

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

Complaint no. : 5059 of 2021
Date of filing 23.12.2021
complaint:
First date of hearing: 06.05.2022
Date of decision : 18.07.2023

1. 2.	Satya N Poddar Shakuntala Poddar R/O - K-26, Mahaveer Nagar, Tonk Road, Jaipur, Rajasthan	Complainants
versus		
	Fantasy Buildwell Pvt. Ltd. R/O: Room No 205, Welcome Plaza S-551 School Block -ii Shakarpur, Delhi - 110092	Respondent

CORAM:

Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)	Complainants
Ms. Harshit Batra (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 details

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

S. No.	Heads	Information
1.	Name of the project	"Paras Quartier", Sector-2, at Village Gwal Pahari, District- Gurugram
2.	Project area	10.096875 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	74 of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of licensee	Maxicon Traders Pvt. Ltd. and 2 others
6.	Date of environment clearances	12.07.2013 [Page 69 of reply]
7.	RERA Registered/ not registered	Registered vide no. 164 of 2017 dated 29.08.2017
8.	RERA registration valid up to	28.08.2022
9.	Unit no.	PL-1/03 02

		(Page no. 16 of complaint)
10.	Allotment Letter	22.12.2012 (Page 56 of complaint)
11.	Unit area admeasuring	5350 sq. ft. (Page no. 56of complaint)
12.	Date of execution of apartment buyer agreement	20.02.2013 (Page no. 58 of the complaint)
13.	Possession clause	<p>3. Possession</p> <p><i>3.1 subject to clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller and any restrain/restriction from any courts/authority and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and having complied with all the provisions, formalities, documentations, etc. as prescribed by th seller, whether under this agreement or otherwise, from time to time the seller proposes to offer to hand over the possession of the apartment to the purchaser with in a period of 42 (Fourty-two) months within additional grace period of 6 (six) months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to force majeure. The</i></p>

		<p><i>purchaser(s) agrees and understands the seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the apartment to the purchaser. Any application for the occupation certificate in respect of the project shall be filed in the due course. The seller shall give notice of offer of possession in writing to the purchaser with regard to the handing over the possession, whereafter, within 30 (thirty) days, the purchaser shall clear its outstanding dues when complete documentary formalities and take physical possession of the apartment.</i></p> <p>(Page 27 of the complaint).</p>
14.	Due date of possession	12.07.2017 Calculated from environment clearance being later plus 6 months of grace period
15.	Total sale consideration	Rs. 4,95,92,000/-
16.	Amount paid by the complainants	Rs4,86,83,773/- (As per soa on page no. 173 of complaint)
17.	Occupation certificate	04.06.2018 [Page 171 of reply]
18.	Offer of possession	19.07.2018 (PAGE 99 of complaint)

B. Fact of the complaint

3. That in August 2012, the respondent was marketing a project by the name

- of "Paras Quartier". Through various advertisements, the respondent had propounded that the project would consist of a tower namely 'Iconic' consisting of several luxury residential units.
4. That in August 2012, the complainant got introduced to one Mr. Amit Goyal- a real estate agent and broker for the respondent, who marketed the booking of unit in the project situated at Sector 2 Gurugram. The respondent claimed that the project would be "a super luxurious landmark on the scenic Gwal Pahari Road. Paras Quartier offers 4 BHK ultra-premium residences with a private lift lobby for each apartment. This exclusive property is highlighted by Iconic and two grand condominium towers." Moreover, the respondent claimed that the project is spread over 10 Acres and has only 120 apartments, wrapped around balconies, Infinity pool, etc., and designed by Singapore architects.
 5. That based on the representations held out by Mr. Goyal and the respondent, the complainants took a leap of faith and submitted an application dated 14.08.2012 for the allotment of a residential unit admeasuring 5350 sq. ft. in the project of the respondent. The unit was booked under the construction linked payment plan for a total sale consideration of Rs. 4,95,92,000/-. The complainants also made a payment of INR 82,50,000/- by way of two cheques along with the submission of the application.
 6. That on 22.12.2012, the respondent, issued an allotment letter, allotting the complainants unit bearing No. PL - 1/03 02 on 3rd floor for size

admeasuring 5350 sq. ft. in the project "Paras Quartier" situated at sector - 2, Gurugram - 122001. It is pertinent to mention here that the allotment letter did not mention the tower in which the flat was allotted.

