

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

<b>Complaint no.</b>	<b>3170 of 2021</b>
<b>Date of filing of complaint</b>	<b>17.08.2021</b>
<b>First date of hearing</b>	<b>13.09.2019</b>
<b>Date of decision</b>	<b>16.05.2023</b>

1. Harsh Joneja 2. Khyati Joneja <b>R/O:</b> 221, Deed Plaza Complex, Opp. Civil Court, Gurugram	<b>Complainants</b>
<b>Versus</b>	
Haamid Real Estates Private Limited <b>Regd. Office:</b> The Masterpiece, Sector 54, Golf Course Road, Gurugram	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sanjeev Sharma (Advocate)	<b>Complainant</b>
Sh. Harshit Batra (Advocate)	<b>Respondent</b>

**ORDER**

- 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. N.	Particulars	Details	
1.	Name of the project	"The Peaceful Homes", Sector 70A, Gurgaon	
2.	Nature of project	Group Housing Colony	
3.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.05.2024	Haamid Real Estates Pvt. Ltd.
4.	Name of licensee	73 of 2013 dated 30.07.2013 valid upto 09.07.2019	
5.	Licensed Area	27.163 acres	
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019	
7.	Valid till	Valid upto 31.12.2019	

8.	Area	8.38 acres
9.	Unit no.	B 071 (Annexure 1 at page 16 of the complaint)
10.	Unit admeasuring	2150 sq. ft. (Annexure 1 page no. 16 of the complaint)
11.	Date of allotment letter	19.05.2014 (Annexure 1 page no. 16 of the complaint)
12.	Date of execution of agreement for sale	Not executed
13.	Application form	14.03.2013
14.	Possession clause	<p><b>35.</b></p> <p>"The company endeavours to hand over the possession of the Unit to the applicant within a period of <b>36 (Thirty-Six) months from the date of commencement of construction of the project</b>, which shall mean the date of commencement of the excavation work at the project site and this date shall be duly communicated to the Allottee ("commitment period"). The Allottee further agrees and understands that the Company shall <b>additionally be entitled to a period of 180 days (grac period) , after the expiry of the said Commitment period</b> to allow for any contingencies or delays in obtaining occupation certificate of the project from the concerned Authorities/ Departments</p>
15.	Due date of possession	25.04.2017

		(Taken from the date of excavation i.e 25.04.2014 provided by the project details)
14.	Total sale consideration	Rs. 1,82,14,850/- (Annexure R-11 page 73 of the reply of account statement)
15.	Amount paid by the complainants	Rs. 50,30,000/- (As alleged by complainant )
16.	Occupation certificate	29.10.2019 (Annexure r-5 page 61 of reply)
18.	Offer of Possession	05.11.2019 (Annexure R-6 page 63 of reply)
19.	Surrender by complainant	26.11.2019 (Page 25 of complaint)

**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 complainants coming to know about the same booked a unit for a total sale consideration of Rs. 1,82,14,850/-. The complainants had paid an amount of Rs. 50,30,000/- as per the payment plan scheme wherein 30% amount had to be paid initially and remaining 70% was to be paid at the time of possession. The complainants received the allotment letter for their unit no. A-083, Tower-A, 8<sup>th</sup> floor on 11.12.2013. It is pertinent to note that the complainants, are children of a senior citizen who is retired from the services of Bharat Heavy Electricals Ltd. (BHEL) as a government undertaking employee government.

