

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

Complaint no. :	1662 of 2022
Date of filing complaint:	12.04.2022
First date of hearing:	30.08.2022
Date of decision :	03.03.2023

Nick Mehta R/O: 206, Mavilla Apartment, India Airlines Society	Complainant
Versus	
Haamid Real Estate Private Limited Regd.office: The Masterpiece, Sector 54, Golf Course Road, Gurugram	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Pawan Reley (Advocate)	Complainant
Sh. Harshit Batra (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"The Peaceful Homes", sector- 70A, Gurugram
2.	Nature of project	Group housing
3.	Project Area	8.38 acres
4.	RERA registered/not registered	Registered, vide registration no. 63 of 2019 dated 22.10.2019 valid upto 31.12.2019
5.	DTPC License no.	16 of 2009 dated 29.05.2009 73 of 2013 dated 30.07.2013
6.	Validity status	28.05.2024 29.07.2019
7.	Name of licensee	Haamid Real Estates Private Limited
8.	Licensed area	27.7163 acres
9.	Allotment of unit	23.05.2018 (As per page no. 34 of complaint)
10.	Unit no.	C223, 22 ND floor, Tower- C (As per allotment letter on page no. 34 of complaint)
11.	Super area	1565 sq. ft. (As per allotment letter on page no. 34 of complaint)
12.	Date of flat buyer's agreement	06.08.2019 (As per page no. 38 of the complaint)



13.	Possession clause	<p>As per Clause 11(a) of the said agreement:</p> <p>Subject to Force Majeure, as defined herein and further subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company. the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 6 (Six) months from the date of this Agreement ("Commitment Period*"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six) months ("Grace Period"), after the expiry of the said Commitment Period to allow for any contingencies or delays in construction including for obtaining the Occupation Certificate of the Project from the Governmental Authorities. The Company, based on its present plans and estimates and subject to all just exceptions endeavors to handover the possession of the Unit as above unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 11(b), clause 11(c) and clause 46 or due to failure of the Allottee to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee to abide by all or any of the terms and conditions of this Agreement.</p>
14.	Due date of possession	06.08.2020 (Including 6 months from date of commencement of this agreement + Grace period of 6 months is allowed)



15.	Basic sale price as per bba	Rs.86,16,890/- (As per bba on page 48)
16.	Amount paid by the complainant	Rs. 15,51,491/- (As alleged by the complainant)
17.	Reminder letters	05.07.2018, 29.11.2019, 30.12.2019, 28.01.2020 (Page 104, 106, 108, 110 of reply)
18.	Cancellation letter	10.07.2020 (Page 112 of reply)
19.	Occupation certificate	29.10.2019 (Page 90 of reply)
20.	Offer of possession	05.11.2019 (Page 92 of reply)

B. Facts of the complaint:

3. That a project by the name of "The Peaceful Homes" situated in sector 70 A, Gurugram, Haryana was being developed by the respondent. The complainant coming to know about the same applied for one dwelling unit measuring 1565.00 sq. ft. having unit no. as C223 for a total sale consideration of Rs. 86,16,890/-.

4. That after looking into all the details of the dwelling unit the complainant made the payment of Rs. 1,00,000/- toward its application fees on 03.04.2018 vide Cheque bearing cheque No. 947894 drawn on State Bank of India and on 10.04.2018, the complainant made further payment of Rs. 4,00,000/- towards the allotment of dwelling unit vide cheque bearing cheque no. 304933 drawn on Yes Bank.



5. That on 23.05.2018, the complainant received an allotment letter for the dwelling unit bearing no. C223 in Tower "C" in Peaceful Homes pat Sector-70 A Gurgaon Haryana. Further the respondent also confirmed the payment of Rs. 5,00,000/- towards the booking of the amount.
6. That on 04.07.2018, the complainant made the further payment of Rs. 10,51,491/- in lieu of the payment of instalment, 90 days from booking. The complainant made the payment of Rs. 10,51,491/- vide cheque bearing cheque no. dated 304934 drawn on the yes Bank.
7. That on 06.08.2019, the buyer's agreement was executed between the parties. The respondent sent an email to the complainant on 05.11.2019 to clear all the dues to the tune of Rs. 91,21,155.34/- excluding stamp duty and registration charges as the dwelling unit was ready for possession and the occupation certificate for the same has been issued.
8. That on 08.11.2019, the complainant informed the respondent that he has applied for a home loan from Bank, and it will take 14 days for the Bank to process the documents of home loan. Further, the bank is required the occupation certificate to initiate the process for home loan. However, on the very next day, the respondent instead of sending the occupation certificate to the complainant asked to share the details of the bank and contact details of the banker so as to send the required documents to the concerned bank team.
9. That the complainant shared the details of his bank and the contact details of his banker on next day. That the respondent did not take any appropriate actions to provide the concerned bank until 20.11.2019. The respondent sent the occupation certificate to the complainant so that the same could be sent to the bank. And therefore, because of the delay on the



part of the respondent, the complainant could not get the home loan sanctioned on time.