7. That after a long follow-up on 20.02.2013, the buyer's agreement got executed between the parties. According to clause 3.1 of the buyer's agreement, the respondent was obligated to hand over possession of the unit within a period of 42 months with an additional grace period of 6 months from the date of execution of the buyer's agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later. As per the information obtained from the website of the DTCP, the department approved the building plans for the Project on 04.10.2012, and the BBA was executed on 20.02.2013. Therefore, the due date of possession as per BBA was 20.08.2016 without the grace period. It is pertinent to mention here that the grace period of 6 months was for obtaining the OC from the concerned department, but the respondent has failed to complete the construction. Therefore, the respondent is not eligible for the grace period.
8. That after the allotment letter was issued, the complainants were informed by certain third parties that there are two separate towers in the project and the unit allotted to the complainants is not located in the iconic tower but in another tower. The complainants enquired, they were repeatedly assured by the respondent that the two towers in the project are similar/identical and that the allotment of the unit in the High-End

tower would not be prejudicial to the interests of the complainants. It is noteworthy to mention that the fact about the project consisting of two towers namely 'Iconic' and 'High End' was never earlier disclosed to the complainants. Neither the allotment letter nor the builder buyer agreement revealed the existence of two towers in the fact that the allotment of the property was in a tower which is not the Iconic Tower. The allotment letter issued by the respondent very conveniently only mentioned the number for the unit allotted, without stating the name of the tower in which the unit was to be located, and its layout and features.

9. That based on the assurances of the respondent, the complainants continued to accede to the demands raised by the respondent and paid a total sum of Rs. 4,87,58,273/- i.e., 98% of the total cost of the Unit until 27 October 2017. As per the terms of the BBA, the remaining consideration was to become payable only at the time of possession of the unit.
10. That after a substantial delay of almost 2 years, the respondent, vide an email dated 27.07.2018, sent a letter for the offer of possession dated 19.07.2018 wherein the complainants were called upon to take possession of the property after clearing certain outstanding dues within 30 days. It is noteworthy to mention herein that neither were the complainants afforded any opportunity of prior inspection of the unit nor were they provided with the completion/ occupancy certificate for the project with the said offer for possession. Furthermore, by way of the said letter, the respondent raised a demand for Rs. 62,76,600/- on the

complainant as the final instalment towards the sale consideration of the unit. There was an additional demand for Rs 7,54,530 for two-years advance payment of monthly maintenance charges. It is germane that said demand included several unreasonable demands under different heads such as Rs. 2,33,582/- as "External Electrification Charges", Rs. 29,500/- as "Electricity Connection charges", Rs. 1,12,350/- as "Labour Cess" & Rs. 23,600/- as "Water & Sewerage connection charges", Rs 10, 78,995, VAT for the period 1 April 2014 to 30.06.2017, Rs 133135 and VAT up to 31.03.2014 Rs. 7,54,530 under the head CAM for two years of Advance maintenance charges. Needless to say, the demands raised by the respondent were absolutely baseless and unacceptable to the complainants.

11. That vide letter dated 01.08.2018, the complainants highlighted the aforementioned discrepancies in the accounts statement shared by the respondent and expressed their need to inspect the property before taking possession of the unit. It is relevant to mention that as per Clause 3.6 of the BBA, after taking possession of the unit, the complainants would have had no claims against the respondent in respect of the area, specifications, quality, construction, or any other item of work in the unit. Acceding to the said request, the respondent vide email dated 14.08.2018, agreed to fix the accounts statement and also extend the date of possession to 18.10.2018.

