

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

Complaint no.	6927 of 2022
Date of filing complaint	11.11.2022
Date of decision:	11.10.2023

Deepak Sethi Address: B-129, Amar Colony, Lajpat Nagar, New Delhi-110024	Complainant
Versus	
Angle Infrastructure Private Limited Address: 201-202, Elegance Tower, Plot No. 8, District Centre Jasola, New Delhi 110025	Respondent

CORAM:

Shri Ashok Sangwan

Member**APPEARANCE:**

Ms. Priyanka Jindal proxy counsel

Complainant

Shri Aditya Rathe (Advocate)

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 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 allottees 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.no.	Particulars	Details
1.	Name of the project	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered vide registration no. 231 of 2017 dated 19.09.2017
	Validity status	31.12.2019
4.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
5.	Allotment letter	04.01.2012 [As per page no. 49 of complaint]
6.	Unit no.	E-1203 on 12 th floor of tower E [As per page no. 49 of complaint]
7.	Unit area admeasuring	2125 sq. ft. [Super area] [As per page no. 49 of complaint]

8.	Date of apartment buyer agreement	31.05.2013 [As per page no. 20 of complaint]
9.	Endorsement dated	24.09.2021 (Wherein the co-allottees as described above, transfers wights in allotted unit in name of complainant)
10.	Payment plan	Construction linked plan [As per customer ledger on page no. 82 of complaint]
11.	Total sale consideration	Rs. 1,03,99,750/- (BSP) Rs. 1,17,18,500/- (TSC) [As per customer ledger on page no. 82 of complaint]
12.	Amount paid by the complainant	Rs. 1,15,09,123.52/- [As per customer ledger dated 28.07.2020 on page no. 83 of complaint]
13.	Possession clause	Clause 3.1 <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having compiled with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchasers) within a</i>

		<u>period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course...</u>
14.	Building plan approvals	Not available on record
15.	Environmental clearance	15.10.2013 [As per page no. 13-22 of reply]
16.	Commencement of construction	01.06.2013 [As per customer ledger on page no. 84 of complaint]
17.	Due date of possession	15.04.2018 [Calculated from the date of Environment Clearance i.e., 15.10.2013, being later + grace period of 9 months] Grace period of 9 months is allowed.
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint: ✓



- i. That the complainant came across luring advertisements by the respondent-company and claimed itself as a renowned developer having pan India presence. Based on representations of the officers of the respondent that the project would be developed completely in 4-5 years, booked a unit on 1203, Block-E on 04.01.2012 in the project floated by the respondent namely, "Krrish Florence Estate" in Sector 70, Gurugram, Haryana.
- ii. Further, a flat buyer's agreement on 30.05.2013 was executed between the parties. That the total sale consideration of the flat was Rs. 1,03,99,750/- out of which he has paid Rs. 1,15,09,123/- till date. It is a matter of record that the complainant has paid instalments as per demands raised by the respondent. The subject unit was booked under construction linked payment plan and despite absence of, any construction at the site, whenever the respondent raised any demand, he timely paid those instalments. The complainant was ready and willing and had resources to pay the balance amount if any, computed and found payable after taking into consideration the compensation receivable by the complainant.
- iii. That the respondent was under obligation to handover the physical possession of the unit to the complainant within a period of 4 years & 9 months including the grace period from the date of execution of buyer's agreement. However, till date i.e., September 2022, the construction and development works of tower E, have not commenced at the site in which their unit was proposed even after passing of more than 10 years from the allotment of the said unit only, and bare tower is constructed. It has been learnt that

the respondent is not in possession of statutory permissions and approvals and in absence thereof is unable to start development work at the site.

- iv. That at the site, there is no development, the project far from completion and the complainant is suffering because of undue delay on the part of the respondent in handing over of the physical possession of the flat. That the respondent has failed to abide by the contractual terms stipulated in the buyer's agreement and it is in breach whereas they have diligently discharged all his obligations as per the flat buyer agreement, whereas, it has failed to perform its obligations stipulated in the contract.
- v. That further Section 2(za) should be read into buyer's agreement and the respondent should be held liable to pay compound interest @24% from the due date of delivery of possession till actual handing over of physical possession. The interest is payable on the instalments/sale consideration from the date of receipt of the respective instalments by the respondent.
- vi. That since the respondent is unable to developing the project and handover physical possession of the flat, the petitioner is entitled to withdraw from the project and for refund of the entire sale consideration and other charges along with 24% compound interest from the date of respective payments.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.
- ii. Direct the respondent to pay compensation and litigation costs.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:

