

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

Complaint no. : 501 of 2022  
Date of complaint : 04.02.2022  
Date of decision : 27.04.2023

Amit Aggarwal S/o Praveen Kumar Aggarwal R/O: - W-6C/11, Western Avenue, Sainik Farm Deolikhas, South Delhi	<b>Complainant</b>
Versus	
M/s Countrywide Promoters Pvt. Ltd. Regd. Office at: - M-11, Middle circle, Connaught Circus, New Delhi-110001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sushil Yadav	Advocate for the complainant
Sh. Venkat Rao	Advocate for the respondent

**ORDER**

1. This 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 28 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 allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	102, Eden Estate, Sector 102, Gurugram, Haryana.
2.	Unit no.	C-544 (Page no. 26 of reply)
3.	Unit admeasuring	241.18 square yards (Page no. 26 of reply)
4.	Date of execution of agreement for sale	Not executed
5.	Possession clause	N-A
6.	Due date of delivery of possession	NA
7.	Allotment Letter	29.09.2021
8.	Total sale consideration	Rs. 2,22,57,970/- (As per page no. 27 of reply)



9.	Total amount paid by the complainant	Rs. 21,65,744/- (As alleged by the complainant)
10.	Offer of possession	Not offered
11	Termination Letter	10.02.2022 (Page no. 90 of reply)
	Plan	Development linked plan

#### B. Facts of the complaint

3. That the complainant booked a plot measuring 241.18 sq yds. in respondent's "102 EDEN ESTATE-II" project for total sale consideration is Rs 21,975,465 /-which includes BSP, car parking, IFMS, club membership, PLC etc. The complainant and his mother were part of the original application but later, he applied for name deletion of his mother as she is senior citizen and can't do any paperwork formalities at any offices etc.
4. That relying on the respondent and on the representations in the application form dated 28.09.2021 qua the project being fully financed and developer would facilitate the buyer to get the loan from the bank, the complainant applied for the loan from HDFC bank. Nowhere in the application form did respondent mention that there was no financing available as yet, which is the truth and fact. Had the complaint known that fact that there was no financing available, he wouldn't have gone ahead with the booking of the plot.

5. That on dated 10.10.2021, the complainant got a loan approval letter of Rs 1,60,000,00/- from the HDFC bank on his profile.
6. That when the complainant sent the demand letter of 2nd installment to the HDFC bank for disbursement for the amount to the respondent, the HDFC bank rejected his request stating that 102 EDEN ESTATE-II the project of the respondent is not approved for financing. (Copy of trail of email from HDFC is attached for reference). The complainant was shocked to know that the HDFC bank denied for the disbursement to the project in question. It is pertinent to mention here that the complainant had made this plot booking based on the information in respondents' application mentioning that it would facilitate financing. However, that information was fraudulent and incorrect & respondent was never in a position to facilitate any financing from any financing body or financing agencies, as the project was not approved for financing from any bank/institution.
7. That following that incident the complainant confronted the respondent and wrote an mail to it and personally visited its office but didn't get the satisfactory answer. The respondent admitted the fact that the financing of the project was not available yet and the same was under process.
8. That even after admitting the finance for this project was not approved, yet the respondent threatened the complainant to charge interest in case he did not pay the 2nd installment and that it would cancel the unit & forfeit the entire amount of Rs 2,165,790/- and

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would not return single penny to him and all correspondence and email exchanged between the complainant and the respondent.

9. The respondent's mala-fide and dishonest motives and intention to defraud the complainant are evident through the above-mentioned deeds and it also evident from the fact that the respondent/builder continued to ask for penal interest for delayed instalment payments without any financing available till 3rd instalment (asking additional 54 lakhs for 2nd and 3rd instalments) in addition to Rs. 21.65 lakhs and continued to harass him to pay interest and instalments creating mental duress and financial hardships to the complainant. Despite repeated requests and reminders over phone calls and personal visits by the complainant, the respondent failed to cooperate with him and refund his hard-earned money.

