as the respondents are not required to be registered with the Authority as it is not an 'ongoing project' as provided in Rule 2(1)(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 which were even otherwise published in the official gazette after the respondents received deemed occupation certificate.
36. That the present matter is also sub-judice as the respondents have filed an appeal in the Appellate Authority Appeal Number-H-REAT-470-2020 (GRG) dated 28.12.2020 in the Haryana Real Estate Regulatory Authority Appellate Tribunal, Chandigarh in Complaint no. RERA-GRG-3271-2020. It is also pertinent to note that the said matter is also sub judice as personal hearings have been granted on the issue of "show cause notice for non-registration of ongoing project under provisions to section 3(1) of the Real Estate (Regulation and Development) Act, 2016" where the complainants has attended hearings on 20.01.2020, 10.02.2020, 16.03.2020 whereby the said file was merged with another file suo moto, which is pending and therefore the respondents are already in compliance and arguments are being heard by the authorities for exemption from registration.

37. That in the present case, the project commenced, constructed and the occupancy certificate was applied for before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 in 28.07.2017. It is submitted that the present scope of the complaint is pre-RERA and that the Act and jurisdiction of the Authority does not hold true in the present complaint and should be governed by the commercial space buyer agreement as signed by both parties. Moreover, so no claim survives against the respondents as the refund has already been taken by the complainants.
38. That in view of the above stated facts, the complaint be dismissed, and relief as prayed by the respondents may be granted since they had already received the refund and are deliberately suppressing this fact.
39. That the complainants have failed to put on record that they have completed the entire construction of the project for which part OC was received on 16.01.2018.
40. That it is therefore pertinent to note that this Hon'ble Tribunal has no jurisdiction to entertain and adjudicate the present complaint and therefore, the same should be dismissed in limine. Moreover, they filed complaints with different authorities and departments and causing harassment to the respondents. The respondents have paid full and final settlement amount 6 years ago. However, the complainants in order to extort and extract more money from the respondents are filing the unnecessary litigation.

41. That the respondents are committed builders and have at each and every stage provided transparency and assisted the buyers to make them assured of their investments and build a relationship of trust keeping in view of the integrity and the standing of the respondents, which image is being misrepresented and tarnished before this authority.
42. That it was clarified that the Ikon tower is a term used for the tower with service apartments for the commercial space. The said name was used for reference purpose only and the unit of the complainants as per the location decided by them are in tower B. It is submitted that the tower in which the service apartment was so allotted was tentatively named as Ikon Tower. The allegations of the complainants that no such tower exists are untrue and incorrect. The only change in respect of the tower in which the complainants' unit is situated is in the name and not the location.
43. That the provisional allotment letter was issued with the consent and knowledge of the complainants and full transparency was also maintained. Moreover, the same was also explained vide the letter with reasons for the change of the unit. They were informed that the allotment is tentative and subject to change and the same was part of the terms and conditions laid down in the booking form and the provisional allotment letter which the complainants agreed to, consented to freely without any objection whatsoever. It is submitted that they were well informed of the terms and conditions about booking the unit and the same conditions were reiterated in the booking form which was signed by them on their own accord. It is also

submitted that the entire project was made keeping in mind the terms and regulations and abiding by the laws.

44. That the complainants themselves through email of Mr. Sunil Singh, who is father of Sameer Suhag i.e., complainants no. 1 and husband of Suman Suhag i.e., complainants no. 2 vide email dated 29.12.2013 stated reasons that due to unavoidable circumstances they were unable to continue with that scheme and vide email dated 11.01.2014 requested to refund the entire amount paid by them. It is pertinent to mention here that the CRM department of the respondents through Ms. Divya Jain has reverted to them on 06.01.2014 and informed that in case the complainants intend to go for refund then as per the terms of booking, earnest money shall be deducted.
45. That the complainants failed to pay demands raised on time and a timeline of reminders was sent by the respondent no.2 to the complainants over the years for payment of instalment is as follows:

Dated	Reminder
04.06.2013	Intimation of due instalments and unpaid outstanding instalment of Rs. 24,01,782.35/-
26.11.2013	Final Notice for payment of overdue instalment of Rs. 1205516/-
04.10.2013	Reminder Intimation of due instalments and unpaid outstanding instalment of Rs. 12,05,515.83/-
23.10.2013	Final Notice for payment of overdue instalment of Rs. 1205516/-

12.09.2013	Reminder Intimation of due instalments and unpaid outstanding instalment of Rs. 12,05,515.83/-
20.05.2014	Reminder Intimation of due instalments and unpaid outstanding instalment of Rs. 12,05,515.83/-

46. That the respondent after taking necessary approvals had started the construction of the said project and the re-allotment was only for the benefit of the buyers and to offer them better amenities, whereas the complainants refused to adhere to the payment plan and did not fulfil their part of the commitment.
47. All other averments made in the complaint were denied in toto.
48. 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 submissions made by the parties.

**E. Jurisdiction of the authority:**

49. The plea of the respondents 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.

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

##### **F.1 Objections regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA:**

50. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the same has already applied for obtaining occupation certificate from the competent authority on 22.05.2017 i.e., before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

51. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.