12. That when the complainants visited the project to inspect the unit on 27.08.2018, they were utterly shocked to note that the condition of the unit which was already offered for possession by the respondent was abysmal and that the unit was far from completion. It was brought to the notice of the respondent that a number of works were yet to be completed in the unit, and the works that were completed were lacking in quality and finishing. The complainants were extremely disheartened to note that the materials and workmanship were not as per "a luxury unit" costing in excess of Rs. 6 crores and evidently fell short of the commitments that the respondent had promised by way of their customer kit/brochure publicised at the time of the launch of the project. By way of an example, the bathrooms in the unit allotted to the complainant (located in the High-End Tower) were finished in inferior and unpolished granite stones, with sharp edges, and significant and visible variation in colour from one stone to the next. The kitchen had no provision for smoke exhaust. With all the windows in a sealed casing, and no cross-ventilation, the unit posed a serious risk of smoke inhalation and suffocation. With unit already constructed, any make-shift arrangements for smoke exhaust will look ugly, not suitable for a luxury/modern residence. The fire exit through the service balcony is significantly blocked by the central air-conditioned system installed right beside it, leaving a passage of less than two-foot width. There are no mosquito screens installed in any of the exits from the unit to the balconies, nor a provision is made in the design for their

installation later at the buyer's own cost. It is also apposite to mention herein that the project clubhouse, which promised facilities like Banquet & Conferencing services, Indian and Italian cuisine Restaurants, Food Delivery, Spa and Salon was also not ready at the relevant time and it is only very recently (vide email dated 30.11.2021) that the complainants were intimated that the club is almost ready for use of the home buyers. In view of the fact that the Possession Letter was issued by the Respondent without completing the construction of the unit in actuality, and without amenities, the said letter cannot be deemed a valid offer of possession and is not tenable under the eyes of the law.

13. That with the disturbed condition of the unit, the complainants reached out to the respondent several times. After multiple follow-ups including vide, emails dated 31.08.2018 and 14.09.2018 on the pending works and other concerns regarding the payment of final instalment by the complainants, one Mr. Rajesh Kaul of the respondent communicated with the complainants telephonically on 09.10.2018 whereby the were inter alia assured that all their concerns would be resolved. To record the said discussion, the complainant vide email dated 09.10.2018 wrote that the "We are delighted that at last we are able to connect directly and discuss pending issues in re unit PL1/0302. We are comforted by your assurances that you would go through the construction deficiencies that we have identified in our list and inspect the unit to make sure that it conforms fully to the specifications that you had provided at the time of launch of

the project. You indicated that the unit is still not ready for occupation/possession transfer. Many of the finishing elements are undertaken only when the final possession date is confirmed. You also indicated that the colour variation and poor finishing of the tiles and marble in the bathrooms and living/dining rooms may well require complete retiling and re-flooring. We are attaching for your information the updated list of construction deficiencies, which is based on our first/preliminary inspection of the unit on 27.08.2018. We requested and you agreed that, before you start rectification of major deficiencies, you would allow us an opportunity to discuss how the construction deficiencies would be rectified. We would like to come for an inspection of the unit with our architect, and interior decorator. They would be advising us on ways of making the unit fit for our habitation and occupation (eg: the layout of the bathrooms, quality of the bathroom fixtures, lighting arrangements in the unit, etc.) As we discussed, we would appreciate a confirmation of further extension of the possession notice date. We request that this extension confirmation be provided within a day or two, i.e. by October 10 or 11, 2018. You indicated your commitment to provide this extension within a day or two. In fixing the new date for possession, please keep in mind that we would need two-three weeks' notice for pre-possession inspection of the unit. All other pending issues regarding your statement of account would also need to be resolved before taking the possession. Given that both my wife and I have relocated out of Delhi, we

would need time to travel to Gurgaon at the time of registration and conveyance of the title of the unit”.

14. That the respondent, vide email dated 12.10.2018, assured the complainants that the construction deficiencies and gaps in the completion of the unit will be remedied and completed as per the specifications mentioned in the BBA and that the due date for depositing the final instalment against the offer of possession letter shall stand deferred till the time the complainants are invited for the final Inspection of the property.

15. After some time, another inspection of the property was conducted on 21.11.2018. To the chagrin of the complainants, none of the work as discussed after the first inspection on 27.08.2018 had been carried out in the unit by the respondent. Additionally, the complainants could spot numerous other deficiencies. For instance- one arm (more than 15 ft in length) of the L-shaped balcony adjoining the living room was missing, tiling, sink counters, and woodwork done in bathrooms was unfit for use, etc. Vide email dated 28.11.2018, the complainants once again pointed out such deficiencies and their disappointment to the respondent. In response, the respondent, vide email dated 07.12.2018 assured the complainants that the points of concern shall be discussed with the project team and resolved on priority.