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

The complainant has sought following relief(s):

- Direct the respondents to refund the entire amount paid by the complainant along with prescribed rate of interest.
- To take Suo-Motto action against the respondent for misleading and misrepresentation the complainant and impose a heavy penalty on it for misleading statements on financing in the application form.

**C. Reply by the respondent**

10. It is submitted that the complainant has approached this Hon'ble Authority for redressal of his alleged grievances with unclean hands,

i.e., by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects.

11. That the complainant has paid only Rs. 21,65,790/- till date to the respondent. The total sales consideration of the unit (after adjustment of the discount of 1.32% offered to the complainant) as per the allotment letter was Rs. 2,19,75,465/-. The total amount paid by the complainant is merely 9.85% i.e. less than 10% of the total sale price.
12. That the respondent vide email dated 27.12.2021 intimated the complainant that IDBI Bank has approved the project and hence, loan can be availed from IDBI Bank.
13. That the complainant failed to clear her outstanding dues despite repeated reminders issued by the respondent on 16.12.2021 and 20.01.2022 respectively. In addition to the same, the complainant was also issued demand letter dated 05.01.2022 and 25.01.2022 reminding previous outstanding demands.
14. That it is humbly submitted that due to non-payment of outstanding dues by the complainant even after repeated reminders, the respondent as per clause 9.3 of the model agreement to sale and clause 18 and 19 of the application form had no option but to cancel the said booking vide termination letter dated 10.02.2022.
15. That after having lawfully terminating the unit, the amount paid by the complainant is less than the due deductions that can be made and hence, the present complaint for refund cannot be entertained as is devoid of merit.
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 the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents, oral as well as written submissions made by the parties.

**E. Jurisdiction of the authority**

18. 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**

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

20. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

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**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.

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.

**G. Findings on the relief sought by the complainant.**

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

21. Some of the admitted facts of the case are that the complainant along with his mother was allotted the subject unit vide letter dated 29.09.2021 for a total sale consideration of Rs. 2,22,57,970/-. Later on, made the name of Mrs. Rajni Aggarwal i.e., a co-allottee was deleted on a request made by her and the same was confirmed by the respondent vide its letter dated 18.11.2021. A sum of Rs. 21,65,714/- was paid against the allotted unit by the complainant. It is his case that he could not pay the remaining amount as he was to avail finance facility from the financial institution approved by the respondent. Though approval of loan from HDFC bank was accorded vide letter dated 10.12.2021 but later on he was informed on 31.12.2021 that since the project was not approved for financing as of now, so the amount of loan was not released. Though he took up the matter in this regard with the respondent but vide letter at page



43 of the complaint, he was informed that the process of getting the project approved from few banks such as HDFC and IDBI is in final stage. All the necessary documents have been provided to the respective bank's concerned department for releasing/providing the APF (approval of project finance) document. But despite that neither the loan was approved by any of the financial institution, nor he was able to arrange finance for payment of the amount due, ultimately leading to cancellation of the allotment vide letter dated 10.02.2022 and forfeiting the amount paid. It is pleaded by the complainant that though he paid a substantial amount against the allotted unit but could not pay the remaining amount due to non-sanction of loan by any of the financial institute on the ground of the project not being approved for financing. Though the respondent issued a number of reminders for payment of the installment due but none of the same contains any recital w.r.t. cancellation of the unit on the ground of non-payment of amount due and the amount already paid being forfeited. The complainant alleged that the cancellation of the unit by forfeiting the paid-up amount is illegal and is based on misrepresentation of facts and the complainant is entitled to receive that amount with interest.

