

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

Complaint no.	:	199 of 2021
Date of complaint:		13.01.2023
Date of decision	:	10.05.2023

Poonam Verma R/o: - S-95, Greater Kailash, New Delhi-110048.	Complainant
Versus	
Splendor Buildwell Private Limited Regd. Office at: Splendor forum, 5th floor, plot-3, Jasola district centre, new delhi-110025.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Ajay Kumar Proxy Counsel	Advocate for the complainant
Sh. Ravi Aggarwal	Advocate for the 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 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
	Name of the project	Splendor Spectrum One, Sector-58, Gurugram
1.	Unit no.	316, 3 rd floor, Tower-D (As per page no. 6 of promoter information)
2.	Unit admeasuring	1000sq. ft. and cover area 600 sq.ft. (As per page no. 6 of promoter information)
3.	Date of execution of agreement for sale	Not executed
4.	Allotment letter	21.11.2014
5.	Possession clause	xxiii Within a period of 4 years from the date of execution of the agreement subject to timely payment by the allottee
6.	Due date of delivery of possession	21.11.2018

		(calculated from the date of allotment letter as buyers agreement is not executed)
7.	Basic sale price	Rs. 54,50,000/- (As per page no. 6 of promoter information)
8.	Total amount paid by the complainant	Rs. 61,16,679/- (As per promoter information)
9.	Occupation certificate	06.09.2019 (Page no. 84 Of complaint)
10.	Offer of possession	Not on record
11	Legal notice by the complainant for refund	03.09.2020 (Page no. 41 of complaint)

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

3. That in December 2012 booked an office unit (approx. 1,000 Sq. ft.) in respondent's project "Spectrum One" for a total price of Rs. 59,11,000/-.
4. That during the passage of time through statement of account respondent informed the complainant a unit bearing unit no. SLL/SPCT/145 was allotted in the name of the complainant, however the complainant did not receive any formal communication from respondent.
5. That the complainant time and again insisted on signing a builder buyer agreement or agreement, however respondent, malafidely and fraudulently did not execute the same, neither respondent issued any other document in

respect thereof. Additionally, the respondent through its authorized agents constantly assured the complainant that there was nothing to worry about. However, Complainant not satisfied by such false assurances and contacted the respondent the allocation, signing of the Agreement and other documents. However, driven by greed and malicious intentions, respondent was always evasive and never gave any appropriate and straight answers.

6. It is pertinent to mention here that the complainant paid Rs. 61,16,679/- till date to the complainant. The complainant made payments from her lifetime of earning and savings solely based upon the aforesaid representation of respondent. She complied with her obligations of payments as and when demanded and parted with her hard- earned money.
7. That it is submitted that aggrieved with the aforesaid act / conduct of the respondent, the complainant sent a legal notice dated 03.09.2020 withdrawing herself from the project and also asked for the refund of the money paid, with interest and other damages.
8. That it is submitted that although pursuant to the complainant withdrawing from the project, as per the RERA Acts, Rules and terms registration certificate, the respondent ought to have refunded the principal, interest and paid damages, however respondent malafidely and with ulterior motive sent a communication dated 17.9.2020 under the heading / subject "recovery of the proportionate the dues and charges." with the huge sum of a demand of Rs. 38,43,715/-. Against the aforesaid communication the complainant through her lawyer got sent reply dated 26.09.2020. The reply was sent through the registered post as well as by email. It is pertinent to mention

here that against the reply dated 26.09.2020, respondent wrote a mail to the complainant's lawyer asking three weeks' time to respond to the complainant's reply dated 26.09.2020. It is submitted that aforesaid communication by email was nothing but creating further delay in refund.

9. That it is submitted that the complainant is entitled to refund of Rs 61,16,679/- i.e. the principle amount paid to Respondent. besides, the complainant is also entitled to interest on the aforesaid sum paid to the respondent, as per provisions of Rule 15 of Haryana Real Estate (Regulation & Development) Rules 2017. This interest to be paid from the date of the respective and each payment by the complainant to the respondent.

C. Relief sought by the complainant:

The complainant has sought following relief(s).

- i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
- ii. Direct the respondent to give Rs. 20,00,000/- as damages for mental and physical harassment and for fraudulent act of the respondent.
- iii. Direct the respondent to pay a sum of Rs. 2,50,000/- as cost of sending notices, litigation cost, fees paid to advocate, and other cost for filing this petition.

D. Reply by the respondents:

10. That in December 2012, the complainant booked an office unit approx. 1000 sq. ft. in the said project. The total Price of the said unit including basic sale price, EDC/IDC and other charges alongwith parking as per payment plan annexed with the allotment letter is Rs.78,02,250/-

excluding Service tax / GST, Labour cess as applicable for which demand letter have already been sent to the complainant as per said payment plan. Further, as per payment plan a sum of Rs.3,00,000/- is payable towards IFMS and asset replacement fund for which demand letter has already been sent to the complainant as per said payment plan.