16. That after having received no update/ cooperation from the respondent for several months, another meeting was ultimately scheduled on

15.07.2019 between the complainants and representatives of the respondent. Various relevant discussions about the furnishing of the property, compensation to be offered for delay in the offer of possession, etc. took place during the said meeting. The complainants at that time as well expressed their reservations about the compensation offered and that the demand for its up-front payment since the amount offered as compensation for almost 3 years of delay was extremely low.

17. That after having received no update/ cooperation from the respondent for several months, another meeting was ultimately scheduled on 15.07.2019 between the complainants and representatives of the respondent. Various relevant discussions about the furnishing of the property, compensation to be offered for delay in the offer of possession, etc. took place during the said meeting. The complainants at that time as well expressed their reservations about the compensation offered and that the demand for its up-front payment since the amount offered as compensation for almost 3 years of delay was extremely low.

18. That the respondent once again went mute and hence, vide email dated 14.10.2019, the complainants wrote to the respondent stating "It has been more than three months since we last met in your offices to discuss the pending work for completion of the unit 302 in Paras Quartier Complex allotted to us, and financial arrangements for the transfer of possession to us. Amit Goyal also joined in the meeting via telephone. We have not received a response to that mail as yet. Nor have you bothered to answer

any of our telephone calls, and follow up emails. Mr. Kamlesh Yadav did provide us a revised statement of account on 12.09.2019. Unfortunately, it included only some of the adjustments agreed to during our discussions; errors in the original statement were not corrected. We advised him immediately of the remaining adjustments to be made, and he acknowledged that they have been communicated to your finance department. We are requesting you again to please advise us of your plans for completion of the pending work, rectification of construction deficiencies, preparation of the revised/final statement of account correcting the various errors in the original statement of account in July 2017, and final transfer of the possession of the unit. We request that you please respond within a week, by 23.10.2019."

19. That on the request of the respondent, the complainants, vide email dated 23.09.2019, also submitted a revised statement of accounts for the unit, which was accepted as valid. The said revised statement, before adjustment of compensation to be paid by the respondent on account of delay in offering possession, reflected an amount of INR 34,75,431 as the final due instalment on possession.

20. That pursuant thereto, in a meeting held between the parties on 31.01.2020, the respondent had offered to link the net amount due (approx. INR 17 lakhs, after deduction of a nominal compensation for delay in possession) to the completion of construction (both interior and of Club House) or rectification of interior construction deficiencies. At that

time, the complainants were invited to inspect the marble, tiles, bathroom countertops, etc., installed in another unit in the High-End Tower, and also in the Iconic Tower. The complainants found the material used and finishing of the interior in these units to be of much better quality and concurred for the unit allotted them to be finished in the same manner. The complainants had at that time as well, expressed their disappointment with respect to the lack of proper finishing and inferior construction standards of the unit.

21. That in response to the aforesaid, the respondent once again made a false promise and agreed to provide confirmation about rectifications/modifications in the unit in writing along with the proposed timeline for the completion and handover of possession of the unit. The confirmation was to be provided within a day or two, i.e., by Feb 1, 2020. Subsequently, the respondent, vide a message, stated that the said letter will be shared with the complainants before 06.02.2020.
22. That despite repeated follow-ups made by the complainants telephonically and vide emails dated 26.02.2020, 21.10.2020, 01.12.2020, 20.12.2020, 26.03.2021, there has been radio silence on the respondent's part with respect to the discussions and assurances made to the complainants on 15.07.2019 and 31.01.2020. Thereafter, without redressal of the complainants' grievances and in complete ignorance of follow-ups, the respondent, vide email dated 19.08.2021, issued a demand letter dated 14.08.2021 wherein an arbitrary sum of Rs. 1,29,26,197/- was

demanded from the complainants towards taking possession of the unit. It is pertinent to mention here that the demand letter inter alia maleficiently mentioned that since the said instalment for the unit is due since 18.08.2018, the complainants are liable to pay a whopping amount of INR 57,88,700/- as holding charges. It is settled law that "a wrongdoer can't take advantage of his own wrong" and hence, the levy of holding charges by the respondent, for its own defaults and shortcomings, is absolutely unmeritorious and fraudulent. Furthermore, the demand made by the respondent includes several other unreasonable and unjustifiable demands which are unacceptable to the complainants.

