

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

Complaint no. : 1175 of 2020
Date of filing : 18.03.2020
complaint:
First date of hearing: 21.07.2020
Date of decision : 18.07.2023

1. 2.	Sh. Chand Ram Chhachia R/O - H.No. D-1/5831, Gf, Ansal Api Sushant City, Panipat-132103 Smt. Om Pati Chhachia R/O- H.No. D-1/5831, Gf, Ansal Api Sushant City, Panipat-132103	Complainants
versus		
	Dss Buildtech Pvt. Ltd. R/O: 506, 5th Floor, Time Square Building, B- Block, Sushant Lok-1, Gurugram	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Abhimanyu Rao proxy (Advocate)	Complainants
Ms. Manju Singh AR (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	"The Melia" Sector-35, Gurugram,
2.	Project area	17.41875
3.	Nature of the project	Residential
4.	DTCP License no. & validity status	77 of 2013 dated 10.08.2013 upto 09.08.2024
5.	Name of Licensee	Smt. Aarti Khandelwal and two others
6.	RERA Registered / not registered	Registered vide no. 288 of 2017 dated 10.10.2017
7.	RERA registration valid up to	09.08.2024
8.	Unit No. (tentative)	F-202 on second floor (Annexure p 10 of page 30 of complaint)
9.	Unit admeasuring	1350 sq. ft.

		(Annexure p 10 of page 30 of complaint)
10.	Date of apartment buyer agreement	Not executed
11.	Date of allotment letter	24.04.2015 (Annexure p 10 of page 30 of complaint)
12.	Date of approval of building plan	21.04.2016 (Taken from the project details)
13.	Date of environment clearance	20.09.2016 (Taken from the project details)
14.	Date of consent to establish	12.11.2016 (Annexure 7 page 64 of reply)
15.	Payment plan	Construction linked payment plan (Page 19 of the complaint)
16.	Possession clause	--
17.	Due date of possession	Earlier same parties filed a complaint in front of Honourable Authority Vide complaint number 1093 of 2018 on date 24.09.2018 , the date of possession was deemed as 24.05.2019 as calculated 4 years from the date of allotment. 24.05.2019
18.	Total sale consideration	Rs. 76,06,800/- (Annexure 10 page 87 of reply)
19.	Total amount paid by the complainant	Rs. 19,15,168 /-

		(Inadvertently mentioned in the proceedings of the day as Rs. 19,33,928/-
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered
22.	Surrender by the complainants	17.08.2015 (Annexure p-11 page 31 of the complaint)

B. Fact of the complaint

3. That the complainants booked a residential unit in the project namely "The Melia" Sector 35, Sohna (Gurgaon). The date of booking was 07.01.2014 and the complainants were allotted unit No. F-202. Tower 2 having super area of 1350 sq ft vide allotment letter dated 24.04.2015.
4. That the unit was booked under "Construction linked plan". The complainants paid the first three instalments (30%) as per demand of respondent company, at the time of booking they paid 10% of basic sale price and within 60 Days from booking they paid - 10% of basic sale price and at the time of allotment - 10% of basic sale price was paid .
5. That respondent sent a tentative/ provisional allotment letter dated 10.02.2015. The respondent sent a communication letter 10.02.2015 stating the progress of the project. Till date no builder buyer agreement was executed by the developer even after 20 Months.
6. That since January 2014 complainants were regularly visiting at the office of respondent party as well as on construction site and making efforts to get the exact details of start of work of allotted flat but all went in vain, in

spite of several visits and request by the complainants. The complainants never were able to understand/know the actual date of start of construction and expected possession date.

