

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

Complaint no. :	2561 of 2021
Date of filing complaint:	12.07.2021
First date of hearing:	03.09.2021
Date of decision :	11.05.2023

Rajesh Kalra R/O: 1201, Tower-08, Unitech Cascade, Greater Noida	Complainant
Versus	
Haamid Real Estate Private Limited Regd. office: The Masterpiece, Sector 54, Golf Course Road, Gurugram	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Tushar Behmani (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.	RERA registered/not registered	Registered, vide registration no. 63 of 2019 dated 22.10.2019 valid upto 31.12.2019	
4.	Area Registered	8.38 acres	
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.	Unit no.	E 071 (Annexure C-1-page no. 22 of the complaint)	
10.	Unit admeasuring	930 sq. ft. (Annexure C-1-page no. 22 of the complaint)	
11.	Date of allotment letter	05.02.2019 (Annexure C-1-page no. 22 of the complaint)	
12.	Date of execution of Agreement for sale	19.06.2019	

13.	Possession clause	<p>5.</p> <p>5. The Promoter shall abide by the time schedule for completing the Project, handing over the possession of the Unit to the Allottee(s) and the Common Areas and Facilities of the AIPL Projects to the Association of Allottee(s) or the Governmental Authority or Maintenance Agency, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017 by 31 May 2020 as disclosed at the time of registration of the Project with the Authority or such extended period as may be intimated and approved by Authority from time to time. The completion of the Project shall mean grant of Occupancy Certificate for the Project</p>
14.	Due date of possession	<p>31.05.2020</p> <p>(As stated in the clause of agreement for sale page 41)</p>
15.	Total sale consideration	<p>Rs 64,00,632/-</p> <p>(Annexure C5 page 26 of the complaint)</p>
16.	Total amount paid by the complainant	<p>Rs 12,80,127/-</p> <p>(Annexure R-4 page no. 60 of reply)</p>
17.	Occupation certificate	<p>24.07.2020</p> <p>(Annexure R-2 page 52 of reply)</p>
18.	Offer of possession	<p>29.07.2020</p> <p>(Annexure R-3 page 55 of reply)</p>
19.	Reminder Letter	<p>18.08.2020, 09.09.2020, 06.10.2020</p> <p>(Page 62 to 65 of reply)</p>



20.	Pre-Termination	11.12.2020 (Annexure R-6 page 67 of reply)
21.	Termination	12.04.2021 (Page 68 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 agreed to purchase a residential property' in the said project. Therefore, the complainant vide booking application dated 25.01.2019 booked a residential unit having area of 930 sq.ft. (approx.) and accordingly the complainant paid Rs.5,00,000/-.

4. That the respondent issued allotment letter on 05.02.2019 against the said booking to the complainant. The payment plan for the above booked residential unit in present dispute was attached with the allotment letter which clearly mentioned the total sale consideration of the unit in dispute which is Rs.58,07,850/- including bsp, edc/idc, ifms, plc and stamp duty.

5. That the complainant was assured that the possession of the unit in dispute will be handed over by the respondent as and when they receive the occupation certificate and the said unit in dispute is complete and is in status of occupying for a peaceful living of the complainant and his family. At the time of the booking of the unit in dispute i.e., in January 2019, the respondent assured the complainant that the said unit will be ready for possession within the period maximum 1 year i.e., by January 2020.

6. That That on 18.02.2019, the complainant wrote an email to the respondent for clarification on car parking, club charges, transfer fee, payment receipts and escalation of price of the unit. The respondent responded to the said email of the complainant vide email dt.20.02.2019 in

which the respondent clarified on the queries put forward by the complainant in his email mentioned in this paragraph. The complainant time and again requested the respondent to get execute the buyer's agreement after the allotment letter was issued but the respondent always evaded the request and delayed the execution of the buyer's agreement because of reasons best known to the respondent.

7. That the complainant on 12.03.2019 sent an email to the respondent where he demanded clarification on the payments made and regarding the payments which was due on his part along with bifurcation of various demands raised under various heads. It was also demanded by the complainant that the G.S.T. if reduced to 5% from 12 % when what shall be the updated amount due after the calculations as per the changed G.S.T. After repeated requests and regular follow ups with the respondent, the buyer's agreement was executed.

8. That it is pertinent to mention here that the respondent in the AFS dt. 19.06.2019 envisaged Clause 5 with head 'time is essence'. In the said Clause 5 the respondent clearly mentioned the exact date of delivery of possession of the allotted unit to the complainant which was 31.05. 2020. It is hence established that the respondent promised and assured the delivery of possession of the unit in dispute by 31.05.2020 to the complainant which the respondent failed.