23. That vide email dated 23.08.2021, the complainants wrote that "We were taken by surprise by the demand letter you have issued today for the amounts outstanding as per your "offer of possession" letter. It does not reflect any of the adjustments and corrections you have already agreed to make during various discussions we have had with you following your "offer of possession" letter in July 2018. These were fully documented in email communication with your office following each discussion. During our last meeting with you on 31 January 2020, you had agreed to provide us a definitive timetable within a day or two for completion /rectification of the construction deficiencies and for handover of possession. You were also to suggest a schedule for payments of any residual amounts (\$17-18 lakhs as of the date of last meeting). You had agreed to link the payments to completion of pending construction (including the club facilities) or

rectification of deficiencies. The attached mail summarizes the conclusions reached at the meeting. We are still awaiting your letter which you had promised to issue within the first week of February 2020. Almost 20 months have passed since that meeting, but there has been no communication from your office. We have called each of you individually several times since, but you have chosen to not respond to any of our telephone calls or emails. We noticed that you have raised an additional demand of more than Rs. 75 lakhs in interest, holding charges, and maintenance charges. This is in addition to the demand in the original offer of possession letter in July 2018. We consider these charges baseless, when the ball is in your court, and it is Paras who is delaying completion of the unit and handover of possession. Can we please request a time and date for a telephone discussion with you as soon as possible to discuss your demand and the future course of action". However, the respondent, for reasons best known to itself, did not respond to the mentioned email. Thereafter, the complainants also followed up on its requests vide emails 25.08.2021 and 06.09.2021, and numerous telephone calls, but to no avail.

24. That aggrieved by the inaction and silence of the respondent, the complainants were constrained to issue a legal notice dated 12.10.2021 inter alia disputing the demand raised in the demand letter and highlighting once again the numerous deficiencies in the unit. The deficiencies mentioned therein were as follows: 1) Significant colour variation in Marble flooring in the living/dining area 2) Poor quality and

finishing of granite tiles in all of the bathrooms 3) Granite Tiles used are from different lots, causing a significant colour and pattern variation 4) Exhaust chimney or outlets not provided in the kitchen 5) Wooden flooring in the bedrooms not installed or polished 6) Shower enclosures not installed in any of the bathrooms 7) Woodwork in the bathrooms not done 8) Finished paint on the walls pending 9) Many broken/chipped tiles 10) Construction of External Developments, including the Club House and swimming pool, and common reception area linking the two towers not even started..". By way of issuing the legal notice, the Complainants called upon the Respondent to rectify the structural defects /deficiencies in the unit, withdraw the Demand Letter, and provide compensation for the delay in offering the possession of the unit. That despite numerous and repeated requests of the complainants (made telephonically/ through text messages and emails), the Respondent has failed to even respond to such requests, let alone take any corrective action. The callous, lackadaisical, and malevolent behaviour of the respondent against the complainants is writ large and it is manifest that the respondent never had any intention to keep the promises that were repeatedly made to the complainants.

25. That once again in utter disregard of the legal notice and the contents thereof, the respondent vide a standard email dated 09.11.2021 called upon the complainants to take possession of the Unit and clear the outstanding dues. That on 10.11.2021, the complainants replied to the said email and inquired about the status of construction deficiencies. The

complainants, on 05.12.2021, sent one of their family members namely Ms. Rachna Poddar to inspect the unit and the project, only to find that no rectification work had been done to the unit from the time when it was inspected first on 27.08.2018. It is also apposite to mention herein that there is a separate entrance to the High-End Tower, segregating it from the rest of the Paras Quartier project, and the project is not integrated as was represented by the respondent. There is a huge mismatch in the elevation and specification between the two towers. Moreover, the club of the project is at a considerable distance from the High-End Tower and one needs to cross the road to reach the club. The High-End tower is isolated, there are no common amenities between the two towers and the project lacks the element of luxury/high-end residential construction, as was promised and represented by the Respondent at the time of booking. There is no green space within the perimeters of the High-End Tower. Needless to say, at the time of booking a unit in the project, the complainants did not agree to purchase four walls and a roof, but a luxurious residential unit with all perks and amenities as claimed and proposed by the respondent in its brochure, BBA and on the website.