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

**G.I Direct the respondent to refund the entire amount of Rs. 32,00,000/- along with the interest.**

52. The subject unit was allotted to the complainants vide allotment letter dated 10.03.2013. An amount of Rs. Rs. 32,00,000/- was paid by the complainants to the respondents against basic sale consideration of Rs. 1,10,13,790/- and which constitutes 29.05% of basic sale consideration.
53. Originally, the complainants were allotted unit no. 312 admeasuring 1179 sq. ft. vide allotment letter dated 10.03.2013 which was revised by letter

dated 14.08.2013 to unit no. 508 admeasuring 1180 sq. ft. Vide final notice of payment dated 12.09.2013, the said unit was again changed to unit no. 801 admeasuring 1180 sq. ft. The complainants submitted that due to change of allotted unit thrice, they wish to withdraw from the project of the respondents and since September 2013, had been requesting them to refund their amount. They also stated that the construction at the project was not going as per the schedule. Even no buyer's agreement has been executed inter-se parties.

54. In view of aforesaid circumstances, the complainants vide letter dated 09.12.2014 made request for surrender their unit, as pleaded by the respondent in para 8 of written arguments dated 10.06.2022. The respondents in view of said request by the complainants cancelled their unit vide letter dated 12.12.2014 wherein forfeiting 15% of the total sale consideration as earnest money in view of clause 1.9 of similar situated agreement. Further, an amount of Rs. 14,10,105/- was refunded by the respondent after deducting an amount of Rs. 17,89,895/- constituting 16.25% of basic sale consideration (BSP) before coming into force of Act of 2016. The complainant through its counsel submitted that since it was default on behalf of the respondent, that led to such circumstances where he has to request for refund of the amount paid and thus, is entitled to receive full refund instead of refund after deduction. The Authority is of considered view that the provision of Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit



in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has cancelled the allotment of the unit of the complainants on their request and further, has returned the amount of Rs. 14,10,105/- after deducting an amount of Rs. 17,89,895/- on 12.12.2014 and which has been received by them. It is pertinent to note that it was on the request of the complainant that the respondent proceeded with the cancellation of the allotted unit way back on 12.12.2014 and subsequently, amount was refunded back to the complainant in that year only. As noted above, there has been complete inaction on the part of the complainants for a period of more than six years till 2020. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant-allottee has already received an amount of Rs. 14,10,105/- after deduction applicable at that point of time.

55. The complainants have approached the Authority seeking refund of the paid-up amount setting aside the cancellation letter dated 12.12.2014, in the 2021, i.e., after 6 years and 1 month. No doubt, there was fault on part of the respondents wherein they kept on revising the allotted unit of the complainant-allottees. But they remained dormant on their rights since the cause of action arose i.e., from the issuance of cancellation letter dated 12.12.2014 and till the filing of this compliant on 14.01.2021, did not

approach any forum to avail their right for almost 6 years till 2020 and hence, barred by the limitation.

56. The counsel for the complainant took plea of order of Supreme Court in "*suo-moto writ petition (C) no. 3 of 2020*" wherein taking cognizance of extension of limitation from 15.03.2020 to 28.02.2022. The Authority observes that the allotment of the complainant was cancelled on 12.12.2014 and the said period has already expired on 12.12.2017 i.e. before 15.03.2020. Thus, no leniency in this regard can be given to the complainant-allottee w.r.t order by Hon'ble Apex Court of the land wherein giving relaxation w.r.t extension of limitation period in purview of Covid-19 pandemic.
57. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

58. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "*Law assists those who are vigilant and not those who sleep over their rights.*" Law will not assist those who are careless of his rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law. Moreover, the fact cannot be ignored that the respondents after deduction of certain amount as applicable at that point of time have already refunded the balance amount and the same has been received by the complainants.
59. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking full refund of amount paid after setting aside the cancellation, is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.

**G.II Direct the respondent to not to raise any fresh demands as the complainants are interested in refund of the amount paid.**

60. The unit of the complainants was already cancelled by the respondents and hence, the aforesaid reliefs no. 2 has become redundant.

**G.III Direct the respondent to pay litigation cost of Rs. 1,00,000/-.**

**G.IV Direct the respondent to pay Rs. 15,00,000/- to compensate for loss as the complainants have been deprived of the benefit of the escalation of price of the flat.**

61. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1)RCR(C)357*), 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.V The authority to take suo-motu action against the respondents for not registering the said project with the authority within the period specified in Section 3 of Act as this is an Ongoing project.**

62. The violation of Section 3 of Act attracts punishment under Section 59 of Act of 2016. The Authority vide proceedings dated **21.12.2020** of


**CRN/3271/2020** titled as **Aaliyah Real Estate Pvt. Ltd. Vs Vijaydeep Nandal**, issued a show cause notice dated 29.11.2019 to the promoter. The respondent-promoter has already applied for registration of the project with Authority on 28.01.2022. So, in view above, no findings on this issue are being returned.

63. Hence, in view of findings of the Authority on issue no. 1 and discussion above, no case for refund of total paid-up amount to the complainants is made out being barred by limitation.
64. Complaint stands disposed of.
65. File be consigned to the registry.

  
**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Vijay Kumar Goyal)**

Member

**Dated: 18.01.2023**

**HARERA**  
GURUGRAM