4. That it is again pertinent to note that a friend/ erstwhile associate of Mr. Arun Joneja father of the complainants, called Mr. Satinder Singh Sondhi was also attracted by the lucrative idea of the respondent and got unit No. A-0803 and C-032 booked in the name of Satinder Singh Sondhi, whose complaint is also filed before the forum and pending before the Adjudicating Officer.
5. The complainants of the present complaint received an allotment letter on 19.05.2014. No buyer's agreement is executed between the parties. The possession clause is taken from clause 36 of the application form and the same was to be handed over within period of 36 months from the date of commencement of construction of the project .
6. That the complainants along with Mr. S.S Sondhi, visited the site to check on the construction progress but the complainants always returned back in vain seeing the on-going construction was miserably halted by the respondent.
7. That when the possession of the unit in question was not handed over to the complainants by the respondent bearing unit no. B-071 the complainants sent a cancellation/surrender request on 26.11.2019 to the respondent seeking refund of the amount which was paid by the complainants in lieu of the unit booked with the respondent. The reasons behind sending the said letter was that firstly, there was no construction taking place on the project land despite payment of the requisite amount by the complainants on time and secondly, the complainants had lost all the faith in the respondent and therefore, the complainants wanted to secure their hard earned monies which was illegally extorted by the respondent. Thirdly and most importantly the father of complainants Mr. Arun Joneja who booked the flat in the name

of his children got retired from his job on 24-01-2013 and left with no money to pay the builder after such an excessive delay of three years.

8. The complainants again visited the project site 19.11.2019, wherein the complainants had noticed various irregularities in the construction which was duly informed to the officials of the respondent in written on 26.11.2019 by which the complainants had sought for refund with interest for the Unit No. B-071 after waiting for 6 long years wish hope of offer of possession. The reminder to provide refund with interest was again sent by the complainant to respondent on 10.02.2020.
9. That the respondent sent the offer of possession along with a demand letter without adding the delay possession charges for the unit no. B-071 and requested to comply with taking possession formalities on 05.11.2019.
10. That yet again, the respondent played another fraud with the complainants wherein the respondent had raised the issue of termination of the allotment of the unit no. B-071 by forfeiting the amount which was paid by the complainants.
11. That the complainants came to know that the units nos. A-803 and C-032 which were allotted to Mr. S.S Sondhi the colleague of the father of complainants, were also facing the same harassment from the respondent and therefore, the complainants and Mr. S.S Sondhi decided to meet the CRM team of the respondent company to settle the matter without the loss of the money which was paid by the complainants to the respondent.
12. That meanwhile when the negotiations were taking place between the complainants and the CRM team of the respondent, the complainants

received a letter dated 15.07.2020 from the respondent containing termination of units which were allotted to the complainants on the ground that the demand requests which were made by the respondent between February 2020 to May 2020 were not timely obliged by the complainants. The complete fraud and illegality can be seen from the behaviour of the respondent wherein during the high COVID-19 situation when there was no means to even go out of the house, the respondent was demanding money from the complainant neglecting all the delay the respondent undertaken in handing over the possession of the unit.

13. That after the termination incident, the complainants along with Mr. Mr. S.S Sondhi, visited the CRM team of the respondent requesting to find a solution so that the unit retains with the complainants and therefore, the CRM team suggested a merger option by retaining one bigger unit i.e A083. Rest of the two unit will merge into this unit ,wherein the complainants along with Mr. S.S Sondhi would be the joint owner of the this unit which will be retained and there will lie no claim , interest, title over the merged two units which were allotted earlier, to which the complainants and Mr. S.S Sondhi agreed in order not to lose their hard earned money and to get out of the trap of the respondent.
14. That a fresh payment plan was executed to the complainants and Mr. Mr. S.S Sondhi wherein unit No. A-083 was re-allotted/ retained to them and the complainants and Mr. Mr. S.S Sondhi were directed to pay an amount of Rs. 21,45,000/- and Rs. 43,55,000/- respectively towards the freshly allotted/ retained unit. Also, the respondent emailed on 14.08.2020 to the complainants that the unit nos. C-032 and B-071 have been cancelled and there shall lie no claim, interest, title, benefit on the said

two units thereupon. That the freshly allotted unit admeasured 2475 sq. ft. with a basic sale price of Rs. 7300 per sq. ft., which was much higher from the market value but the complainants had no option but to agree along with further payment of Rs. 65,00,000/- over and above from the already paid amount of Rs. 94,87,406/- by Mr. S.S Sondhi a complainants had paid Rs. 50,27,532/-. The cost to complainant will be 2,10,14938/- whereas company its selling it at Rs 7200/- per Sq ft all including with commission (total cost of Flat Rs 1,78,00,000/-)

15. That the complainant enquired about the encashment of the given cheques of balance payment from the CRM team, came to know that the above said unit was already sold by the company malafidely to get the full payment from the market. This clearly show the intention of the respondent to further trap the byer for their ultra-motive benefits.
16. That after the third proposal was given for shifting to commercial project, the respondent informed that the respondent will have to forfeit the 30% of the previous amount paid and the remaining shall be adjusted towards the fresh payment plan.
17. That the complainant has many times approached the respondent-builder to know about the possession but the respondent- builder never gave any concrete reply leading to filing this complaint seeking refund of the deposited amount along with other relief.

