

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

Date of decision: 18.10.2023

Mrs. Manisha Fatwani

Address: - CP-30, Pitampura, Delhi-110034

Complainant

Versus

M/S Breez Builders and Developers Private Limited

Address: - P 903-905, 9th Floor, C Wing JMD Megapolis
Sector 48, Sohna Road Gurgaon

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Krishna Sharma

Advocate for the complainant

Ms. Sonali Karwasra and Shri Madhu Kant

Advocate for the respondent

ORDER

1. The present complaint dated 08.06.2022 has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 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 allottee as per the agreement for sale executed inter se.

A. Project and unit related details

A. Project and unit related details

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

S.N.	Particulars	Details
1.	Name and location of the project	"Global Heights", Sec-33, Sohna, Gurgaon
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	67 of 2014 dated 28.08.2017 valid up to 18.04.2020 (area 9.95 acre)
4.	RERA Registered/ not registered	130 of 2017 dated 21.02.2019 valid up to 28.02.2020
5.	Unit no.	903, 9 th floor, Tower 3 [as per BBA on page 61 of reply]
6.	Unit admeasuring area	598 sq. ft. of carpet area 99 sq. ft. balcony area [page no. 44 of reply]
7.	Application form dated	25.09.2014 (Page 21 of reply)
8.	Allotment letter	27.08.2015 [page 61 of reply]
9.	Date of builder buyer agreement	12.01.2016 (*But not duly executed) [page 55 of reply]



10.	Possession clause 6	6.1 Subject to the grant of occupation certificate by the competent governmental authority and other situation beyond the reasonable control of the Company and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer's Agreement, the Company shall offer to handover the possession of the Apartment within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later.
11.	Date of approval of building plan	05.09.2014 [as per BBA on page 44 of reply]
12.	Date of environment clearance	19.02.2016 (As stated by the respondent on page 2 of its submission)
13.	Due date of possession	19.02.2020
14.	Total sale consideration	Rs 22,02,300/- [as per BBA on page 23 of reply]
15.	Total amount paid by the complainant	Rs 13,39,692/- [as alleged by complainant on page 11 of complaint] Rs.13,20,421/-

		(as per demand letter dated 20.08.2018 on page 68 of reply)
16.	Demand Letter- Final Demand Letter-	01.07.2016, 01.11.2016, 15.04.2017 01.11.2017, 01.04.2018, 20.10.2018 06.05.2019, 15.07.2018, 06.05.2019
17	Cancellation on-	22.05.2019 (As stated by the respondent on page 3 of its submission)
18	Occupation certificate dated	16.06.2020 (Page 75 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- a) That in Pursuant to the elaborate advertisements, assurances, representations and promises made by Respondent in the brochure circulated by them about the timely completion of a premium Project, named as "Global Heights" under Affordable Housing Policy 2013 of Haryana Government, situated at Sector 33, Sohna, District Gurugram, with good facilities and believing the same to be correct and true, the Complainant considered purchasing a Unit in the above-mentioned project of the Respondent. That the Complainant vide application dated 25.09.2014, applied for the unit. The Respondent vide its letter informed the Complainant that her application is accepted and the unit is being confirmed with all the compliances of the Affordable Housing Policy of Haryana Government.



- b) That after the formal procedure of Draw of Lots on 27.08.2015 for allocation of the Units, the Complainant was allocated Flat no. T-3-903 in Tower-3 having carpet area of 598 sq. ft. & Balcony area of 99 sq. ft. on 9th Floor together with the two-wheeler parking site in the project.
- c) That the Complainant timely paid all the installment as per the payment plan. The Complainant has paid a total amount of Rs. 13,39,692.00/- till date. But when Complainant continuously asked the Respondent for execution of the Builder-Buyer Agreement before the further payments made to them, the Respondent made excuses for the execution of the agreement or keep postponing the dates. It is pertinent to mention that no Builder-Buyer Agreement has been executed till date between the Complainant and Respondent, which is contrary to the laws and regulations of RERA.
- d) That thereafter, the Respondent on various occasion demanded the money from the Complainant to which Complainant keep denying because of the fact that Respondent never agreed on signing the Builder-Buyer Agreement. The Complainant was in doubt from the conducts of the Respondent about the possession of the Flat allotted. That it was very un-professional on the part of the Respondent where on one side it never came forward to execute the Builder-Buyer Agreement which ultimately decided rights and duties of the parties but on the other hand keep calling out the demand letters in the name of the Complainant.
- e) That, by the act and conduct of the Respondent, it's been unambiguously lucid that the Respondent from the very beginning



had malafide intention to cheat and defraud the Complainant. That, the Respondent is not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless consumers but also for mental harassment to the Complainant by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.