11. That the complainant had failed to sign and return the allotment letter dated 21.11.2014, the space buyer agreement could not be executed between the parties. It is further stated that the complainant had defaulted/delayed in making payment of every installments since beginning.
12. That it is pertinent to mention here that the said project was completed in Nov. 2018 and immediately after completion, the respondent applied for issuance of occupancy certificate for the said project and the Regulatory Authority had granted the occupancy certificate on 06.09.2019. After receipt of the occupancy certificate, the respondent through its representative informed the complainant about the same and requested them to make payment of balance outstanding amounts and get the conveyance deed registered for the said unit and take possession of the said unit, upon which the complainant's husband and representative stated that they had made the said booking as speculative investor to make profit out of it and they were never interested in taking possession of the said unit. Their only interest in booking the said unit was to earn profit out of it and not to take

possession. As such she refused to make any further payment and get the conveyance deed registered. The respondent kept on persuading the complainant to take possession, but she was adamant not to take possession as a result after waiting for a long period in convincing the complainant and after resumption of normal working of respondent's office post COVID pandemic period, the respondent issued Letter dated 20.08.2020 to the complainant to make payment of the balance outstanding amount. In the said letter the respondent also reminded the complainant that the allotment letter dated 21 Nov 2014 has still not been signed and returned to the respondent.

13. The respondent was shocked and surprised to receive the legal notice dated 03.09.2020 from the complainant post issuance of the said letter by the respondent, the contents of which are totally out of place, baseless.
14. All other averments made in the complaint are denied in toto.
15. 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 these undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority

16. The authority has completed territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction



17. 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.

D.II Subject-matter jurisdiction

18. 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) 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.

19. 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, 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.* "SCC Online SC 1044 decided on 11.11.2021 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."

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

E. Findings on the relief sought by the complainant.

- E.1 Direct the respondents to return sale consideration received by them from the complainant till date along with prescribed interest.**

22. The complainant was allotted unit 316, 3rd floor, Tower-D in the project "Splender spectrum one" by the respondent builder for a basic consideration of Rs. 54,50,000/- and she paid a sum of Rs. 61,16,679/-. The respondent builder has obtained occupation certificate on 06.09.2019. The complainant on 03.09.2020, sent legal notice to the respondent builder for refund. In reply of letter dated 03.09.2020, the respondent-builder stated that since the complainant has not paid the due amount for which demand letter dated 20.08.2020 was sent to the complainant, the respondent sent a reminder to the said demand letter.
23. The complainant intends to withdraw from the project after the occupation certificate/completion certificate of the project where the unit is situated was obtained on 06.09.2019 by the respondent-promoter. It was also incumbent upon the allottee as per section 19(10) of the Act of 2016 to take possession of the unit within a period of two months of the occupation certificate after clearing the outstanding dues. In view of the above, the complainant is not found entitled to sought relief under section 18(1) of the Act of 2016. The issue w.r.t. deduction of earnest money arose before the hon'ble Apex Court of the land in case of MaulaBux V/s Union of India (1970)1 SCR 928 and Sirdar KB Ramchandra Raj Urs V/s Sarah C Urs (2015) 4SCC 136 and followed by NCDRC in cases of Ramesh Malhotra V/s EMAAR MGF Land Limited and Mr. Saurav Sanyal V/s M/s IREO Pvt. Ltd. decided on 12.04.2022 and wherein it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of "earnest money".

24. Similarly, Regulation 11 of the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

"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"

25. In view of aforesaid circumstances, the respondent is directed to refund the amount deposited by the complainant against the unit after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e. 03.09.2020 till the date of realization of payment as surrender of the allotted unit after the Act of 2016.

26. **Admissibility of refund along with prescribed rate of interest:** The allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at



prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70 %**.
29. In view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @10.70 % p.a. on the refundable amount, from the date of surrender i.e.; 03.09.2020 till the date of realization



Compensation towards mental torture, harassment and litigation cost.

30. The complainant under the aforesaid relief is seeking relief w.r.t 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. (Supra), 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

F. Directions of the authority

31. 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 function entrusted to the authority under section 34(f):

- i. The respondent-promoter is directed to refund the amount i.e., Rs. 61,16,679/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.70 % p.a. on the refundable amount, from the date of

surrender i.e., 03.09.2020 till the date of realization of payment after the Act of 2016.

- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
32. Complaint stands disposed of.
 33. File be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2023


(Ashok Sangwan)
Member