26. That it is pertinent to mention here that on 04.06.2018, the respondent obtained the OC for a part of the project only, there is no OC for Club and other facilities. That as per the statement of account dated 06.12.2021, the complainants have paid Rs. 4,86,83,773/-. It is pertinent to mention here that the respondent did not credit the TDS of Rs. 74,500/- in the statement

of account. As per the statement of account prepared by the complainants, they have paid Rs. 4,87,58,273/- to the respondent.

27. That on 19.08.2021, the respondent sent an email to clear the outstanding dues, to which the complainant replied on 23.08.2021 and raised their grievances and thereafter sent another grievance email on 06.09.2021.

28. That the complainants have filed the present complaint for refund of the total paid up amount.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund the whole paid up amount along with interest.
- II. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

30. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

31. The respondent has contested the complaint on the following grounds.

32. That the complainants being interested in the real estate development of the respondent, a group housing colony known as "Paras Quartier" situated at Sector -2, Gurgaon tentatively applied for provisional allotment via Application form dated 14.08.2012 and were consequently allotted unit no. PL-1/0302 on Plot 1, 3rd floor having a super area of 5350 sq. ft.

via allotment letter dated 22.12.2012. Subsequently, a buyer's agreement was executed between the parties on 20.02.2013.

33. That at the outset, it is categorical to note that the booking of the unit by the complainant was not based on any representations, whatsoever or any artistic impressions of the unit and was independently made by the complainant. It was on the basis of this understanding that the agreement was executed.

34. That at this instance, it is pertinent to note that the unit being on Plot 1, i.e., the High-End Tower, since the very beginning, as is evident from the allotment letter and the agreement. The annexure A of the agreement showing the tentative layout plan of the apartment categorically notes the unit to be in High End tower (Plot 1). That no objection with regard to the allotment of the unit was ever made by the complainants and the present complaint is bogus.

35. That as per the Clause 3.1 of the buyer's agreement, the delivery of possession of the unit was proposed to be within 42 months with an additional grace period of 6 months from the date of execution of the builder buyer agreement (20.02.1013) or the date of obtaining all licenses or approvals for commencement of construction whichever is later. An additional period of 90 days for giving the possession, as per the clause 3.1 should also be given.

36. The agreement was executed on 20.02.2013 and the consent to establish was issued on 16.10.2013, hence, computing the due date from the latter,

it comes out to be 16.01.2018. As noted above, the said due date is subject to the complainants' having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and having complied with all provisions, formalities, documentation, etc. However, in complete breach of the same, the complainants have defaulted in making the payments against the Unit. That in case of delays caused in making payments against the Unit, the proposed due date of delivery of possession is liable to be extended. That is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the Respondent has shown exemplary conduct as a real estate promoter which should be duly taken into account. Upon the defaults caused in making timely payments after payment request demand letters and reminders were served, a record of which is noted below:

S. No.	Particulars	Reference No.	Dated
2021			
1.	Final Reminder	NA	22.05.2021
2017			
2.	Demand Letter	FBPL/PQ/17-18/570	05.10.2017
3.	Demand Letter	FBPL/PQ/17-18/526	18.07.2017
4.	Demand Letter	FBPL/PQ/16-17/497	12.04.2017
2016			

5.	Demand Letter	FBPL/PQ/16-17/433	05.11.2016
2015			
6.	Demand Letter	FBPL/PQ/15-16/247	23.04.2015
3.	Demand Letter	FBPL/PQ/14-15/197	23.01.2015
2014			
5.	Demand Letter	FBPL/PQ/14-15/122	22.10.2014
6.	Demand Letter	FBPL/PQ/14-15/53	30.05.2014
2013			
7.	Demand Letter	PQ/Hi-End/2012-2013/06	02.04.2013