7. That when even after 20 months, no work was started on the site and on response of the company, a cancellation letter was sent by the complainants through DTDC consignment number Z61577108 on date 21.08.2015. Clearly stating that the unit should be cancelled and amount be refunded at the earliest and a reminder letter of cancellation letter of booking was sent on date 19.09.2015 through India Post Consignment number RH064746719IN. A follow up cancellation letter was also forwarded on main emails of the company on date 20.09.2015.
8. That the main grievance of the complainants in the present complaint is that in spite of paying 30% of the money and willing to pay the remaining amount, the respondent party failed to execute the builder's buyer agreement and even start the construction of the said flat on promised time, hence hereby delaying the possession date. That's why the complainants thought it wise to withdraw from the project.
9. That the complainants had purchased the flat with intention that after purchase, they would be able to stay in a better environment. Moreover it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed would be handed over to the complainants in 4 years i.e. 2018.

10. That the apprehensions of the complainants were proven correct when the respondent company started work on 20.02.2017 (which was 37 Month after Booking date and 18 Months after cancellation request. Even today only structure of the building is ready, and finishing work is pending and the same will further take two years to complete.
11. That earlier a complaint was filed in front of Honourable Authority Vide complaint number 1093 of 2018 on date 24.09.2018, the Honourable Authority pronounced its judgment on 12.03.2019 and the Honourable Authority took note of the fact that No BBA was executed between the complainants and respondent company, so the date of allotment letter was considered as the deemed BB agreement and 4 years period was deemed fit to give the possession as per the standard builder buyer agreement. The date of possession was deemed as 24.05.2019 and the complainants were given the liberty to approach the authority after the due date of delivery.
12. That the facts and circumstances as enumerated above would lead to the conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and refund the amount to the complainants.
13. That the complainants have filed the present complaint for refund of the total paid up amount.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund to the complainants their paid up amount towards the allotted unit with interest .
 - II. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.
15. 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

16. The respondent has contested the complaint on the following grounds.
17. That the respondent is developing a residential group housing complex approximately over 17.418754 acres of land situated in village Mohammadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia".
18. That the said the project is likely to be completed by 25.04.2022. The project is completed about 51% and there is still 02 years left in completing the construction of project. At this stage, the refund will adversely affect the completion of the project as there may be other allottees also who may seek refund. Keeping in view the progress of the work and the likely date of completion of project and due date of possession, it is not fair on the part of the Authority to entertain present complaint.
19. That the respondent commenced the construction of the said project soon after receipt of consent to establish. The construction of the project is

completed about 51%. As per approval granted by the HARERA, the project is likely to complete by 25.04.2022 and there is still 02 years left in handing over the possession of flat to the Buyers. Therefore, the complaint is premature. The construction work of the said project is going on with full swing.

20. That the respondent has been regularly sending updates on the progress of construction of the project from time to time, to the complainants. The respondent is fully committed to hand over the possession of apartments/flats to the buyers, including the said flat of the complainant, well within the promised time period. Keeping in view the timeline fixed for the handing over of the flats in the said project to the respective allottees including the complainants, it is not feasible for the respondent to refund the amount to the complainant. Further, the respondent is fully ready to hand over the possession of the said flat to the complainants as per undertaking vide Form 'REP-II' [See Rule 3(3)], subject to the force majeure or reasons beyond the control of the Respondent.

21. That the complainants booked an 2BHK flat admeasuring 1350 sq. ft. super area at the rate of Rs. 4632/- per sq. ft. in the above said project for the total consideration of Rs.76,06,800/-and paid Rs. 6,00,000/- as initial booking amount. The complainants had agreed to pay instalments as per 'construction linked payment plan' . The respondent issued allotment letter bearing no. F-202 situated on 2nd Floor of Tower-F, vide ref no. DSS/TM/ALT/467 dated 24.04.2015.

