

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

Complaint no. : 682 of 2020  
First date of hearing: 09.03.2020  
Date of decision : 10.02.2023

Smt. Parmeshwari Hooda  
R/O : H. no. 1012/12, Dev Colony, Near Jat College,  
Rohtak, Haryana

**Complainant**

Versus

1. M/s Parkwood Infrastructure Pvt. Ltd.  
2. Sh. Harpreet Singh, Director  
3. Sh. Dakshdeep Singh  
Office: 1001,10<sup>th</sup> floor, Hemkunt Chambers, 89  
Nehru place, New Delhi-110017.

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Nikhil Hooda Advocate  
None

**Complainant  
Respondent**

**ORDER**

1. The present complaint dated 06.02.2020 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 28 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Parkwood Westend", sector-92, Gurugram
2.	Nature of the project	Group Housing colony
3.	Project area	14.125 acres
4.	DTCP license no.	53 of 2010 dated 10.07.2010 valid up to 09.07.2018
5.	Name of licensee	Smt. Devki and 4 others
6.	RERA Registered/ not registered	<b>Registered</b> <b>Vide no. 16 of 2018 issued on 19.01.2018 valid up to 31.12.2019</b>
7.	Unit no.	A-203, 2 <sup>nd</sup> floor, tower A [page no. 21 of complaint]
8.	Unit admeasuring area	1200 sq. ft. of super area [page no. 21 of complaint]
10.	Date of allotment	05.07.2010 (page 10 of complaint)
11.	Date of flat buyer agreement	25.06.2012 (page 16 of complaint)
12.	Possession clause	<b>28. Possession</b> <b>a) Time of handing over the Possession</b> <i>That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this agreement and not compliance with all provision of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc, as prescribed by the DEVELOPER the DEVELOPER proposes to handover the possession of the FLAT within</i>

		<i>a period of thirty six (36) months from the date of signing of this Agreement..... emphasis supplied.</i>
13.	Due date of possession	25.06.2015
14.	Total sale price	Rs 30,05,000/- [as per clause annexure I of BBA, page 46 of complaint]
15.	Total amount paid by the complainant	Rs 30,82,449/- [as alleged by the complainant, page 7 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	N.A.

**B. Facts of the complaint:**
**3. The complainant has made the following submissions in the complaint:**

- I. That an application for allotment of a unit was made by one namely Mr. Jai Prakash Yadav in the year 2010, to the respondent. Accordingly upon the request of the original applicant, a residential unit bearing no-A-203 in the project Parkwood Westend located at Sector 92, Gurugram, Haryana was allotted in the name of Mr. Jai Prakash Yadav.
- II. That an allotment letter dated 05.07.2010, was issued by the respondent in the name of original allottee. Thereafter, the said unit was transferred/endorsed in the favour of Mrs. Parmeshwari Hooda (the complainant) on 28.06.2011. That she subsequently made various payments in accordance to the demands as and when raised by the respondent and also executed the flat buyer agreement dated 25.06.2012 with the respondent no. 1 through its Director i.e. respondent no 2. Therefore as per the said flat buyer agreement, a unit/floor bearing no. A-203 on 2<sup>nd</sup> floor Block-A, in a group housing complex, having a super area measuring 1200 sq. ft. (approx.) @ Rs.1950 per sq. ft. in sector-92, Gurugram, Haryana, was allotted and purchased by the complainant.

- III. That as per the terms indicated in the flat buyer's agreement dated 25.06.2012, it was specifically stated in clause 28 of the said agreement and the respondent/developer shall hand over the possession of the flat/unit to the complainant within a period of 36 months from the date of signing of this agreement.
- IV. That the total sale consideration of the above stated unit was Rs. 28,80,000/- inclusive of external development charges, infrastructure development charges, preferential location charges etc. but exclusive of applicable service taxes and in lieu of which the complainant has already made all the payments. In total, an amount of Rs. 30,82,449/- has already been paid by the complainant and no payment is due to be made, as on date.
- V. That the complainant paid huge interest to the banks amounting to approximately Rs. 2.85 Lacs on the loan amount to pay the time to time demands of respondents.
- VI. That due to the delay in the delivery of the possession of the above stated unit, the complainant served a legal notice dated 27.07.2017 demanding possession of booked flat along with compensation charges for harassment and humiliation met out by her due to illegal and irregular acts of the respondents. A reminder dated 20.10.2017 was again served to the respondents for the same grievance but all in vain.
- VII. That the respondent failed to comply with the orders of the authority as well as various mandatory provisions of the Act as to be followed by the respondents. Initially, the complainant on numerous occasions tried to contact the above-named respondents for resolution of the grievance of her but the respondent maintained silence onto the same, for best of the reasons known to them. Thereafter, the complainant had filed a complaint



bearing number RERA-GRG-1150-2018 Dated 28.09.2018 before the authority, Gurugram. But unfortunately, the complaint was not entertained due to the reason of inadvertently wrongly mentioning the name of the respondent party. But as an outcome of the said complaint dated 28.09.2018, the respondents approached the complainant.