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

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

- i. Direct the respondent to refund the complainants an amount of Rs. 50,30,000/-

**D. Reply by respondent:**



19. That the complainants being interested in the real estate development of the respondent, known under the name and style of "The Peaceful Homes" located at Sector 70A, Gurgaon, Haryana applied for allotment of a unit vide an Application form in March 2013 under the construction linked plan.
20. That at the outset, it is pertinent to note that the complainant's father, Mr. Arun Joneja had a unit no. C-082 in the project of the respondent and further requested vide letter dated 18.03.2014 to cancel the unit no. C-082 due to other financial commitments and adjust the amount of Rs. 20,96,075 paid for the said unit against the allotment of the complainant. That thereafter, on 19.03.2014, the complainants wrote a letter to the respondent with a request to transfer the funds from their father's unit to their allotment and to change/modify the payment plan of their allotment from Construction Linked Plan to Possession Linked Plan.
21. That the request of the complainants was accepted and accordingly, the complainants were allotted a 3 BHK flat no. B071, admeasuring super Area 2150 sq. ft. located on 7<sup>th</sup> Floor in Tower B vide an allotment letter dated 19.05.2014 on a possession linked plan.
22. That thereafter, the complainants were sent a copy of the buyer's agreement, to be executed between the parties on 20.12.2014, however, the due process was not followed by the complainants, and they miserably failed in execution of the agreement. Consequently, reminders for the execution of the documents pertaining to allotment was made to the complainants on 07.01.2015 and 09.01.2015, yet again, they continued to default on their obligation of timely execution of the agreement. The complainants were thereafter sent various reminders

dated 18.08.2017 and 15.03.2018 reminding them that the agreement has already been sent on 20.12.2014 and the same needs to be executed by the complainants, however, the requests of the respondent fell on the deaf ears of the complainants. That the respondent again sent two copies of the buyer's agreement to be executed by the complainants on 22.07.2019. That till date, the buyer's agreement has not been rightly executed by the complainants despite several requests.

23. That the respondent company had the right to cancel the allotment of the complainant upon failure of the complainant to execute the required documents in respect of the Unit in terms of clause 28 and 33 of the application form. Clause 28 of the Application form is reiterated hereunder:

*28. The Applicant hereby agrees to execute all the documents, including the Flat Buyers Agreement or any other agreement by whatsoever name called, as per the Company's format as and when called upon to do so. I, however, the Applicant fails to execute the said documents within the time line stipulated by the Company, then this Application, at the Company's discretion, may be treated as cancelled / terminated and would be liable for deductions and charges as defined in Clause 33 hereunder. Consequently, the Applicant shall be left with no right, interest or claim in the Unit and no compensation or interest or any charges shall be paid by the Company to the Applicant.*

24. That as per clause 35 of the Application form, the due date of delivery of possession was not absolute and subject to force majeure conditions. The subjective commitment period was 36 months from the date of

commencement of construction (excavation), which is 10.05.2014, thus, the subjective due date of possession turns out to be 25.04.2017. That no delay, due to the fault of the respondent has been caused. That the due date of delivery was subject to reasons beyond the control of the respondent.

25. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as per the payment plan categorically and mutually agreed between the parties.
26. That the occupation certificate was obtained on 29.10.2019 and the respondent rightfully offered possession of the said unit to the complainants on 05.11.2019.
27. That thereafter, the respondent also allotted the car parking space no. 140(LB) and 141(LB) at the lower basement vide letter dated 08.11.2019 and vide another letter dated 08.11.2019, the respondent requested the complainants for payment of stamp duty and registration charges for the unit, however, the complainants miserably failed in doing the same.