37. That, moreover, the delivery of possession of the unit was subject to force majeure as mentioned in clause 11 of the agreement. The respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization, contractor issues etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

38. Hence, the benefit of the said 166 days need to be rightly given to the respondent builder. hence, the benefit of the above affected 166 days

should be given to the respondent. In addition to the above, the following reasons have caused delay in completing the construction of the Unit:

- A. The Director of Town and Country Planning, Haryana issued directions to stop work at towers of the Project "Paras Quartier" till further order vide Order dated 28.07.2015. Further, the Director of Town and Country Planning, Haryana considering the report of the Commissioner Municipal Corporation, Gurgaon dated 20/04/2016 directed to de-freeze the construction on the site of Project "Paras Quartier" vide order dated 29/04/2016.
- B. That the construction at the site of the Project "Paras Quartier" was stopped from 28/07/2015 to 29/04/2016, that is for the period of 9 months and 2 days. That it is noteworthy that the construction activity does not start immediately after receiving of such orders. It takes time to mobilize the work force and to mobilize the construction material on site.
- C. That it is a matter of record that in the year 2015-16, the Hon'ble National Green Tribunal (NGT) in the matter of Vikrant Kumar Tongad vs. Union of India & Anr. had banned the extraction of ground water in the whole NCR including Gwal Pahari Gurugram where the project of the answering respondent is situated. On account of this banning, the period of 2 months and 10 days is taken which was also one of the reason of delay in the project.



D. That it is stated that in the year of 2019, the Supreme Court has banned construction activity on the recommendations of Central Pollution Control Board (CPCB) in Delhi NCR region from 4/11/2019, which was partially lifted on 09/12/2019. Even on the said date, the ban was partially lifted and construction activities was allowed between 6 AM to 6 PM, in day time only. It is further stated that the answering respondent/ builder takes up construction activities at the site seeing the situation and accordingly, increases its pace by devoting more time on daily basis and as well as by infusing more work force. It is stated that the total construction was banned in the Delhi NCR region was from 4/11/2019 to 9/12/2019, that is for the period of 1 month and 5 days. Even thereafter, full-fledged activities were not allowed at the construction site.

E. That in furtherance, it is stated that the Project has faced these instances which are of the nature of Act of God and Force Majeure, which forced us to stop construction activities at the site of "Paras Quartier" for the period more than 12 months and 17 days and in turn delayed completion of Project.

39. That the respondent, despite defaults on part of the complainants, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The default committed by the allottees and

various factors beyond the control of the respondent are the factors responsible for delayed implementation of the project. The respondent cannot be penalised and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

40. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application vide an application dated 12.04.2018 before the concerned authority and successfully attained the occupation certificate dated 04.06.2018. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority to respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority, and the respondent does not exercise any influence in any manner whatsoever over the same. There is a delay of around 2 months caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of delay. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is

liable to be excluded from the time period utilised for implementation of the project.

41. That thereafter, only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 19.07.2018. The respondent also intimated the complainant about the payment of stamp duty on 19.07.2018. That the complainants were obligated to take possession of the unit after making the due payments, as per the terms and conditions of the agreement, however, the complainants miserably failed in doing so. That the price of the unit as per the payment plan along with the BBA is Rs. 4,95,92,000 (without tax, club membership charges etc) and a sum of Rs. 4,86,83,773 has been paid till date. Accordingly, a balance of Rs. 9,08,227 is outstanding and liable to be paid by the complainants, as is evident from Statement of Account dated 18.08.2022.
42. That additionally, it is pertinent to note that for the delay in payments by the complainants, the complainants are bound to make payment of delayed payment interest to the Respondent, as per the agreed terms and conditions of the agreement and the RERA Act.
43. That the complainant wrongly alleges that the unit was not ready at the time of offer of possession, which is wrong, baseless, bogus and vehemently denied. It is a matter of fact and record that the occupancy certificate was procured on 04.06.2018 which in itself shows the habitability of the unit.