22. But on the other hand, it is contented on behalf of respondent that despite issuance of reminders a number of times, the complainant failed to pay the amount due leading to cancellation of the allotment and forfeiting the paid-up amount. Secondly, as per the terms and condition of allotment and particularity contained under clause 16b & c, it was the responsibility of the loanee to get the amount sanctioned and the respondent cannot be held liable for non-



sanction of loan. The conditions under section 16(b) & (c) of application form provides as under:

*In case the Applicant(s) wants to avail of a loan facility from his employer or financing bodies to facilitate the purchase of the Plot applied for, the Developer shall facilitate the process subject to the following: (a) The terms of the financing agency shall exclusively be binding and applicable upon the Applicant(s) only; (b) The responsibility of getting the loan sanctioned and disbursed as per the Payment Plans shall rest exclusively on the Applicant(s); and (c) In the event of the loan not being sanctioned or the disbursement getting delayed, due to any reason whatsoever, the payment to the Developer, as per Payment Plan, shall be ensured by the Applicant(s), failing which, the Applicant(s) shall be governed by provisions contained in Clause 19 below*

23. Moreover, the project in question was approved for the purpose of financing by IDBI bank as evident from letter dated 27.12.2021 (annexure R-13). So, it shows that when the allottee failed to pay the amount due despite issuance of reminders, then the same led to cancellation of his allotment and forfeiture of the paid-up amount and the same is not liable to be set aside in any manner.
24. The factual matrix as detailed above shows that against the total sale consideration of Rs. 2,22,57,970/-, the complainant paid a sum of Rs. 21,65,744/- to the respondent against the allotment of the unit. Though as per term and condition of allotment contained in application form, the respondent was to facilitate the process of loan for the allotted unit but sub clause b and c of clause 16 absolves the developer from any responsibility for non-sanction of loan by any financial institution. So, it was for the complainant to raise funds for the purchase of allotted unit, and he cannot blame the respondent for non-sanction of loan to be paid against the allotted unit. Though it is contended on behalf of the complaint that the respondent misrepresented him at the time of allotment of the unit w.r.t the

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project being approved one for financing and availability of easy loans, but that version proved to be false when HDFC vide its email dated 29.11.2021 refused to finance the purchase of the unit in the project. A reference in this regard has been made to a number of emails from the complainant and their response by the respondent but after the allotment of the unit was made, the allottee paid less than 10% of the sale consideration and failed to pay the remaining dues despite issuance of reminders. So, vide letter 10.02.2022, the allotment of the unit was cancelled and the paid-up amount being less than 10% of the sale consideration was forfeited. So, now the complainant cannot challenge the termination of the allotment made on the ground of non-payment of amount due. Secondly, the complainant admittedly paid less than 10% of the sale consideration of the allotted unit. Though the respondent could not have raised demand against the allotted unit beyond 10% prior to the execution of buyer's agreement but that was also not done by the complainant as evident from the responses to the emails sent to him (emails dated 29.10.2021 18.11.2021 and 24.11.2021) So, keeping in view all these facts, the respondent was right in forfeiting the paid-up amount of the complainant on the ground of non-payment of amount due against the allotted unit. Thus, he is not entitled to seek refund of the amount paid with interest from the respondent.

**To take Suo-Motto action against the respondent for misleading and misrepresentation the complainant and impose a heavy penalty on it for misleading statements on financing in the application form**



25. Further, the complainant submitted in his written submission that the representation made in the application form dated 28.09.2021 is per se misleading and in blatant contravention of section 12 of the RERA Act, the project was not approved even a single financial institution and as such there was no question of availing any loan facility. This was a clear act of misrepresentation of trap honest and innocent homebuyers into believing that the project was duly approved, and payments could be made using the said financial facilities thereof. The authority is of view that section 12 of RERA Act is a punitive provision which makes it obligatory for the promoter to give compensation or refund, as the case maybe, to the buyer in case the promoter takes an advance or deposit on the basis of a false or misleading advertisement. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation. Hon'ble Supreme Court of India in civil appeal titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)**, has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

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**F. Directions of the Authority:**

26. Hence, in view of findings on the above-mentioned issues and discussion above, no direction is being issued for refund of the paid-up amount with interest. Although the complainant may approach Adjudicating Officer under section 71 of the Act for compensation for alleged misleading assurances and misrepresentation in violation of section 12 of the Act.
27. Matter stands disposed off.
28. File be consigned to the Registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated: 27.04.2023**