- i. That after conducting his own independent due diligence and being fully satisfied with the particulars of the said project, the complainant in the year 2012 voluntarily approached and applied to the respondent and expressed his interest in purchasing an apartment in the said project being developed by the respondent.
- ii. That the respondent vide letter dated 04.01.2012 provisionally allotted apartment no. 1203, Tower E, admeasuring 2125.00 sq. ft. in the said project to the complainant. After duly understanding, acknowledging and agreeing to the contents of the agreement, the apartment buyer's agreement was executed between the complainant and the respondent on 31.05.2013 and thereafter, the respondent allotted Plot no.1203, Tower-E, 12th Floor, admeasuring 2125.00 sq. ft. to the complainant. the total basic sale consideration of the said unit is Rs. 1,23,42,247/-.
- iii. That the Complainant had made a total payment of Rs.1,05,29,889/- to the Respondent till date. It is stated that sometime in the year 2013, one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard

- to transfer and construction in respect to the said Project of the Respondent herein.
- iv. It is stated that the Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said Writ Petition. Copy of the order of the Hon'ble High Court of Punjab and Haryana in CWP No. 17737 of 2013 dated 17.11.2014. It is further pertinent to bring to the notice of this Hon'ble Authority that certain disputes arose between M/s. Capital Builders and the Respondent In an Appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the Respondent No.1 before the third-party Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the Respondent No.1 herein from creating any third party interest in respect unsold flats. The Hon'ble High Court vide order dated 08.05.2019 modified the earlier order dated 10.09.2015 and excluded 60 un-sold flats from the ambit of the stay order. Copy of the orders dated 10.09.2015 and 08.05.2019 passed by the Hon'ble High Court of Punjab and Haryana.
- v. It is stated that the respondent is in the process of completing and developing the said project and will deliver the possession of the apartment to the buyers within a short period of time. It is further stated that this Authority has granted registration of the said Project under the Real Estate (Regulation and Development) Act, 2016. The Respondent has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.

- vi. It is stated that the respondent was unable to complete the project on time due to force majeure circumstances and for other reasons which are beyond the control of the respondent hence the respondent is entitled to reasonable extension of time for completion of the project and delivery of the units.
- vii. It is most respectfully submitted that in view of the circumstances beyond its control, the respondent was unable to complete the construction and deliver the possession of the apartment within the stipulated period of time. It is most respectfully submitted that in view of the aforementioned facts and force majeure circumstances, there is no failure on the part of the respondent in completing the construction and delivering the possession of the apartment and further there is no deficiency of service on the part of the respondent as such the present complaint is not maintainable. The respondent is not liable to pay any amounts to the complainant.
6. 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.

E. Jurisdiction of the authority:

7. 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

8. 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

9. 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 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.

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.

10. 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."

11. 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 force majeure circumstances.

12. The respondent-promoter alleged that there was no delay on its part and the delay in completing the project and handing over the possession of the allotted unit was on account of force majeure circumstances such as stay on construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued



by DTCP in writ petition (CWP No. 17737 of 2013) and due to a dispute arising between M/s. Capital Builders and the respondent, in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against it before the Hon'ble High Court of Punjab and Haryana vide order dated 10.09.2015 restraining creation of any third-party interest in respect unsold flats modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order. But the authority is of view that the pleas taken by the respondent are devoid of merits.

13. The respondent also took a plea that the construction of the said project was stopped due to orders of Hon'ble High Court of Punjab & Haryana in writ petition (CWP No. 17737 of 2013) challenging grant of license no. 170 of 2008 issued by DTCP and ban on creating third party rights vide order of Hon'ble High Court of Punjab and Haryana in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent. The respondent pleaded that such period should not be considered vide calculating the delay in completion of the subject unit. The authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling his obligation. The respondent approached the competent/deciding authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time

being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act.

G. Findings regarding relief sought by the complainant.

G.I Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

14. In the instant case, the apartment buyer agreement, for the subject unit was executed on 31.05.2013. According to the apartment buyer agreement, the due date of possession comes out to be 15.04.2018. However, the occupation certificate for the tower where complainant unit is situated not received. Keeping in view the fact, and hence the complainant is entitled for full refund.
15. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. 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....."

16. 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. (supra) 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

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

17. 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). 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.
18. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 1,15,09,123/- 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 Haryana Rules 2017 *ibid*.

G.II Direct the respondent to pay compensation and litigation costs.

19. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (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.

H. Directions of the Authority:


20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters 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 amount received by it i.e., Rs. 1,15,09,123/- from the complainant along with interest at the rate of 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 refund 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.10.2023


HARERA
GURUGRAM