22. That thereafter, the respondent sent apartment buyer agreement to the complainants, and advised him over telephone to execute the same but the complainants turn calm and deaf to the request of the respondent. The complainants paid an amount of Rs. 19,15,168/- and thereafter made violation of Section 19(6) of the 'Act'. The respondent raised various demands and sent reminders to the complainants, but the complainants failed to discharge their obligations, provided under Section 19(6) and 19(7) of the 'Act'. As per demand letter dated 30.06.2019, a total amount of Rs. 52,19,398/- plus interest of Rs. 18,81,285/- is outstanding and payable by the complainants.
23. That the complainants failed to clear the instalments dues despite repeated demand letters, payment request letters, reminders, including the amnesty schemes given by the respondent. The respondent is ready and willing to execute the apartment buyers' agreement and undertakes to handover physical possession of the flat within time.
24. That, to be fair to the complainants, the respondent is also willing to waive off delayed payment interest charges which run into many lakh as the complainants have failed to pay the due instalments as per construction linked payment plan for the last four years. Accordingly, the complainants may make payment of the due instalments and respondent shall not charge interest, due to delayed payment.
25. That It is apposite to submit that 'The Real Estate (Regulation and Development) Act, 2016, nowhere provides for refunds at pre-mature

stage or after issuance of Allotment Letter. The Project of Respondent is duly registered under the 'Act' and Rules, 2017 and is completed about 51%. As per HRERA Registration dated 10.10.2017 read with Section 4(2)(1)(C) of the Act [Form 'REP-II' [See Rule 3(3)]] and HARERA Order No. 9/3-2020 (Admn.) dated 26.05.2020 (Covid-2019), the project is likely to be completed by 25.04.2022 and still there is 02 years left in handing over the possession. Therefore, the Complainants have no rights to seek refund at the pre-mature stage under the provisions of 'Act'. The complaint deserves to dismiss *in- limine* on this ground alone.

26. That 'The Real Estate (Regulation and Development) Act, 2016, nowhere provides for refunds at pre-mature stage or after issuance of allotment letter, therefore the complaint the remedy lie before Civil Court.
27. That, the real estate industry is going through a time in the backdrop of prevalent unprecedented situation brought by Covid-2019 pandemic. The industry depends heavily on the debt financing and these debts are serviced through instalments received from the buyers. The progress of construction directly depends on the instalments received from the purchaser, which, in the present circumstances is slow. The lockdown imposed due to COVID-19 pandemic has brought the industry to a standstill; the real estate industry is struggling immensely to meet ends in wake of the centre's direction to mandatorily pay all salaries and wages to employees. Keeping in view the progress of the project, and likely date of completion of project and time left for due date of possession, it would be

against the interest of industry and public interest at large, if refund is granted at this stage.

28. All other averments made in the complaint were denied in toto.
29. 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

30. 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

31. 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

32. 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.

33. 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.

34. 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."

35. 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 complainants

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

36. The complainants were allotted a unit in the project of the respondent detailed above on 24.04.2015 for a total sale consideration of Rs. 76,06,800/-. It is important to note that no builder buyer's agreement was executed between the parties. Earlier same parties filed a complaint in the Authority vide complaint number 1093 of 2018 on 24.09.2018, the Honourable Authority pronounced its order on 12.03.2019 and the Honourable Authority took note of the fact that no BBA was executed between the complainants and respondent company, so the date of allotment letter was considered as the deemed BBA agreement and 4

years period was deemed fit to give the possession as per the standard builder buyer agreement. The date of possession was deemed as 24.05.2019 and the complainants were given the liberty to approach the authority after the due date of delivery.

37. That in the present case no occupation certificate has been obtained by the respondent and no possession has been offered till date to the complainants . The due date comes out to be 24.05.2019. However, the complainants send a letter on 17.08.2015 regarding surrender of the booked unit and the said letter was sent before the due date of possession i.e 24.05.2019. The said letter was sent by the complainants and is evident from the page no. 31 of the complaint.
38. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided 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."

39. It is evident from the above mentions facts that the complainants paid a sum of Rs.19,15,168/- against basic sale consideration of Rs.76,06,800/- of the unit allotted on 24.04.2015. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.
40. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount along with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 17.08.2015 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 refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

41. 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

42. 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.19,15,168/- after deducting 10% as earnest money of the basic sale consideration of Rs.76,06,800/- with interest at the prescribed rate i.e., 10.70%, from the date of surrender i.e 17.08.2015 till date of actual refund.
- 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.

43. Complaint stands disposed of.

44. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.07.2023