

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

Complaint no. :	1785 of 2022
Date of filing complaint:	02.05.2022
First date of hearing:	25.08.2022
Date of decision:	16.08.2023

Madhumita Roy R/O: E-11, Lower Ground Floor, Jangpura Extension, New Delhi - 110014	<b>Complainant</b>
Versus	
Vs Real projects Pvt. Ltd Regd.Office: Ground Floor, Plot No. 15, Sector-44, Gurugram-122002	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Niraj Chanyal (Advocate)	Complainant
Sh. Ashwarya Hooda (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 allottee 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.	Heads	Information	
1.	Name of the project	"AMB Selfie Square", Sector 37D, Gurgaon	
2.	Project area	3.78 acres	
3.	Nature of the project	Commercial Colony	
4.	DTCP license no. and validity status	14 of 2014 dated 10.06.2014 valid upto 09.06.2019	
5.	Name of licensee	VS Real projects Pvt. Ltd.	
6.	RERA Registered/ not registered	Registered vide 57 of 2017 dated 17.08.2017	
7.	RERA registration valid up to	16.08.2022	
8.	Application form	Unit no. 26 01.11.2014 (As per on page 25 of reply)	Unit no. 27 31.10.2014 (As per on page 33 of reply)
9.	Unit no.	Unit no. 26, Ground floor (Page no. 51 of the complaint)	Unit no. 27, Ground Floor (Page 91 of the complaint)
10.	Unit area admeasuring	For unit no. 26-288 sq. ft. (As per on page 51 of complaint)	For unit no. 27 -430 sq. ft. (super area) (Page 91 of the Complaint)



11.	Date of execution of Flat Buyer's Agreement	Not signed	
12.	Possession clause	<p><b>16.1 Possession of the Unit</b></p> <p><i>"The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to <b>handover possession of the Unit within thirty-six (38) months computed from the date of execution of Buyer's Agreement excluding additional grace period of twelve (12) months subject to force majeure circumstance and reasons beyond the control of the Company ("Commitment Period").</b> In case of failure of the Allottee to make timely payments of any of the instalments as per the Payment Plan, along with other charges and dues as applicable or otherwise payable in accordance with the Payment Plan or as per the demands raised by the Company from time to time in this respect, or any failure on the part of the Allottee to abide by any of the terms and conditions of this Agreement, the time periods mentioned in this clause shall not be binding upon the Company with respect to the handing over of the possession of the Unit, regardless of the fact that the Company has accepted interest on delayed payments".</i></p> <p><b>Taken from unsigned BBA</b></p>	
13.	Due date of possession	<p><b>Unit. 26</b></p> <p>01.11.2017</p> <p>(Calculated from the date<sup>o</sup> of application form)</p>	<p><b>Unit 27</b></p> <p>31.10.2017</p> <p>(Calculated from the date of application form)</p>
14.	Total sale consideration	Rs. 34,27,344/-	Rs. 55,17,215/-



		(As per on page 4 of complaint)	(As per on page 4 of complaint)
15.	Amount paid by the complainant	Rs. 21,34,648/- (As alleged by the complainant on page 4)	Rs. 31,87,148/- (As alleged by the complainant on page 4)
16.	Occupation certificate /Completion certificate	Not annexed	
17.	Offer of Possession	Not annexed	
18.	Demand Letter	08.01.2021	08.01.2021
19.	Reminder Letters	<b>Unit No. 26</b> 15.05.2021, 20.03.2020, 01.07.2021 (page 78 and 79 of reply)	<b>Unit No. 27</b> 12.02.2015,15.04.20 15, 12.02.2020,
20.	Pre notices cancellation	29.07.2020 (Page 115 of complaint) By respondent 10.01.2017, 16.09.2017, 29.07.2020, 27.08.2020, 30.03.2021) (Annexure r-13 to r-18)	29.07.2020 (page 114 of complaint) By respondent 10.01.2017, 16.09.2017, 29.07.2020, 27.08.2020, 30.03.2021, 11.07.2021) (Annexure r - 22-r-30)
21.	Termination Letter	16.07.2021 (page 87 of reply) (As per on page 87 of reply)	16.07.2021 (As per on page 10 of reply)





