

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

Complaint no. :	873 of 2022
Date of filing complaint:	11.03.2022
First date of hearing:	12.07.2022
Date of decision :	25.04.2023

Sh. Suresh Kumar Garodia S/o Late Sh. Ganga Dhar Garodia R/O: Y-6/108, Yamuna Apartments, Sector D-6, Vasant Kunj, Delhi- 110070	Complainant
Versus	
M/s Anant Raj Limited Regd. office: Plot No. CP-1, Sector-8, IMT Manesar, Gurugram-122051	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Deepak Yadav (Advocate)	Complainant
Sh. Manu Bajaj (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant 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 provisions of the Act or the rules and regulations made there

under or to the complainant 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.n.	Particulars	Details
1.	Name of the project	"Maceo", Sector- 91, Gurgaon
2.	Nature of project	Group housing colony
3.	RERA registered/not registered	Registered vide registration no. 314 of 2017 dated 18.08.2017
	Validity status	17.08.2019
4.	DTPC License no.	71 of 2008 dated 25.03.2008
	Validity status	24.03.2025
	Licensed area	15.575 acres
	Name of licensee	Jubliant Software Service Private Limited
5.	Application form	NA
6.	Unit no.	103 on 1 st floor of tower E [As per draft settlement agreement of page no. 27 of complaint]
7.	Unit area admeasuring	2320 sq. ft. [Super area] 3BHK+ study room+ SR



		[As per page no. 13 of complaint]
8.	Allotment letter	Not allotted
9.	Date of apartment buyer agreement	Not executed
10.	Total sale consideration	Rs. 90,00,000/- [As per draft settlement agreement of page no. 27 of complaint]
11.	Amount paid by the complainant	Rs. 9,00,000/- [As per draft settlement agreement of page no. 27 of complaint]
12.	Possession clause	NA
13.	Due date of possession	NA
14.	Occupation certificate	28/11/2019 (Tower-A, C, D, E, F, L, M, N and EWS Block-B) [As per DTCP site]
15.	Offer of possession	Not offered
16.	Surrender dated	05.12.2020 [As per page no. 17 of complaint]
17.	Reminder letters by complainant seeking surrender of unit	07.12.2020 Followed by legal notice dated 16.12.2020 [As per page no. 18 & 20 of complaint]
18.	Settlement draft sent by	07.01.2021

	the respondent to the complainant	[As alleged by the complainant on page no. 05 of complaint] [Draft settlement deed on page no. 26 of complaint]
--	-----------------------------------	--

B. Facts of the complaint:

3. That the respondent launched a residential project by the name of "Maceo" at Sector 91, Gurugram, Haryana in 2011. In the year 2020, the complainant was contacted by the respondent and was briefed about the said project. In need of a better residence, the complainant showed interest and enquired about the said project.
4. Thereafter, the respondent with sweet marshmallow words invited the complainant to their office in Gurugram and introduced themselves as "Anant Raj Limited" the best developer and builder in town and further presented the entire proposal of the above-mentioned project and claimed that the said project is completed and ready to move.
5. That to mitigate the doubts, the complainant again visited the office of the respondent on 18.11.2020 and met the representative of the company.
6. That the complainant believing upon the presentation, assurances, and promises of the respondent and keeping in mind the agedness, wrote a letter dated 20.11.2020 and stated his intension to book/purchase a 3BHK+Study+SR, Deluxe, unit bearing no. E-101 admeasuring 2320 sq. feet including parking space on ground floor, as agreed between him and

representative of Anant Raj Limited for a total consideration price of Rs. 90,00,000/- inclusive all possession charges, PLC and fitting.

7. That on 29.11.2020, the complainant wrote another letter to respondent showing his willingness to purchase the above-mentioned unit on the earlier agreed terms, which was duly received by respondent official on 29.11.2020.
8. That on 02.12.2020, he sent another letter to respondent wherein requesting for a certified true copy of the agreement for sale which was duly received by the respondent. With this application, he also sent a cheque bearing number 676056 dated 27.11.2020 amounting to Rs. 9,00,000/- with a condition that the same would be encashed by it only after handing over the true certified copy of the agreement for sale to the complainant.
9. That the complainant was astonished to note that without giving any certified copy of the agreement for sale, respondent encashed the cheque given by him which is a clear violation of the terms and conditions of complainant's letter dated 02.12.2020.
10. That due to such utter breach of trust, complainant decided to cancel his booking for said unit and sent a letter dated 05.12.2020 to the respondent, demanding immediately refund of amount of Rs. 9,00,000/- received by the respondent. When no fruitful results was obtained, the complainant again wrote another letter dated 07.12.2020 to the

respondent through speed post, seeking refund of Rs. 9,00,000/- with interest, which was wrongfully encashed by the respondent.