10. That on 29.11.2019, the respondent sent reminder letter to the complainant for the amount dues on the offer of possession in lieu of the dwelling unit allotted to the complainant.

11. That on 02.12.2019, the respondent sent another reminder letter for the amounts dues on offer of possession. That on the very next day the complainant responded to the mail by stating that he had taken steps for acquiring a home loan from state bank of India and it takes minimum 15 days of time to ascertain all the documents with regards to the home loan. Further, there was a delay of one month on the part of the respondent in providing occupational certificate to the complainant therefore, there is a delay in payment as the sanctioning of home loan is still under process. That on 06.12.2019, respondent replied to the mail by stating that the complainant is required to send the loan sanction letter from SBI Bank at the earliest.

12. That on 23.01.2020, the complainant was able to obtain home loan from HDFC Bank and revived a sanction letter in lieu of the same. Further that the sanction letter showed the approved home loan amount to the tune of Rs. 78,00,000 /-. The complainant sent the sanction letter to the respondent on the same day vide an email and the same was acknowledge by the respondent vide email dated 24.01. 2020. On 28.01.2020, the respondent sent final reminder letter for the amounts due on the offer of possession for the dwelling unit.

13. That after receiving the final reminder from the respondent, the complainant sent an email dated 29.01.2020, inquiring about the outstanding dues in lieu of the dwelling unit bearing No. C 223, to which the



respondent asked to provide with three copies of tripartite agreement duly signed by the bank, to enable the respondent to issue the permission to mortgage the dwelling unit. On 31.01.2020, the respondent sent another email with reference to the intimation for possession letter and payment of the amounts due on the offer of possession. And on 01.02.2020, the respondent sent another email to the complainant to confirm verification of the Aadhar details of the complainant. That the complainant in due diligence, sent the pdf copy of Aadhar Card to the respondent on the same day to complete its verification.

14. That on 13.03.2020, the complainant sent an email to the office of the respondent illustrating his situation and inability to make the payment with regards to the remaining due amount because of the financial position of YES Bank at that time. The complainant on several occasions asked the respondent to provide NOC for tripartite agreement however, the respondent took more than 3 weeks to provide NOC to the complainant. Further, due to the delay in the issuance of NOC letter by the respondent in March 2020, the complainant could not disburse the remaining amount in favor of the respondent, because when the NOC letter was issued by the respondent, YES Bank was on the verge of bankruptcy and therefore, the bank withhold the withdrawal of any amount in favor of their account holders including the complainant. Meanwhile, the complainant also lost his job because of COVID-19 Pandemic and the complainant was left with no source of income amid nationwide lockdowns. Therefore, the complainant failed to disburse the remaining amount in favor of the respondent and the same situation was informed to the respondent. Further, there was no other response received from the part of the respondents until 23.03.2020, when the respondent sent an email to the complainant intimating the closure of



office due to Covid-19 Pandemic and as advised by the government authorities.

15. That on 15.04.2020, the respondent sent another reminder letter for the amounts due on offer of possession for dwelling unit within 7 days. The complainant replied to the respondent vide email dated 18.04.2020, stating that because of COVID-19 situation, aviation industry has come to standstill and as the complainant was working as a Pilot (Captain) in Air India, he do not have an active payroll from his job. Further, complainant had a contract with Indigo, and he was supposed to join from 23.03.2020, however, Indigo Airline deferred his joining indefinitely and therefore, he was not in the position to clear all the dues. Further, the financial situation of YES Bank (in which the complainant has his bank Account) was on the verge of bankruptcy and therefore they have denied making any further payments of huge amount to any of its customers. This was the another reason because of which the complainant was not being able to make the complete payment on time, thus, the complainant sought some time to arrange funds in lieu of the due amount for offer of possession.

16. That the complainant contacted to all the representatives of the respondent during the course of time explaining his difficulty and inability to clear all the dues on time. That the complainant sought extension of time from the representatives of the respondent to clear all his dues, to which the representatives of the respondent replied by stating that a decision will be taken on the conditions of the complainant and once a decision is made the same will be intimated to the complainant within due course of time. The complainant was waiting for the response of the respondent and in the meantime, the respondent terminated the buyer builder agreement by issuing an intimation of termination letter dated 10.07.2020 to the



complainant. that when the complainant came to know about the termination of agreement, he was in shock.

17. That the complainant proposed alternative by selling the dwelling unit bearing No. C 223 in tower 'C' in the project "The Peaceful Homes" to his relatives and they will make the full and final settlement for the same, however no response was received on the part of the respondent. The respondent denied all the requests of the complainant.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s):

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

D. Reply by respondent:

The respondent by way of written reply made the following submissions

19. That the complainant being interested in the project of the respondent applied for provisional allotment of an apartment unit no, C223 in Tower C admeasuring super arca 1565 sq. ft. ('unit') in the real estate project. "The Peaceful Homes (project)" vide an application form and subsequently received the allotment of the unit vide an allotment letter dated 23.05.2018 and consequently a builder buyers' agreement was executed between the parties on 06.08.2019 .