- VIII. That around March 2019, on request of the respondent party, a meeting was held between both the parties at the registered office of respondent party. However due to the intervention of the elderly people of the vicinity, an amicable settlement was agreed by both the parties but before the same could get executed, the respondents again eloped from their own promises and confirmations.
- IX. That the respondents had not only denied returning the payment made by the complainant but also had denied compensation for harassment caused to the complainant. To the utter surprise of the complainant, the respondents have themselves engaged in the illegal and malpractice of pressurising the complainant, for giving up her rightful dues and delay interest as per the Act.
- X. That due to delay in the delivery of the possession of the above stated unit for more than 54 months from the date promised for delivery of possession, the complainant has suffered humongous & consequential losses.
- XI. That the above named respondents are not only intentionally avoiding their duties and responsibilities only towards the complainant but also towards the authority and the authority itself has filed complaint no: RERA-GRG-5354-2019 Dated 27.12.2019 against the respondents. Thus, the complainant being a victim of the intentional acts of respondent & being left with no other option approached the court, and therefore, prays

to kindly direct the respondents to refund the entire amount of Rs. 30,82,449/- along with an interest of 24% per annum from the date of each individual payments made by the complainant, till the date of realization of the amount.

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

4. The complainant has sought following relief(s).

- I. **Direct the respondent to return the amount of Rs 30,82,449/- with interest @ 24% p.a. paid by the complainant.**
- II. **Direct the respondent to pay an amount of Rs. 10 lacs for harassing the complainant and a cost of Rs. 2,00,000/- for litigation expenses.**

5. The respondent put in appearance on 15.02.2021 through its counsel Sh. Mayank Grover but did not file any written reply despite giving several opportunities. On hearing dated 14.09.2022, the respondent was directed to file reply within 2 weeks i.e. 27.09.2022 with cost of Rs.5,000/- to be paid to the complainant which the respondent has not done till today. Hence, the defence of the respondent was struck off.
6. 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 complainant.

**E. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

9. 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.*

10. 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.
11. 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. 2021-2022 (1) RCR (Civil)*,



**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."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**F. I Direct the respondent to return the amount of Rs 30,82,449/- with interest @ 24% p.a. paid by the complainant.**

13. The complainant purchased a unit vide flat buyer agreement dated 25.06.2012 executed between the complainant and the respondents wherein the total basic sale price was Rs.30,05,000/-. Under the said agreement the complainant was allotted a unit viz. A-203 admeasuring 1200 sq. ft. in the said project. As per Clause 28 of the said agreement the



respondent was obligated to deliver the possession within thirty six (36) months from the date of signing of this agreement i.e. by or before 25.06.2015. In total an amount of Rs. 30,82,449/- has already been paid by the complainant and no payment is due to be made, as on date. There is delay in the delivery of the possession of the above stated unit for more than 54 months from the date promised for delivery of possession. Thus, the complainant being a victim of the intentional acts of respondents & being left with no other option has approached the court, and therefore prays to kindly direct the respondents to refund the entire amount of Rs. 30,82,449/- along with an interest of 24% per annum from the date of each individual payments made by the complainant, till the date of realization of the amount.

14. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and 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.
15. The due date of possession as per agreement for sale as mentioned in the table above is **25.06.2015** and there is delay of **4 years 7 months 15 days** on the date of filing of the complaint.
16. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs.***

**Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:**

*“.... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”*

17. 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 (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed :**

*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”*

18. 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 she 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.

19. The authority hereby directs the promoter to return the amount received i.e., Rs. 30,82,449/- with interest at the rate of 10.60% (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.

**F II. Direct the respondent to pay an amount of Rs. 10 lacs for harassing the complainant and a cost of Rs. 2,00,000/- for litigation expenses.**

20. The complainant is also seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 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, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

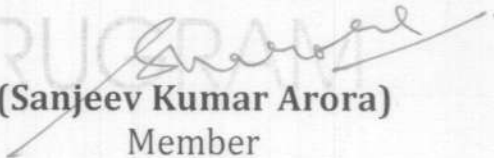
**F. Directions of the authority**

21. 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 function entrusted to the authority under section 34(f):



- i. The authority hereby directs the promoter to return the deposited amount received i.e., Rs. 30,82,449/- with interest at the rate of 10.60% (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.
  - 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 paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottees-complainant.
22. Complaint stands disposed of.
23. File be consigned to registry.

**HARERA**  
**GURUGRAM**

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.02.2023