11. That when the respondent did not respond for any refund request of the complainant, then he sent a legal/demand notice dated 16.12.2020 to it seeking refund of Rs. 9,00,000/- along with interest. That subsequently, the respondent through his CRM Mr. Karan Kapoor forwarded a mail with attached file (settlement/compromise agreement) on dated 07.01.2021 to the complainant and agreed to refund full amount without any deduction to the complainant, but the said settlement/compromise agreement suffered to many errors and not as per conversation between them.
12. That on 13.01.2021, the complainant sent an e-mail to the respondent and highlighted the errors in the settlement/compromise agreement but the respondent has not taken any action to correct the settlement agreement as per actual conversation between them.
13. That the above-mentioned facts are conclusive proof that the respondent was never of an intention to deliver a healthy residence. There is no doubt that with malafide and dishonest intentions, the respondent has deliberately pulled the complainant into its wicked web of looting the hard-earned money of the complainants. Moreover, they have intentionally violated the terms and conditions of the agreement and have committed the offense of cheating and criminal breach of trust.

Hence, shall be liable to be prosecuted under the appropriate provisions of law.

14. That the complainant has faced heavy financial and mental hardships as the it cheated him for almost one year, playing hide and seek with him. After being heavily duped by the respondent, its representatives and directors, the complainant is approaching before the Authority to take stringent action against the perpetrators of the aforesaid crime of mass cheating, thug, fraud, forgery, looting innocent people and usurp crores of rupees of public money under the grab of false assurances for handing over the possession of the unit. An illegal profit-making business is being run by the said respondent and its directors, to usurp the public money at a large scale which if not stopped shall lead to a large-scale economical fraud.

C. Relief sought by the complainant:

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

- i. Direct to the respondent to refund the amount paid by the complainant of Rs. 9,00,000/- along with interest @ 24%.

D. Reply by respondent:

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

- i. That the complainant has not approached the Authority with clean hands and have presented wrong and concocted facts, in as much as even the basic facts such as non-execution of application for booking



which is the genesis of relation between the builder and a home buyer has not been disclosed before the Authority.

- ii. It owing to the well-established reputation, the complainant approached the respondent through an agent to book a unit in the project namely "Maceo".
- iii. That the complainant never signed the application form for booking the flat/unit. The general practice adopted by the respondent-company is that when a booking amount is received from any home-buyer, it deposits the cheque and once the cheque is cleared, a booking for the home buyer for the desired unit is made and the same was done in the present case.
- iv. That thereafter, it was discovered by the respondent that the complainant had some reservations regarding the deal with the brokers and the manner in which the deal was done, was unethical and not appropriate. The respondent immediately contacted him and addressed the concern upon which he wanted to terminate the booking. He has already signed a copy of the builder buyer agreement, however, the same was never executed as he wanted to resolve the issue with respect to the agent/broker first.
- v. That after series of discussion with the complainant and his Advocate, the respondent agreed to refund the entire amount paid by him i.e. Rs. 9,00,000/- without any deductions in 3 installments. The complainant, however agreed for 2 installments. Thus, in view of the



agreed terms, the respondent drafted the settlement deed and emailed it on 13.01.2021. However, the complainant did not agree to the terms and conditions and sought time to modify the draft of the settlement agreement.

- vi. That the respondent also offered the complainant to draft a fresh settlement deed so that the refund can be made in two instalments as required by him. Subsequently, a fresh settlement deed on 14.01.2021 was sent by his Advocate to the respondent, however, the revised terms and conditions were unreasonable and unacceptable to the respondent and eventually the settlement talks failed between the parties.
- vii. That in view of the submissions above and without prejudice to the rights of the respondent in the captioned complaint, it is once again informed that it is willing to refund the entire amount of Rs. 9,00,000/- paid by him.
- viii. That the parties never entered into any formal agreement for purchase/sale of unit. The respondent always had the intent of refunding the principal amount of Rs. 9,00,000/- that is why it shared draft settlement agreement. The complainant on the contrary indulged in the practice of acquiring flat/unit from a broker/agent in an inappropriate and unethical manner and that is why the agreement was never executed. He cannot approach the Authority at this stage, on account of his own fault and seek interest on the



principal amount with intent of earning money. Further, he cannot be allowed to claim interest with refund on the principal amount when he himself is liable for non-execution and non-materialization of the agreement between the parties.