9. That as the clause 7.6 clearly mentions that the allottee shall be liable to request for refunds in case the promoter fails to deliver the possession as per the Article 5 of the agreement for Sell dt. 19.06.2019, the complainant is legally correct to seek refund in event of failure to get the possession of the unit as promised by the respondent.

A

10. That to the surprise and shock, the complainant received a letter dt. 29.07.2020 from the respondent through which he was intimated for possession of the unit in dispute by the respondent. The respondent through the alleged letter dt.29.07.2020 demanded the complainant the balance payment. In this very letter, the respondent claimed that they have received the occupation certificate of the tower in which the unit in dispute is allotted i.e. Tower - E but when the complainant requested for the copy of the occupation certificate citing the said fact, the respondent bluntly denied to share the same and till date they have avoided the request of the complainant which made the complainant see the respondent with suspicion. To validate the fact that the Tower - E is ready for possession, the complainant visited the same and he was shocked to see that the Tower - E is nowhere near to the liveable condition and incomplete .

11. That to add the miseries of the complainant the respondent sent a tax invoice with the intimation of possession. The respondent illegally charged CGST and SGST at 9% whereas the GST Council decreased the rate to 5% but the Respondent continued charging the GST at old rate purposely. The same was countered by the complainant and explanation was demanded by the complainant that why respondent is charging tax on old rate whereas the GST rate was revised and slashed down by way of a notification by the government.

12. That it is pertinent to mention here that the entire project was launched with a specific kind of payment schedule and offer. The Complainant was assured that he has to pay 20% of the total sale consideration at the time from 100 days from date of booking i.e., Rs.7,80,126.401-. The said amount was duly paid by the complainant on 05.05. 2019. The rest 80% of the total sale consideration was to be paid at the time of offer of possession which

A



was Rs.52,13,505.60/- to the respondent. The same schedule is duly reflected in the Account Statement dt.30.07.2020.

13. That the respondent not only sent the intimation of possession at the time when the Tower - E was not complete and in a liveable condition, the respondent continuously kept harassing the complainant by sending illegal demands to extract hard-earned money of the complainant. The respondent demanded charges like maintenance, club charges, electric switch-in station, electric meter charges, multi dwelling unit charges RFID Tag charges, access control charges, intercom charges which are completely unwarranted and illegal demands raised in the account statement.

14. That it is pertinent to mention here that the respondent sent an email on 30.07.2020 to the complainant informing that it has obtained the occupation certificate of Tower - E and that the unit is ready for possession and further demanded the complainant to pay clear the balance amount with the respondent. The said Tower - E in which the unit in dispute is allotted is yet not finished and hence it has not received the occupation certificate till date. If the occupation certificate was obtained, then why respondent could not share a copy of the same with the complainant at the first place when the respondent sent intimation of possession. This amounts to suspicion on the activities of the respondent. The complainant same day i.e., on 30.07.2020 sent an email to the respondent and expressed his willingness to discuss the statement and he found discrepancies in the same.

15. That between 10.08.2020 to 09.10.2020 there were number of emails sent to the respondent for requesting clarification on account statements shared with him but the respondent instead of resolving the matter with the complainant again and again kept sending reminders with sole purpose to

A

extract money without discussing the account statement which clearly showed discrepancy.

16. That at this point of time during the ongoing pandemic where people have lost their jobs, are facing salary cuts, etc, the respondent did not give heed to any single request made by the complainant to discuss the account statement he has received instead the focus of the respondent was only to extract money from the complainant despite the tower in which his unit is allotted was not ready for possession as well as was not in condition to live in and continued serving demand notices of Rs.53,47,262.72/-. It was brought to the shock and dismay of the complainant when on 11.12.2020, he received a pre-termination letter from the respondent in which it was mentioned that if the pending due is not paid then the allotment of the unit will be terminated.

17. That further on 16.12.2020 the complainant sent an email once again citing the request for meeting or discussion on the account statement and status of the possession of the unit and on 17.12.2020, for the first time the respondent responded to the said email and assured that the complainant's requests will be dealt at highest priority but post remittance of the dues from his side. That the respondent erroneously and putting itself at the dominant position issued an intimation of termination letter on 12.04.2021 to the complainant where again an amount of Rs.53,44,678.34/- was demanded otherwise they would enforce the termination of the unit.

18. That it is pertinent to mention here that after realizing that the Respondent is intentionally and mischievously avoiding to hear the grievance of the complainant regarding the major breach of terms and conditions of the buyer's agreement for Sale dated 19.06.2019, the complainant sent numerous emails citing the said mentioned issues and

ra

requested the respondent to finally cancel the allotment and refund the deposited amount along with interest.