- f) That the Respondent had failed to keep pace with development of the project as the construction of the said project since the date of start of excavation was going at snail pace and the said project is far from completion and the same will not be able to deliver the possession within the stipulated time. It is abundantly clear that the Respondent has played a fraud upon the Complainant by taking their money and with no response thereafter, and has cheated them fraudulently and dishonestly with a false promise to give timely possession of the Unit.
- g) That the Respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The Complainant has suffered on account of deficiency in service by the Respondent and as such the Respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- h) That the present Complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the Respondent. The modus operandi adopted by the Respondent, from the Respondent's point of view may be unique and innovative but from the Allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the Allottee by taking his hard earned money with no intention to give the possession of the Unit.
- i) The Complainant after losing all the hope from the Respondent Company, after being mentally tortured and also losing considerable amount, is constrained to approach this Authority for redressal of his grievance.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
- Direct the respondent to refund the total paid-up amount with interest as per RERA Act.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
- That as per the Affordable Housing Policy, 2013 of the Haryana Government all the projects registered under the said Policy should be necessarily completed within 4 years from approval of building plan or

grant of environmental clearance, whichever is later. It is submitted that the Respondent herein received environmental clearance for the said project on 19.02.2016 and since then the project was completed before time and the Occupation certificate was applied for by the Respondent herein on 12.02.2020. Subsequently, the issuance of the occupation certificate was delayed on account of the outbreak of the COVID 19 pandemic. However, taking into account the relaxation extended to the developers, the project was issued occupation certificate well within the time frame i.e. on 16.06.2020.

- b) That Respondent has also granted the possession of the allotted flats in the said project to the most of the allottees regardless of the COVID-19 pandemic persisting since March 2020. Furthermore, most of the units in the said project have already been occupied and as such the claim of the Complainant pertaining to incompleteness of the project is untenable, vexatious, utterly false and friable. It is submitted that the Complainant herein has sought reliefs) under Section 18 of the RERA Act, 2016 but the said section shall not be applicable to the true facts and circumstances of the present case as such this complaint deserves to be dismissed.
- c) It is submitted that Section 18 of the RERA Act, 2016 mandates return of amount and compensation only under circumstances where there is apparent failure of the promoter/builder in completing or handing over the possession of an apartment, plot or building. In the present complaint, the Complainant has failed to substantiate apparent failure of the Respondent in delivering the possession of the Unit allotted to her, which now stands cancelled vide newspaper publication dated 22.05.2019, in the said affordable housing project "Global Heights". The



Complainant has failed to put anything on record to show the intentional reluctance of the Respondent in giving the possession of the unit as well as has failed to show delay on part of the Respondent in completing the said project. The allottee i.e., the Complainant had never challenged the cancellation of the allotment from the project, and it is only now through this complaint that the Complainant is making a frivolous complaint which is not maintainable. Regardless, the said project "Global Heights" has already been completed by the Respondent and the possession of the units allotted have also been handed over to most of the buyers and the unit previously allotted to the complainant stands cancelled after following the procedure established under the Affordable housing policy. Thus, it is not due to noncompliance on part of the Respondent but due to reoccurring defaults in payments made by Complainant and her failure to execute Builder Buyer Agreement that the possession of the Unit has not been given to the Complainant and instead her allotment stands cancelled. As such, her claim for compensation under section 18 of the RERA Act, 2016 for refund is liable to be dismissed as the same is not maintainable under law.

- d) That the Complainant has no cause of action or entitlement to institute this false and frivolous complaint against the Respondent. It is submitted that despite repeated reminders/demand letters the Complainant herein had failed to pay the remaining installments of the total consideration price of the Unit previously allotted to her. Despite such default, the Respondent refrained from canceling the unit allotted to her, for a long period of time, taking into consideration the assurances that the Complainant kept on giving Respondent regarding her intent to take

corrective actions and make timely payments thereon. Despite such assurances, the Complainant failed to pay remaining outstanding amount and even stopped responding to the correspondences sent by the Respondent and as such the respondent was constrained to initiate the cancellation procedure and the unit previously allotted to the Complainant herein stands cancelled vide newspaper publication dated 22.05.2019. It is pertinent to mention that the Complainant's husband was handed over the Builder Buyer Agreement dated 16.09.2017 upon his request that he would only get it signed after reading it thoroughly. Upon such request, the Respondent handed over the Builder Buyer Agreement dated 16.09.2017 to the husband of the complainant and he assured that he would bring the complainant for the execution of the same.