44. That, moreover, after having offered possession of the Unit, the complainant has miserably failed in taking the same and hence, it liable to pay holding charges. Accordingly, the present complaint has been *malafidely* filed and is liable to be dismissed.

45. All other averments made in the complaint were denied in toto.

46. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

47. 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

48. 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

49. 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.

50. 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.

51. 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. (Supra)* 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."

52. 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. Objections raised by the respondent

F.1 Objection w.r.t the request by the respondent for calculating the zero period

53. The respondent is claiming that there was delay in constructing the project due to construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization, contractor issues etc.

54. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, lack of availability of building material, development activities by the judicial authorities including NGT in NCR on account of the environmental conditions Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity, stay of construction by order of National Green Tribunal, and contractor issues but all the pleas advanced in this regard are devoid of merit. First of all, the unit in question was allotted in the year 2012. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong and the plea raised in this regard is devoid of merit.

55. Further In case 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; that

25. The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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

G. Findings on the relief sought by the complainants

F.I Direct the respondent to refund to the complainants their paid-up amount towards the allotted unit with interest.

56. The complainants were allotted a unit in the project of the respondent detailed above on 22.12.2012 for a total sale consideration of Rs. 4,95,92,000/-. The buyer's agreement was executed between the parties on 20.02.2013 and therefore the due date comes out to be 12.07.2017 calculated from 42 months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement of construction whichever is later. The occupation certificate was obtained on 04.6.2018 and the possession was offered on 19.07.2018.

57. The due date of possession as per agreement for sale as mentioned in the table above is 12.07.2017. The allottees in this case has filed this application/complaint on 23.12.2021 after possession of the unit was offered to them on 04.06.2018. As per the section 19(10) every allottee shall take physical possession of the apartment, plot or building as the case may be , within a period of two months of the occupancy certificate issued for the said apartment , plot or building , as the case may be. In this case the possession was offered on 19.07.2018 after receiving the occupation certificate on 04.06.2018 but the complainants did not take the

possession as they had objection to completion of the unit and because of the demands which were raised by the respondent.

58. The allottees never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made and demand for due payment was raised, then only, they filed a complaint before the authority.

59. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by 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; that

25. The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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

60. The judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. But the allottees failed to exercise this right although it is unqualified one. They have to demand and make their intentions clear that the allottees wish to withdraw from the project. Rather they tacitly wished to continue with the project were entitled and thus made them entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottees invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of

delay possession charges at prescribed rate of interest for every month of delay.

61. The unit of the complainants was booked vide allotment letter dated 22.12.2012. The buyer's agreement was executed between the parties on 20.02.2013. So, the due date for completion of the project and handing over possession of the allotted unit comes to be 12.07.2017. There is a delay in handing over the possession as due date of possession was 12.01.2017 whereas the offer of possession was made on 19.07.2018 and thus, becomes a case to grant delay possession charges. The authority has observed that interest of every month of delay at the prescribed rate of interest be granted to the allottees. But now the peculiar situation is that the complainants want to surrender the unit and want refund of the paid up amount . Keeping in view the aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and judgment of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202*, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

"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"

62. In view of the above the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.75 % p.a. on the refundable amount, from the date of this complaint i.e., 23.12.2021 till the date of realization of payment.

F.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

63. After dealing with relief No. 1, the aforesaid relief sought by the complainants-allottees became redundant. Hence, no direction to this effect.


H. Directions of the authority

64. 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 respondent is directed to refund to the complainants the paid-up amount of Rs.4,86,83,773 /-after deducting 10% as earnest money of the basic sale consideration of Rs.4,95,92,000/- with interest at the prescribed rate i.e., 10.75% is allowed, from the date of filing of this complaint i.e., 23.12.2021 till the date of realization of payment
- ii. The respondents are directed to pay that amount within 90 days from the date of order of this order as per rule 16(2) of the rules.

65. Complaint stands disposed of.

66. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.07.2023

The Commission is directed to the following:

1. To determine the extent of the damage caused by the flood in the area of the ...

2. To determine the extent of the damage caused by the flood in the area of the ...

3. To determine the extent of the damage caused by the flood in the area of the ...


[Name]


[Name]

Witnessed and signed this 1st day of ... 1973