20. That at the outset, it needs to be noted that there has been no default, whatsoever, on part of the respondent in completing its obligations under the contract and the law. That as per Clause 11(a) of the agreement, the possession was to be given within 6 months of the agreement with an additional grace period of 6 months. Thus, the due date of delivery of

possession comes out to be 06.08.2020. That the respondent, acting in utmost bonafide, gave the possession of the unit in 3 months of executing the agreement on 05.11.2019 after having received the occupancy certificate dated 29.10.2019. A car parking - 009(UB) was also allotted to the complainant on 08.11.2019 and an intimation for payment of stamp duty was also given on 08.11.2019. Subsequently, the complainant executed an indemnity cum undertaking for possession on 09.01.2020.

21. That despite the same, the complainant continued to cause grave default. It is submitted that till date; the complainant has paid only Rs. 15,51,491 and the last payment was made on 04.07.2018, i.e., more than one year before the execution of the agreement. Upon continuous defaults being caused by the complainant in making the payment as per the agreed terms and conditions of the agreement, the complainant stood in the event of default and the respondent had the right to terminate the unit under clause 56 of the agreement.

22. That it is a matter of record that multiple opportunities were offered to the complainant for making payment against the unit, as evident from reminders dated 05.07.2018, 29.11.2019, 30.12.2019 and final reminder dated 28.01.2020. That it was only after absolute non-compliance by the complainant that the unit was finally terminated vide letter dated 10.07.2020. In the event of non-fulfilment of the obligation of making do payments against the unit, the unit was rightly terminated.

23. That the respondent builder has rightly, and law fully terminated the captioned unit as per the terms and conditions of the application form. That the charges forfeited are valid and lawful. Due to the non-compliance by the complainant, he stands in default of making an outstanding payment of Rs.



98,11,527, as is evident from the account statement dated 21.11.2022. That at this instance, it is important to note that the demands raised by respondent is as per the mutually agreed terms and conditions of the agreement and the payment plan.

24. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

25. 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

26. 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.

27. 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.

28. 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 judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking

the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

29. 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. Entitlement of the complainant for refund:

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

30. The subject unit was allotted to the complainant on 23.05.2018. A buyer's agreement was executed with regard to the allotted unit between the parties on 06.08.2019 and the complainant paid a sum of Rs.15,51,491/- against total basic sale price of Rs. 86,16,890/-.

31. It is an admitted fact that the buyer's agreement was executed between the parties on 06.08.2019. So, the due date for completion of the project and handing over possession of the allotted unit is taken from clause 11(a) and the same comes to be 06.08.2020. The occupation certificate was obtained on 29.10.2019 and the possession was offered on 05.11.2019.

32. The respondent raised various demands on 05.07.2018, 29.11.2019, 30.12.2019, 28.01.2020 against the complainant for the amount due which were not cleared by him. So, the respondent sent cancellation letter of the unit on 10.07.2020.



33. The due date of completion of project expired on 06.08.2020. Thus, it is evident from the facts mentioned above that the complainant is no longer interested in the project and is seeking refund of the paid-up amount as per the provisions of Act of 2016.

34. It has been pleaded by counsel for respondent that occupation certificate has already been obtained and it has already made payment of required taxes to the government. The occupation certificate was obtained on 29.10.2019 before due date of handing over of possession i.e., 06.08.2020. However, the complainant approached the Authority seeking relief of refund on 12.04.2022. The Authority observes that the respondent has already made payment towards taxes to the governmental authorities. Hence, the respondent is entitled to deduct from refundable amount to the complainant, taxes which are not refundable from government and respondent-promoter cannot charge from subsequent allottee as GST provision prohibit charging of GST after receipt of occupation certificate.

35. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."




36. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land . But in the case in hand , after cancellation of the unit , the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India*, AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors*, Civil Appeal No. 7266 of 2009 decided on 01.12.2015 , followed in *Jayant Singhal v/s M3M India ltd*. Consumer case no. 27669 2017 decided on 26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to return the balance amount (subject to deduction of statutory dues and brokerage i.e 0.5%) after deducting 10% of the basic sale price from the date of cancellation of the unit i.e, 10.07.2020 till the date of refund along with interest @ 10.70 % per annum within a period of 90 days.

G. Directions of the Authority:

37. 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 promoters 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 amount (subject to deduction of statutory dues and brokerage i.e 0.5%) of Rs. 15,51,491/- after deducting 10% of the basic sale price of the unit being earnest money along with interest @ 10.70% p.a. on the refundable amount, from the date of cancellation i.e. 10.07.2020 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.
38. Complaint stands disposed of.
39. File be consigned to the registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.20s23