- ix. That the present complaint ought to be dismissed on the aforesaid grounds, and the reliefs as sought in the instant complaint may be denied as the disputes/issues are not of the nature of delayed possession or where the builder is refusing to complete construction of the unit. The present complaint is a glaring example of internal rift between the prospective home buyer and builder early at the stage of booking and the same can be amicably resolved between the parties and which does not require indulgence of the Authority.
16. All other averments made in the complaint were denied in toto.
17. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

18. 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

19. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

20. Further, in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State**

of U.P. and Ors. (SLP(Civil) No(s). 3711-3715 OF 2021) reiterated in cases of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, it was observed that :

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

F. Entitlement of the complainant for refund:

F.I Direct to the respondent to refund the amount paid by the complainant of Rs. 9,00,000/- along with interest @ 24%.

22. The project detailed above was launched by the respondent as group housing colony. The complainant submitted that he wrote letters dated 20.11.2020, 29.11.2020 and 02.12.2020 and shown his willingness to purchase unit in the project of the respondent. The complainant along with letter dated 02.12.2020 send cheques amount to Rs. 9,00,000/- as booking amount to the respondent. The said cheque was specifically sent with a condition that the same would not be encashed till issuance of application form in its favour. However, the respondent has encashed the said cheque without any prior intimation to the complainant or fulfilling condition imposed vide such letter dated 02.12.2020. It was specifically provided vide letter dated 02.12.2020, that the said cheque be only encashed after issuance of true certified application form, since it was not done, the complainant, thus, vide letters dated 05.12.2020, 07.12.2020 and 16.12.2020 sought refund of amount paid. To which the respondent vide email dated 07.01.2021, sent settlement agreement wherein agreed to refund the amount paid by the complainant in full in three installments, which was not acceptable to him.
23. The respondent on the other hand submitted that it is a general procedure that after encashment of cheque only, the company issues application form in favour of the applicant. After encashment of said cheque for booking amount on 05.12.2020, the complainant wrote letter dated 05.12.2020 wherein seeking withdrawal from project and refund of the amount paid. The respondent further agreed to and is willing to refund the amount paid by the complainant and in consonance of same sent settlement deed vide email dated 17.01.2021, terms of which were not acceptable to the complainant. The respondent with an intent to return the amount paid by complainant gave an opportunity to the complainant to draft the settlement agreement. However, the terms of

same were not acceptable to it, as a result no settlement could arrived at between the parties. The respondent vide proceedings dated 24.04.2023, further submitted that it is ready and willing to refund the amount paid by the complainant at the time of booking without interest as the complainant seeks withdrawal from the project and further asserted that the condition w.r.t. supply of true certified copy of application form could not be fulfilled as neither there was any application form nor allotment.

24. It is a rare case where the complainant vide letter dated 20.11.2020, followed by another letters dated 29.11.2020 & 02.12.2020 shows willingness to purchase the unit in the project of the respondent where the occupation certificate of the concerned tower has already been obtained on 28.11.2019. The complainant along with letter dated 02.12.2020 submitted a cheque amounting to Rs. 9,00,000/- and vide said letter, imposed a condition that the said cheques be encashed after handing over of the certified true copy of application form.
25. There is no document on record to support the fact that the said offer of the complainant to purchase a unit in the project of the respondent was ever accepted by the respondent, resulting in any allotment except a written hand note of receiving over letter dated 29.11.2020 only. However, the inference that the subject unit i.e. E- 101 was provisionally allotted to the complainant can be drawn from the settlement draft sent by the respondent itself to the complainant and the fact is undisputed that the builder-respondent has encashed the cheque of Rs. 9,00,000/- paid by him to the respondent. As soon as the cheques was encashed by the respondent (on 05.12.2020, as per bank statement of complainant on page no. 16 of complaint), the complainant vide letter dated 05.12.2020

wrote to the respondent that since no prior draft of application form is sent to him before the encashment of the cheque, which was verbally agreed by the parties, the complainant wishes to withdraw from the project. The said letter was followed by another letter and legal notice dated 07.12.2020 & 16.12.2020 respectively.