19. Thus, the complainant was left with no other option but to file the present complaint seeking refund of the entire amount paid against allotment of the unit.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire amount along with interest.
- ii. Direct the respondent not to charge anything which is not the part of the allotment letter and agreement respectively till the present complaint is not decided.
- iii. Direct the respondent not to sell the unit in dispute to the third party during the pendency of the present complaint.
- iv. Restrain the respondent from raising any fresh demand and any liability on the complainant.
- v. Direct the respondent to pay compensation of Rs. 70,000/- as litigation expenses.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

21. That the complainant being interested in the project of the respondent applied for provisional allotment of a residential unit no. E071 on 07th Floor in Tower "E" revised as "Serene" admeasuring super area 930 sq. ft. and carpet area 535.33 sq. ft. along with usage of 1 covered car parking ("Unit") vide an application dated 21.01.2019, subsequently received the allotment

of the unit vide an allotment letter dated 05.02.2019 and consequently an agreement for sale was executed between the parties on 19.06.2019. As per clause 5 of the agreement, the due date of completion of the project was on 31.05.2020.

22. That the respondent builder had always acted in utmost *bonafide*. That it must be categorically noted that the construction activities of the unit have been rightly completed. The occupancy certificate was attained on 24.07.2020. Thereafter, the respondent rightly offered the possession of the unit within two days of receiving the occupancy certificate, i.e., on 29.07.2020.

23. The furthermore, the complainant was obligated to make payments against the unit. The payment of the monies was required to be made as per the stages of payment agreed to in the payment plan. That moreover, it was the obligation of the complainant to make the payments against the unit.

24. That upon non-payment of monies, the complainant was served with a number of reminder letters for making the payment, however the complainant miserably failed in doing so. A list of the reminders is mentioned below:

S. No.	Reference Number	Letter Type	Date
1.	TPH/CLRD/0037	Payment Reminder Letter	18.08.2020
2.	TPH/CLRD/0037	Payment Reminder Letter	09.09.2020
3.	TPH/CLRD/0037	Payment Reminder Letter	06.10.2020

A

25. That the complainant cannot be allowed to take benefit of his own wrong. Upon non-payment, the complainant stood in the condition of default. After the complainant miserably failed in making the payments despite a number of reminders being served onto the complainant, the respondent had a right to cancel the allotment of the complainant.

26. That the respondent served the complainant with a pre-termination letter dated 11.12.2020. However, the requests for payment of monies against the unit fell on deaf ears of the complainant and upon the repeated and continuous breach of the agreement, the unit was terminated vide letter dated 12.04.2021.

27. That as is evident from the complete facts and circumstances, reiterated hereinabove, the respondent has always maintained exemplary conduct and has completed all of its obligations in a timely manner. That the present complaint is a frivolous attempt of the complainant to extract monies out of the respondent. Accordingly, the present case is bound to be dismissed with costs in favor of the respondent.

28. 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:

29. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 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

30. 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.

31. 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.

32. 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."

33. 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:

F.I Direct the respondent to refund the entire amount along with interest.

34. The subject unit was allotted to the complainant on 05.02. 2019.. A buyer's agreement was executed with regard to the allotted unit between the parties on 19.06.2019 and the complainant started making payments against the allotted unit and paid a sum of Rs.12,80,127/- against total sale consideration of Rs. 64,00,632/-. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that

the respondent was not giving clarification with regard to the statement and payments made.

35. It is an admitted fact that the buyer's agreement was executed between the parties on 19.06.2019. So, the due date for completion of the project and handing over possession of the allotted unit is taken from clause 5 and the same comes to be 31.05.2020.

36. The respondent raised various demands on 18.08.2020, 09.09.2020, 06.10.2020, against the complainant for the amount due which were not cleared by him. So, the respondent sent pre termination letter on 11.12.2020 following which the respondent cancelled the unit of the complainant on 12.04.2021.

37. The due date of completion of project expired on 31.05.2020. 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.

38. 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."

A

39. 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 after deducting 10% of the basic sale price from the date of cancellation of the unit i.e, 12.04.2021 till the date of refund along with interest @ 10.70 % per annum within a period of 90 days.

F.II Direct the respondent not to charge anything which is not the part of the allotment letter and agreement respectively till the present complaint is not decided.

F.III Direct the respondent not to sell the unit in dispute to the third party during the pendency of the present complaint.

A

F.IV Restrain the respondent from raising any fresh demand and any liability on the complainant.

40. After dealing with relief No. 1, the aforesaid relief sought by the complainant-allottee became redundant. Hence, no direction to this effect.

F.V Direct the respondent to pay compensation of Rs. 70,000/- as litigation expenses.

41. The the complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- ra*
- i) The respondent-promoter is directed to refund the amount of Rs. 12,80,127/- 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. 12.04.2021 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.

43. Complaint stands disposed of.

44. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.05.2023

HARERA
GURUGRAM