**B. Facts of the complaint**

3. That a project by the name of 'Amb Selfie Square' in Sector 37D, Gurgaon, Haryana. Was being advertised by the respondent. The respondent painted a rosy picture of the project in its advertisements making tall claims. The complainant was approached by the respondent was requested to book a unit in the project of the respondent 'AMB SELFIE SQUARE' citing various fancy offers and proposals.
4. That the complainant booked two units, Unit no. 26 and 27, Ground Floor, admeasuring 288 sq. ft. and 430 sq. ft respectively in the project - developed by the respondent located at sector 37D, Gurugram, Haryana for a total sale consideration of Rs. 34,27,344/- and Rs. 55,17,215/- respectively.
5. That the respondent allotted the aforementioned commercial units to the allottee. In pursuance of the said purchase, the complainant paid the amount of Rs. 21,34,648/- as part consideration for Unit No. 26 and paid the amount of Rs. 31,87,148/- as part consideration for Unit No. 27, and the same was duly acknowledged by the Respondent via various receipts & acknowledgments and demand letters dated 06.05.2017 issued for both the units.
6. That the buyer's agreement was executed between the respondent and the complainant for both units. It was promised to the complainant that the possession of the said units will be provided within 36 months and 12 months grace period from the date of execution of the buyer's agreement.
7. That the complainant made timely payments as per the construction-linked payment plan. The respondent defaulted at each and every stage of construction as promised in the buyer's agreement. After defaults in construction and irregular demands, the respondent issued pre-cancellation letters dated 29.07.2020 for both units requesting the

complainants to make payments irregularly and against the agreed construction-linked plan. The respondent issued the said pre-cancellation notices dated 29.07.2020 to pressurize the complainant and extract monies from the complainant illegally.

8. That the respondent in furtherance of its ill will and mala fide intentions issued intimation of termination dated 16.07.2021 for unit No. 27 in the name of the complainant stating that due to non-payment of dues, unit no. 27 stands cancelled and annulled. The complainant has paid a total of Rs. 53,21,796/- for both the units.

9. That the due date to deliver the possession was 36 months from the date of execution of the Buyer's Agreement and 12 (Twelve) months was for a grace period. The due date to deliver the possession was 28.01.2019 including the grace period. But, the respondent builder has not delivered the peaceful possession of the units to the complainants till the date of filing of the present complaint.

10. That it is pertinent to mention here that it was agreed in the buyer's agreement that the respondent shall pay Rs. 10/- per sq ft per month for the actual period of delay in possession until the date of issuance of the letter of offer of possession.

11. That to the utter dismay of the complainant and despite the remittance of demands raised, the respondent has failed to construct the project as per the agreement and to place the complainant in possession of the unit and thus infringed the rights of the complainant under the buyer's agreement.

12. That in view of the above-mentioned facts and circumstances it is only appropriate that this Hon'ble Authority may be pleased to hold that the respondent company is liable to refund the entire amount paid by the complainant. Thus, the complainant was left with no other option but to file





the present complaint seeking refund of the entire amount paid against allotment of the unit.

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

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

- i. Direct the respondent to refund the entire amount of Rs. 53,21,796/- paid by the complainant along with interest.
- ii. Direct the respondent to pay compensation of Rs. 1,00,000/- for litigation expenses.

**D. Reply by respondent:**

The respondent by way of written reply made the following submissions

14. That the complainant has booked two units in the project in question. The complaint filed by the complainant pertains to both the units. The complainant ought to have filed two separate complaints for both the units. The complaint is also liable to be dismissed on this ground as well.

15. That the complainant approached the respondent and evinced an interest to purchase two units in the said project. The application forms dated 01.11.2014 and 31.10.2014 had been filled by the complainant. The complainant had been allotted unit bearing no.26 admeasuring 288 square feet (super area) located on the ground floor of the said project and unit bearing no.27 admeasuring 430 square feet (super area) located on the ground floor of the said project. The complainant had opted for a construction linked payment plan for both the units.