- e) That the complainant did not sign the builder buyer agreement and only made a payment towards the outstanding installments of the allotted unit on 16.11.2017. Since, then the Complainant has time and again requested for more time citing her financial difficulties and inability to pay the remaining amount. Despite the delay, the Respondent has on humanitarian grounds accommodated the requests and demands of the Complainant and obliged to give more time to the Complainant. Additionally, all the reminders and requests made for execution of Builder Buyer Agreement and to make remaining payments were ignored by the Complainant. Furthermore, the Complainant also failed to execute the Builder Buyer Agreement despite repeated requests from the Respondent owing to which the respondent was left with no other option but to cancel the unit previously allotted to the Complainant in



accordance with the procedure established under Affordable Housing Policy. It is humbly submitted that the Respondent cannot be made unconditionally liable for executing the Builder Buyer Agreement.

- f) It is submitted that the Respondent cannot be held liable for non-execution of the Builder Buyer Agreement when the delay in the execution of the same is attributed to the allottee/buyer. It is submitted that Complainant was aware from the first instance that the allotment of the said unit is contingent upon their intent and participation in executing various legal documents as prescribed under the law. The application for allotment of a residential apartment in Global Heights as submitted by the Complainant clearly provided that the Complainant/allottee/buyer understood that the proposed allotment shall be subject to timely execution by her of various documents including the Apartment Buyer's Agreement, provided by M/s Breez Builders & Developers Pvt. Ltd., and also subject to compliance with the broad and indicative terms and conditions set out hereinafter and such other terms and conditions as may be stipulated under the Apartment Buyer's Agreement. Thus, the Complainant had failed to execute the said Builder Buyer/Apartment Buyer's Agreement despite being aware of the same as such the Respondent cannot be held liable for the defaults attributable to the Complainant's failure and non-participation in execution of Builder Buyer's Agreement.
- g) Therefore, the Complainant herein is wrongfully claiming compensation of interest or refund under Section 18 of the RERA Act, 2016 when clearly the complainant is not an allottee of the unit as the same stands cancelled in accordance with the procedure established by Affordable

Housing Policy vide newspaper publication dated 22.05.2019 and further it is due to the actions/omissions attributable to the Complainant that the said unit previously allotted to the Complainant now stands cancelled in the project "Global Heights" even when most of the allottees/buyers have received the same.

7. 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 based on these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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.

11. 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.
12. 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. 2021-2022(1) RCR (Civil), 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** and 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."

13. 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 relief sought by the complainants.

F.I Direct the respondent to refund the total paid-up amount with interest as per RERA Act.

14. The complainant was allotted a unit no. 903 on 9th floor, in tower/block- 3, in the project ""Global Heights", Sec-33 by the respondent/builder for a sale consideration of Rs. 22,02,300/- under the Affordable Group Housing Policy 2013 vide offer of allotment letter dated 27.08.2015. No buyer's agreement was executed between the parties. The possession of the unit was to be offered with 4 years from approval of building plans (05.09.2014) or from the date of environment clearance (19.02.2016) and whichever is later. The due date of possession was calculated from date of approval of environment clearance i.e., 19.02.2016, as per policy, of 2013

which comes out to be 19.02.2020. The complainant paid a sum of Rs. 13,20,421/- out of the sale consideration of Rs. 22,02,300/-. The complainant did not pay the remaining amount as per the demands of the respondent, which led to issuance of notice of cancellation by the respondent/builder on 22.05.2019. Now, the issued for consideration arises as to whether direction of the respondent in cancelling the allotment of the allotted unit was made as per the provisions of the policy of 2013 or not.

15. Clause 5(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, **a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice.** If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within **15 days from the date of publication of such notice, failing which allotment may be cancelled.** In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

16. The respondent company has issued reminders letter dated 01.07.2016, 01.11.2016, 15.04.2017, 01.11.2017, 01.04.2018, 20.10.2018, 06.05.2019, 15.07.2018 and 06.05.2019. Thereafter, on 22.05.2019, the respondent published a list of defaulters of payments in the daily Hindi newspaper "Hari Bhumi Newspaper" New Delhi. Finally, the cancellation letter was issued by the respondent on 22.05.2019. The respondent cancelled the

unit of the complainant with adequate notices and as per the Affordable Housing Policy, 2013. Thus, the cancellation of unit is valid.

17. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant-allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs. 25,000/- as per clause 5 (i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 22.05.2019 till the actual realization of the amount.

G. Directions of the authority

18. 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 is directed refund the paid-up amount of Rs. 13,20,421/- after deduction of Rs. 25000/- as per clause 5(iii)(I) of the Policy 2013 of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum as prescribed under rule 15 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 from the date of cancellation of allotment till the actual realization of the amount.

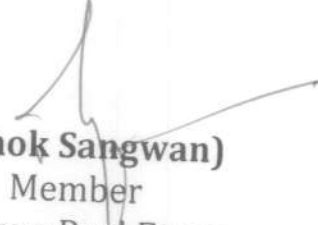
ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to registry.

Dated: 18.10.2023




(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM