



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

Complaint no. : 1266 of 2022
Date of filing : 28.03.2022
Order Reserve On : 07.07.2023
Order Pronounced On: 27.10.2023

Mr. Sandeep Singh Bhatia
R/o: NS-2111, DLF Phase-II, Gurugram

Complainant

Versus

Haryana Urban Development Authority
Office: Sector 14, Gurugram- 122001, Haryana.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sanjeev Dhingra
Sh. B.P Gaur

**Complainant
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 provisions 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Commercial Units in HUDA Sector" at Sector 23-23A, Gurgaon, Haryana.
2.	Nature of the project	Commercial
3.	RERA Registered/ not registered	Not Registered
4.	Unit no.	Built up booth -69 and 70 (page no. 40 and 44 of complaint)
5.	Unit area admeasuring	22.69 sq. mtr. (page no. 40 and 44 of complaint)
6.	Date of allotment Letter	14.01.2013 (page no. 40 and 44 of complaint) Allotment letter annexed but not signed
7.	Letters by complainant for possession	04.04.2013, 16.05.2013, 22.07.2013 (page no. 31-34 of complaint)
8.	Letter by complainant for refund	31.05.2015 (page no. 35 of complaint)
9.	Speaking order by HUDA	29.09.2016 (Page no. 39 of complaint)
10.	Possession clause	6. The possession of the site is hereby offered with this allotment. (page no. 41 of complaint)
11.	Due date of possession	14.01.2013 Note: Possession is too offered with allotment letter.
12.	Total sale consideration	Booth 69- Rs. 82,40,000/- (page no. 40 of complaint)



		Booth 70- Rs. 82,50,000/- (page no. 44 of complaint)
13.	Amount paid by the complainant	Rs. 41,22,500/-

B. Facts of the complaint

3. The complainant has made the following submissions:
4. That on 11.01.2013 the complainant participated in an auction held by respondent i.e. Haryana Urban Development Authority (respondent) at open air theatre, sector-29, Gurgaon, wherein the complainant bid for two booths bearing 69 and 70 at Sector 23/23A, Gurugram, alleged to be build-up, for Rs. 82.40 Lacs and Rs. 82.50 Lacs respectively.
5. That on 11.01.2013, the respondent demanded a sum of Rs. 8,72,000/- from complainant. The refundable earnest money against booth no. 69 alleged to be build-up and ready for occupation and immediate use. The said amount was absolutely refundable, if the "Approval Committee" did not give its final approval and Sanction in writing. The member of "Approval Committee" was District Town Planner, Gurgaon, XEN i.e. Executive Engineer, H.U.D.A., Gurgaon, Representative of Deputy Commissioner/D.C., Gurgaon, Estate Officer, H.U.D.A., Gurgaon, Administrator, H.U.D.A. Gurgaon (Convenor, Chairman and Final Approving Authority of the "Approval Committee" formed for this specific purpose of approving the bid for any/all the properties sold by way of auction held on 11.01.2013. The complainant also paid a sum of Rs. 8,25,000/- to respondent against booth no. 70, also alleged to be build-up and ready for occupation and immediate use.
6. That a sum of Rs. 1,42,000/- was also demanded and obtained from the complainant as refundable money which was deposited vide DD on 10.01.2013.

7. That on 18.01.2013, complainant received two envelopes from the office of H.U.D.A. SEC-14, Gurgaon, wherein one envelope, there was receipt bearing no. 25621 for Rs. 8,72,000/- issued in the name of complainant against booth no. 69, sector 23-23A, Gurgaon and in the second envelope, there were two receipts bearing no. 25620 for Rs. 6,21,000/- and no. 25619 for Rs. 2,04,000/- also issued in the name of complainant against booth no. 70, sector 23-23A, Gurgaon. However, no allotment letter whatsoever, of any kind, was ever issued or sent to complainant.
8. That on 19.02.2013 the complainant visited the office of H.U.D.A. SEC-14, Gurgaon, to enquire about the status of complainant's case/refund, complainant was informed that the approval/sanction of complainant both bids is still awaited. However, complainant was also informed that meanwhile, awaiting the final approval in writing/file, they have kept the blank allotment letter ready with them, but it would be signed and stamped only when complainant deposit a further sum out of the total bid price, thus totalling and completing at least 25% of the total bid of each booth, by way of Bank Draft only.
9. That on 22.02.2013 as per the directions of the officers of respondent, complainant further deposited Rs. 11,88,000/- i.e. Rs. 6,70,000/- and Rs. 5,18,000/- respectively against booth no.69 and also deposited Rs. 12,37,500/- i.e. Rs. 5,17,000/-, Rs. 4,25,000/- and Rs. 2,95,500/- against booth no. 70, thus, exceeding the milestone of 25% of the bid price of both the booths.
10. That when respondent failed to deliver the actual vacant possession to complainant then complainant started complaining personally to the officers of respondent and finally submitted an application/written request on 04.04.2013.

11. That on 04.04.2013, 16.05.2013, 22.07.2013 and 31.5.2015 there was no effect of complainant written request/application dated 04.04.2013 and complainant in numerous visits, meeting, prayers, etc before the officers of respondent/H.U.D.A., complainant against submitted another written application on 16.05.2013 and thereafter, also on 22.07.2013 and on 31.05.2015 but to no avail.
12. That on 29.09.2016, the said booths were alleged to be duly built-up by respondent and were claimed by respondent to be absolutely ready for immediate occupation and use by the successful bidder whose offer is finally accepted/sanctioned/approved by the "Approval Committee" in writing, as therefore, further deposits amount and achieves the milestone of 25% of his finally approved bid. That the said booths no. 69 and 70 actually were "Non-Existant" from the very beginning i.e. the alleged built-up booths no. 69 and 70 factually never existed and there never stood any duly constructed/built-up booths no. 69 and 70 and there was only a small piece of land lying vacant at the spot.
13. That the respondent most dishonestly and deliberately did not show the actual built-up booths to complainant, but with absolute malafide, only displayed the layout plan of the sectors on a map prepared by them and kept at the last moment only at the time and venue of auction which was in sector-29, gurgaon without giving an opportunity to the complainant to visit the site and verify its existence. The respondent itself vide its speaking order dated 29.09.2016 indirectly admitted that built up booths were not present physically or actually. The said speaking order have been passed by the respondent on 29.06.2016, in pursuance to the direction/order passed by the Hon'ble Punjab and Haryana High Court on 08/07/2015. The said speaking order alleged to have been passed by the respondent on 29.09.2016, in

pursuance to the orders of the Hon'ble High Court of Punjab and Haryana dated 08.07.2015.

14. That in the end of Year 2016 the complainant filed the petition no. 3572/2016 before the Hon'ble Permanent Lok Adalat, Gurugram against the respondent and while contesting the said petition no. 3572/2016, the respondent filed his reply before the Hon'ble Permanent Lok Adalat, Gurugram in which respondent once again produced the unsigned allotment letter which were allegedly issued to the complainant pertaining to Booths No. 69 and 70 but the allotment letter which were issued to the allottees of other booths were duly sanctioned, approved and signed. The said act of the respondent shows the malafide intention.

C. Relief sought by the complainant:

15. 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.**

D. Reply by the Respondent:

16. That the present complaint is not maintainable in law or on facts. The complainant has filed the present complaint seeking the relief of refund of entire deposited amount of Rs. 42,64,500/-alongwith interest after a long period of 9 years. The pleadings of the complainant are totally contradictory, as in the pleadings the complainant alleges that there was no booth duly constructed by the HUDA Department at the time of auction whereas in his fabricated letter dt. 22.07.2013 the complainant has mentioned that both built up shops are found demolished. This false version is neither found in any letter written before 22.07.2013 nor it is mentioned in any letter written after 22.07.2013.
17. That the complainant has not mentioned the false allegations of already demolished of both shops in other alleged letters dated 04.04.2013

16.05.2013, 31.05.2015, 16.10.2015. The complainant himself had demolished the structure of both the shops as per his ulterior plans and when he failed in that planning then the complainant conspired to shift this blame on the HUDA Department. Recently the survey team of HUDA Department had visited the disputed site and took the photograph of said demolished site which is clearly visible.

18. That as per the records the complainant had filed the CW No. 13372 of 2015 in the Hon'ble Punjab and Haryana, High Court, but the same was disposed off on 08.07.2015 by the Hon'ble Court without giving any notice to the HUDA Department. However, the Hon'ble High Court had given the direction to the HUDA Department to pass a speaking order after affording an opportunity of hearing to the complainant. So, accordingly the complainant was heard and it was found that the complainant had himself demolished the said shops and he is blaming on the department that these sites were not built up.
19. That the complainant had never challenged the said speaking order in any competent court till date. Thereupon, after a gap of more than 5 years the complainant had filed a complaint in the permanent Lok Adalat Gurgaon. Worthy to note here that this complaint was filed with melafide intentions in a pre-planned manner in order to legalise his unlawful letters so, the complainant had lastly withdrawn the said complaint on 18.11.2021 from permanent Lok Adalat Gurgaon. After withdrawing the said complaint the complainant has very cunningly obtained the copies of fabricated letters from the permanent Lok Adalat with the Seal of Certified to be true (and this was the only ulterior motive of the complainant to file and withdraw the said complaint to give the lawful shape to his fabricated and manipulated letters).
20. That instead of again going to the High Court the complainant has filed the instant complaint before this Hon'ble Authority without any application/relief for condonation of delay. Worthy to note here that in the instant complaint the

coloumn of Dt. 29.09.2016 at Page No. 8 the complainant has categorically mentioned that said booth No. 69 and 70 actually were not existent since very beginning. But subsequently while drafting the letter dt. 22.07.2013 the complainant forgot his earlier version and he cunningly mentioned in that complaint dt. 22.07.2013 that the shops were already demolished by the greedy and criminal minded officials. The complainant cannot blow hot and cold at the same time and on the same subject, so the complaint is misconceived of law and facts.

21. That in this un holy attitude and behaviour of complainant, he has blamed the HUDA department that both the said allotment letters are unsigned. In reply to this allegation it is submitted that the said allotment letters are having the memo number and date and same are digitally generated on database system of department, which was already verified by the complainant himself. On such digitally generated documents signature of Officer are not necessary. At 1^o page of the said allotment letters it is categorically written that it is a builtup booth and at next page at clause 6 offer of possession is clearly mentioned. But later on the the complainant did not opt to take the possession of same and he started to blame the HUDA department on one or the other pretext.
22. That this authority has no jurisdiction to entertain this complaint. The subject matter in issue is of much prior to the existence of this Hon'ble Regulatory Authority. If at all, the complaints pertaining to compensation and interest for a grievance under Section 12, 14,18 and 19 of the Real Estate (Regulation & Development) Act, 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with Section -31 and Section -71 of the said Act and not before this Hon'ble Regulatory Authority.
23. 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 those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

24. 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

25. 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

26. 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.

27. 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.

28. 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 cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* 2021-2022(1) RCR(C), 357 & *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 was held 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."

29. 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.

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.

30. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

31. Clause 6 of the allotment letter is reproduced below for ready reference:

6. The Possession of the site is hereby offered with this allotment."

32. The complainant had purchased the two commercial booths vide auction in HUDA sector 23-23A Gurugram for a total sale consideration of ₹ 82,40,000/- and ₹ 82,50,000/- respectively. The complainant was allotted built up booth no. 69 and 70 vide letter dated 14.01.2013 but the said allotment letter was not signed by the respondent. The complainant has paid an amount of ₹ 41,22,500/- against both the booths as demanded by the HUDA. As per clause 6 of the allotment letter the possession of the unit is to be offered with the allotment letter. It has been transpired that the built up booths were never in existence for which bid was made. Thereafter the complainant follow up regarding the possession of the booths vide letter dated 04.04.2013, 16.05.2013, 22.07.2013. Further vide letter dated

31.05.2015 complainant requested the respondent for refund of the amount paid by him. However, till date no possession has been handed over to the complainant.

33. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

34. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** 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, it was observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

35. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
36. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
37. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."

38. 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.
39. 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., 27.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
40. The authority hereby directs the promoter to return the amount received by them i.e., ₹ 41,22,500/- with interest at the rate of 10.75% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

H. Directions of the authority

41. 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 to refund the entire amount of ₹ 41,22,500/- paid by the complainant along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of realization of the amount.



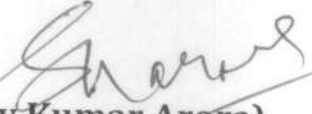
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ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

42. Complaint stands disposed of.

43. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.10.2023



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