



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

Complaint no. :	1296 of 2022
Date of filing complaint:	20.04.2022
First date of hearing:	28.07.2022
Date of order reserve	29.08.2023

Nitish Singhal R/O: 17/2, Shri Jyoti Kunj, Tilak Road, Begum Bagh, Meerut	<b>Complainant</b>
Versus	
M/S Dss Buildtech Pvt. Ltd. Regd. Office: 506, 5th Floor, Time Square Building, B-Block, Sushant Lok-1, Gurugram	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Dhruv Dutt (Advocate)	Complainant
Sh. 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 related details

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

S. N.	Particulars	Details
1.	Name of the project	"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	25.04.2025
8.	Unit No.	F-106 First Floor (Annexure c 4 of page 28 of complaint)
9.	Unit admeasuring	1350 sq. ft. (Annexure c 4 of page 28 of complaint)
10.	Date of apartment buyer agreement	Not executed
11.	Date of allotment letter	29.11.2016 (Annexure c 4 of page 28 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 8 page 82 of reply)
15.	Payment plan	Construction linked payment plan (Page 19 of the complaint)
16.	Possession clause	<b>14. DELIVERY OF POSSESSION</b> <b>14.1</b> Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over <b>possession of the Apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later</b> and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as directed by the DGTCP The resultant period will be called as "Commitment Period". However, <b>this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities (emphasis supplied)</b>
17.	Due date of possession	<b>12.05.2021</b> (Calculated from the date of consent to establish plus added 6 months due to covid)
18.	Total sale consideration	Rs. 82,04,850/-



		(As per the Annexure R-11 on page 91 of the reply)
19.	Total amount paid by the complainant	20,24,945/- (As per the complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered
22.	Surrender by the complainant	25.07.2019 (Annexure c-9 page 92 of the complaint)

**B. Facts of the complaint:**

3. That in the year 2013, the respondent launched a new upcoming Group Housing Complex in the name and style of "The Melia" to be developed in revenue estate of Village Mohammadpur Gujjar, Sector-35, Sohna, District Gurgaon.
4. That the complainant made a booking amount of Rs. 6,00,000 /- vide cheques bearing no. 370696 dated 04.09.2013 and 370697 dated 21.09.2013 both drawn on PNB Bank to the respondent which was acknowledged vide receipt bearing no. 238 dated 24.10.2013. The total basic sale consideration of the Apartment was Rs. 65,47,500/- The complainant further paid a sum of Rs. 14,24,945/- through RTGS which was acknowledged vide receipt bearing no. 731 dated 30.12.2014.
5. That a provisional allotment letter dated 29.11.2016 was issued by the respondent towards apartment bearing no. F-106 on First Floor having approximate super area of 1350 sq. ft. in favour of the complainant.
6. That thereafter the respondent arbitrarily issued various demand letters to the complainant. It is pertinent to mention here that the respondent has illegally retained the hard-earned money of the complainant and even after



4-4½ years from the date of first payment the buyer's agreement was not provided by the respondent and as such the complainant had no option but to stop making the payment to the respondent. Thus, the Respondent has also violated Section 13 of the RERA Act, 2016.

7. That the complainant made number of visits to the respondent and requested to execute the builder buyer agreement, but the respondent did not pay any heed to the request of the complainant and kept on delaying the execution of builder buyer agreement.

8. That till date the Complainant has paid a sum of Rs. 20,24,945/- It was in March 2018 the respondent sent a copy of apartment buyer's agreement to the complainant. The complainant was shocked to see the contents of the buyer agreement as the same was not in accordance with the model agreement provided under RERA Act. It is submitted that as per clause 14.1 of the agreement, the possession of the Unit was to be offered within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later with a grace period of 180 days after the expiry of the said commitment Period, thereby unilaterally pushing the date of possession to 2022.

9. That it is pertinent to mention here that at the time of booking the representative of the respondent assured the complainant that it has all the necessary approvals to start the construction and the possession shall be offered within 3-4 years i.e. around 2017. However, the excavation work itself had started only in the year 2016 and the casting of ground floor was



done in the year 2017 which clearly shows that the respondent had dishonest and malafide intention to cheat the complainant from the very inception. Therefore, the complainant did not sign the apartment buyer's agreement and decided not to continue with the project.

10. That even as per the respondent, the project has been completed to the extent of 51% till mid-2020. It is pertinent to mention here that a complainant bearing no. 3733/2020 was filed by the respondent against the complainant to make the payment of the outstanding dues. However, in that complaint, the complainant herein has stated that he does not want to continue with the Project and wants the refund. Accordingly, the complaint was disposed of with a direction to sort the matter as per the provisions of law.

11. That time and again, the complainant requested the respondent to initiate the process of refund, but the respondent turned a deaf ear to the request of the complainant. Now even after repeated reminders to the respondent and lapse of many years the respondent has not refunded the hard-earned money of the complainant.

12. That finding no other way the complainant sent a letter/notice on 25.07.2019 to the respondent for refund of Rs. 20,24,945/- on account of delay/failure by the respondent in completing the project. However, the respondent has failed to return the money to the complainant.

13. That in light of the aforementioned circumstances, the complainant is entitled to withdraw from the aforesaid project and is also entitled to refund of the entire amount paid by him to the respondent along with prescribed



rate of interest i.e., MCLR + 2% from the date of each payment till the date of refund.

14. That the present complaint has been filed by the complainant due to delay committed by the respondent in handing over the possession of the allotted unit seeking refund of the deposited amount along with other relief.

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

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

- i. Direct the respondent to refund the amount paid by the complainant along with prescribed interest.

**D. Reply by respondent:**

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

16. 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".

17. That the complainant approached the respondent and submitted an application dated 07.02.2014 for booking of a 2 BHK plus Study flat admeasuring 1350 Sq. Ft. at the basic sale price of Rs. 4850/- per sq. ft. Plus other statutory charges and taxes, as applicable, for the total sale consideration of Rs. 82,04,850/- and paid a sum of Rs. 6,00,000/- as booking amount and thereafter paid only one instalment amounting to Rs. 14,24,945/- against the total sale consideration of Rs. 82,04,850/- including IFMSD but excluding tax. The Complainant had agreed and signed the



payment plan for payment of instalments dues as per construction linked plan.

18. That the respondent obtained the sanction of building plan (BR-III) on 21.04.2015. It is pertinent to mention that Clause 3 of the sanctioned plan stipulates that the developer shall obtain clearance/NOC from the Fire Department, Gurugram before starting the construction/execution of development works at site. Furthermore Clause 17 (iv) of the sanctioned Building Plan stipulated that the developer shall obtain an NOC from the Ministry of Environment & Forests as per provisions of the Notification No. S.O. 1533 9E1 dated 14.09.2006 before starting the construction/execution of development works at site.

19. That the Fire Clearance/NOC was obtained by company on 09.02.2016 and the same was submitted to DTCP Haryana. On 20.09.2016 the respondent received the Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). Thereafter, in terms of the provisions of the Environmental Clearance dated 20.09.2016, the respondent herein applied for the 'Consent to Establish' from the Haryana State Pollution Control Board and was granted the same on 12.11.2016.

20. That a residential Unit No. F-106 situated on the 1st Floor of Tower-F in the above said project, was allotted to complainant/allottee vide allotment letter dated 29.11.2016. Thereafter on 01.03.2017 the respondent sent 2 copies of standard apartment buyers' agreement to the complainant for execution, but the complainant failed to execute the same. Pertinent to note that the Complainant failed to execute the buyer's agreement even after



reminders sent by the respondent on several occasions such as 20.04.2017, 13.03.2018 and 13.10.2021. However, the complainant did not pay amount towards the instalments due after payment of Rs. 6,00,000/- towards initial booking amount and one instalment amounting to Rs. 14,24,945/-.

21. That, the complainant had agreed, under the payment plan of application form dated 07.02.2014 signed by him to pay instalments on time and discharge his statutory obligations as per application form dated 07.02.2014 and standard apartment buyer's agreement (sent on dated 01.03.2017). However, the complainant has failed to make payments of his respective instalments as demanded by the complainant, from time to time.

22. That till the date of this reply there is an outstanding amount of Rs. 58,47,594/- alongwith interest of Rs. 40,87,741/- to be paid by the complainant. The respondent as a goodwill gesture offered one time settlement, vide letter dated 15.12.2017 and 01.05.2019, to waive of the interest charges amounting to Rs. 3,55,128/- & Rs. 11,55,129 respectively.

23. That it is pertinent to mention that the said SBA expressly provides a force majeure clause. It is to be noted that the construction was banned for 163 days in the state of Haryana, details of which are provided hereinafter.

Dated	Authority	Order	Days
16.11.2021- 21.11.2021	CAQM Direction	All the construction activity in the entire NCR to remain closed	06 days





24.11.2021- 20.12.2021	Supreme Court Writ Petition (C) No. 1135/2020 r/w CAQM Direction	Ban imposed by Supreme Court on construction activities	26 days
26.05.2020	Haryana Real Estate Appellate Tribunal	Force Majeure period of 6 months	180 days
23.03.2020 to 19.04.2020	Ministry of Home Affairs	Ban imposed by MHA due to covid 19 pandemic	27 days
01.01.2020 to 10.02.2020	Newspaper Report	Ban imposed by on construction activities	40 days
04.11.2019 to 16.12.2019	Supreme court in CWP No. 13029/1985	All the construction activity in the entire NCR to remain closed	42 days
01.11.2018 to 10.11.2018	EPCA	All the construction activity in the entire NCR to remain closed	10 days
24.12.2018 to 26.12.2018	Environment pollution control authority	Construction activities in Delhi, Gurugram, Ghaziabad and Noida to remain closed till 26.12.2018	03 days
09.11.2017 to 17.11.2017	OA 21/2014 NGT	All the construction (Structural) activity in the entire NCR is hereby prohibited till the next date of hearing	09 days
<b>Total no's of days</b>			<b>343 days</b>

24. That in spite of non-payment of dues by the other buyers like the complainant and stay of construction by the National Green Tribunal at several instances, the construction work of the said project is complete and the internal and external development work of the said project is going on



with full swing. Photographs showing the current status of development of the project attached.

25. That since the commencement of the development of the project, the respondent has been sending regular updates regarding the progress of the project to all the buyers including the complainant and also the customer care department of the respondent is in regular touch with the buyers for providing them assistance and updates on the progress of the project.

26. That aggrieved by the indifferent attitude of the complainant of not paying the outstanding dues the respondent herein filed a complaint before the Hon'ble Haryana Real Estate Regulatory Authority for recovery of outstanding dues vide complaint bearing no. RERA-GRG-3733-2020. The Ld. Authority vide its order dated 05.10.2021 directed both the parties to settle the matter inter se. It is relevant to mention that even as on date of passing of the aforesaid order, the complainant did not have any cause of action since the due date of possession had yet not arrived, and it has been recorded by this Hon'ble Commission vide the aforesaid order that the complainant did not want to continue with the project.

27. That the complainant has now filed the present complaint before the Hon'ble Adjudicating Officer for refund of the amount paid by him by making false averments that the respondent has failed to give the possession within time whereas the complainant overlooked the fact that he himself has failed to comply with his obligation of making payment on time. Pertinent to note that since December 2014 the complainant has not paid any amount towards the total consideration of the said unit.



28. All other averments made in the complaint were denied in toto.
29. The respondent has filed written submissions and the same has been taken on record.
30. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

31. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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)(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 promoter, 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. Objection regarding force majeure**

36. The respondent is claiming that there was delay in constructing the project due to construction bans, due to various order of the Authorities and covid.

37. All the pleas advanced in this regard are devoid of merit. First of all, the unit in question was allotted in the year 2016. The respondent is given leniency of 6 months due to covid period. Even the respondent himself stated that in spite of non-payment of dues by the other buyers like the complainant and stay of construction by the National Green Tribunal at several instances, the construction work of the said project is complete. Hence 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

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



**G.I Direct the respondent to refund the amount paid by the complainant along with prescribed interest.**

38. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has not obtained occupation certificate and no possession has been offered by it. The complainant in the present case has sought refund before the due date i.e., 25.07.2019.
39. The complainant is admittedly the allottee of respondent – builder of a residential unit on the basis of letter of allotment letter dated 29.11.2016 for the unit no. F-106 First Floor in the project of the respondent known as The Melia.
40. It is an admitted fact that no buyer's agreement was executed between the parties. So, the due date for completion of the project and handing over possession of the allotted unit is being taken model agreement placed on the file and the same comes to 12.05.2021 after excluding grace period.
41. 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. On 25.07.2019 the complainant as sent a letter regarding surrender of the booked unit and the same is evident from the page no. 92 of the complaint.
42. The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, 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"*

43. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 20,24,945/- against sale consideration of Rs. 82,04,850/- of the unit allotted on 29.11.2016. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.

44. 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 10.75% (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., 25.07.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions of the Authority:**




45. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the paid-up amount of Rs. 20,24,945/- after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.75% p.a. on the refundable amount, from the date of surrender i.e 25.07.2019 till the actual date of refund of the amount.
- 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.

46. Complaint stands disposed of.

47. File be consigned to the registry.

  
(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)

Member

**Dated: 29.08.2023**