28. That it was the obligation of the complainants to make the payment towards their allotment of the unit, however, they miserably failed in doing so. The complainants have been in constant default in making the payments. The respondent has issued various demand letter, reminder letters for the amount due on offer of possession dated 29.11.2019 and 30.12.2019 and final reminder letter for the amount due on offer of possession dated 28.01.2020.
29. That it was categorically understood as per clause 33 of the application form that the due performance of the of all the obligations under the application form and more specifically the timely payment of the sale consideration and other applicable dues and charges under the payment plan agreed by the applicant shall be the essence of the application form. The clause further provided that in the event of failure, neglect, omission or ignorance of the applicant to perform its obligations or fulfil all the terms and conditions, the respondent may cancel the allotment of the unit.
30. That upon non-payment of monies and thus the non-adherence of the terms and conditions of the application form, the complainant was first served with a pre-termination letter dated 25.03.2020. However, the requests for payment of monies against the Unit fell on deaf ears of the complainant. That thereafter, upon non-payment of due amounts against the unit and the repeated and continuous breach of contractual obligation of making the due payment as per the payment plan agreed and signed by the complainant along with the application form, the unit was terminated vide letter dated 15.07.2020. The respondent had the right to terminate the unit in such circumstances as per clause 33 of the application form, as noted above.

31. All other averments were denied in toto.
32. 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:**

33. 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**

34. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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**

35. 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.

36. 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.
37. 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. 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."*

38. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding cancellation of the unit**

39. The respondent has taken a plea that the unit of the complainant was cancelled on 15.07.2020 after sending several demand letters and after offering the possession to the complainant on 05.11.2019. So, the complainant cannot claim any refund of the paid-up amount. Upon perusal of documents on record it is observed that the complainant seeks withdrawal from the project of the respondent vide surrender letter dated 26.11.2019 i.e before cancellation of allotted unit vide letter dated 15.07.2020. The complainant did not wish to continue in the project of the respondent and thus, clearly shown their intent by sending surrender letter dated 26.11.2019. The respondent cancelled the allotment of the complainants-allottees vide letter dated 15.07.2020. Thus, it means that the said cancellation was result of surrender by allottees only and hence, no plea in this regard can be taken that the complainants are not entitled to relief of refund on account that their unit was cancelled by it.

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

**G.I To direct the respondent to refund the complainants an amount of Rs.  
50,30,000/-**

***Validity of Cancellation***

40. In the instant case, the complainant booked a unit in respondent's project and the same can be ascertained by the fact that the respondent raised demands from the complainant. However, no BBA was executed between the parties. The due date of possession is calculated from the application form clause 35 calculating 36 months from the date of commencement of construction of the project and the same comes out to be 25.04.2017. It is pertinent to mention that the complainant has till now paid only Rs. 50,30,000/- out of sale consideration of Rs 1,82,14,850/-.
41. The occupation certificate of the project was obtained on 29.10.2019 and the possession was offered on 05.11.2019. Hence it becomes the case of delayed possession charges. But now the peculiar situation is that the complainants want to surrender the unit and they also sent a surrender letter on 26.11.2019.
42. The cancellation of any allotted unit by the respondent / builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately. Clause 33 specifies about the earnest money.
43. Keeping in view the above-mentioned facts and since the allottees requested for cancellation of the allotment on 26.11.2019 and even withdrew from the project by filing the complaint, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount of Rs. 50,30,000 after forfeiture of 10% of total sale consideration with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as



on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 26.11.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

44. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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.

**H. Directions of the Authority:**

45. 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 respondent-promoter is directed to refund the paid-up amount of Rs. 50,30,000/- to the complainant after deduction of 10% of sale consideration of the subject unit being earnest money




as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e., 26.11.2019 till the date of realization of amount.

- ii. A period of 90 days is given to the respondent-builder 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.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 16.05.2023**

**HARERA**  
**GURUGRAM**