26. The respondent in view of said letters surrendering the unit sent a settlement deed to the complainant wherein agreeing to refund the entire amount paid by the complainant in three instalments. As per averments of the respondent, he objected that instead of three installments the entire amount shall be paid in two installments to which the respondent-builder asked the complainant to draft a settlement deed.
27. The Authority observes that the concerned matter do not relates to violation of section 18(1) of Act as no allotment has been made in favour of the complainant and it was before any such arrangement would come in picture, the dispute occurred between the parties. The relevant portion of the Act is reproduced hereunder: -

18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as



may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

28. The provision of Section 18(1) of Act has been elaborated at length in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*** wherein unqualified right of allottee has been discussed. A perusal of Section 18(1) makes it very clear that such option to withdraw from the demand is available to "allottee" in case where the respondent-promoter has failed to provide possession of unit in accordance with the terms of the agreement for sale. Further, "agreement for sale" and "allottee" is defined under Section 2(c) and (d) of Act respectively and the same is defined hereunder: -

(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

29. As per aforesaid definition an "allottee" as per Section 2(d) is person to whom a plot, apartment or building, as the case may be, has been allotted/sold (whether as freehold or leasehold). However, in the instant matter that there is no document on record to support the fact that the said offer of the complainant to purchase a unit in the project of the respondent was ever accepted by the respondent, resulting in any allotment. Secondly, no agreement to sale has been executed been the

parties and further, respondent-builder in its facts (para 7 on page 3) agrees to refund the entire amount without any deduction.

30. Moreover, if the complainant is bought under the ambit of "allottee", then as per the facts of the instant matter, the same would be treated as case of surrender and would result in deduction of 10% earnest money as decided by the Authority in plethora of cases. Whereas, there is equal default of the respondent-promoter on the other hand, as at this stage it is easy to take plea that no proper application was made by the complainant. However, despite any proper application, the respondent itself has proceeded with encashment of the said cheque on basis on letter showing interest to purchase unit in project of the respondent and despite such issue, the respondent has yet not returned the amount received by it from the complainant and thus, is using the funds of the complainant. The same issue has been addressed by MahaRERA in complaint of **Kamala B. Jain and Ors. vs. Tapir Constructions Ltd. and Ors. (02.01.2020- RERA Maharashtra) (MANU/RR/0064/2020)**, and the same is reproduced hereunder :-

"5. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, it appears that, the complainants are seeking refund of the amount paid by them to the respondent No. 1 promoter towards the purchase of 4 flats booked in the respondent's project. There are no allotment letters issued for the said booking or the registered agreements for sale have been executed between the parties showing any agreed date of possession for handing over possession of the said flats to the complainants. The complainants have just signed the booking application form and paid booking amount.

6. In this regard the MahaRERA is of the view that as per the provision of section-18(1) of the RERA, the promoter is liable to refund the amount to the allottee on demand, if the agreed date of possession mentioned in the agreement for sale is lapsed. However, in the present case, there is no allotment letters issued in favour of the complainants nor agreements for sale have been entered into between the complainants and the respondent. Therefore the provisions of section 18 of the RERA is not applicable in this case. Moreover, there is no provision under RERA to grant refund of the booking amount. However, since the money has been paid to the respondent, the MahaRERA can only grant relief under section 13 of the RERA.

7. In view of the aforesaid facts, the MahaRERA directs the respondent to execute the agreements for sale with the complainants within a period of 2 months from the date of receipt of this order. Failing which the money paid by the complainants be refunded within a period of next 2 months without any interest.

8. With the above directions, the complaint stands disposed of."

31. No doubt that the present complaint is beyond the purview of Section 18(1) of Act and thus, keeping in view matrix of present case and to balance rights of both the parties and keeping in view the fact that the respondent agrees to refund the amount paid by the complainant. The respondent is directed to refund the amount paid by the complainant i.e. Rs. 9,00,000/- within two months from date of this order, failing which interest @10.70% shall be payable by the respondent on the aforesaid amount. It is important to add such component of interest, to avoid delay in refund of the amount paid and balance the rights of the parties as the said amount is in possession of respondent from past two years.
32. The Authority hereby directs the respondent-promoter to return the amount received by him from the complainant i.e. **Rs. 9,00,000/-** within two months from date of this order, failing which interest @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 this order till the actual date of refund of the amount shall be attracted.

G. Directions of the Authority:

33. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The Authority hereby directs the respondent-promoter to return the amount received by him from the complainant i.e. **Rs. 9,00,000/-** within two months from date of this order, failing which interest @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 this order till the actual date of refund of the amount shall be attracted.

34. Complaint stands disposed of.

35. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)
Member

Dated: 25.04.2023