16. That the draft buyer's agreements for both the units had been sent to the complainant for appending her signatures by the respondent. However, for reasons best known to her, the complainant did not return the fully

executed buyer's agreements to the respondent. It is submitted that till date, no buyer's agreements have been executed between the complainant and the respondent in respect of both the units.

17. That the copies of buyer's agreements appended by the complainant with her complaint are both unsigned and undated. However, the aforesaid fact has been intentionally concealed by the complainant from this Honourable Authority. In fact, the complainant is illegally relying upon the terms and conditions incorporated in the unsigned buyer's agreements.

18. That moreover, this Honourable Authority had published order bearing no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Honourable Authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also been stipulated in the aforesaid order that the outbreak of Coronavirus Pandemic would be considered a force majeure event and the Developers would not need to file any application regarding invocation of force majeure clause.

19. That however, the complainant had delayed in making timely payment of the instalments on various occasions. Delayed payment charges amounting to Rs.1,84,297/- had been levied upon the complainant by the respondent in respect of unit bearing no.26 on account of the defaults in making timely payment committed by the complainant.

20. That the complainant had delayed in making timely payment of the instalments on various occasions for unit no.27 as well. Delayed payment charges amounting to Rs. 1,93,871/- had been levied upon the complainant by the respondent in respect of unit bearing no.27 on account of the defaults in making timely payment committed by the complainant.





21. That the respondent was constrained to send multiple payment reminder letters to the complainant on account of the repeated failure of the complainant to make timely payment of instalments for both units and to clear her long outstanding dues as per the payment plan. Furthermore, the outstanding payments had not been cleared by the complainant despite receiving several reminders letters from the respondent.

22. That furthermore, the respondent was constrained to issue several pre-cancellation notices and intimation of termination letters to the complainant in respect of unit bearing no.26 on account of the defaults committed by her. It is submitted that pre-cancellation notice dated 10.01.2017, forfeiture notice dated 08.02.2017, pre-cancellation notice dated 16.09.2017, pre-cancellation notice dated 29.07.2020, intimation of termination notice dated 27.08.2020 and pre-cancellation notice dated 30.03.2021.

23. That eventually, the respondent was constrained to issue pre-cancellation notice dated 11.06.2021 in respect of unit no.26 to the complainant wherein it had been specifically mentioned that in case the complainant did not make payment of the outstanding amount, in that event the respondent would be liable to forfeit the earnest money component as mentioned in the application form duly executed by the complainant. However, the complainant did not make payment of the outstanding amount even after receiving the aforesaid reminders from the respondent.

24. That thereafter, the respondent was constrained to issue termination letter dated 16.07.2021 vide which the allotment of the complainant pertaining to unit bearing no.26 had been cancelled on account of non-payment of the outstanding amount..



25. That it would not be out of place to mention that the complainant did not come forward to collect the balance amount from the respondent. On account of the same, the respondent had issued memorandum of forfeiture dated 07.08.2021 vide which the complainant had been called upon to contact the customer relations team of the respondent to collect the refundable amount on account of cancellation of allotment of unit bearing no.26.

26. That furthermore, the respondent was constrained to issue several pre-cancellation notices and intimation of termination letters to the complainant in respect of unit bearing no.27 on account of the defaults committed by her. It is submitted that pre-cancellation notice dated 08.05.2015, pre-cancellation notice dated 10.01.2017, forfeiture notice dated 08.02.2017, pre-cancellation notice dated 16.09.2017, pre-cancellation notice dated 29.07.2020, intimation of termination dated 27.08.2020 and pre-cancellation notice dated 30.03.2021

27. That eventually, the respondent was constrained to issue pre-cancellation notice dated 11.06.2021 in respect of unit no.27 to the complainant wherein it had been specifically mentioned that in case the complainant did not make payment of the outstanding amount, in that event the respondent would be liable to forfeit the earnest money component as mentioned in the application form duly executed by the complainant. However, the complainant did not make payment of the outstanding amount even after receiving the aforesaid reminders from the respondent.

28. That thereafter, the respondent was constrained to issue termination letter dated 16.07.2021 vide which the allotment of the complainant pertaining to unit bearing no.27 had been cancelled on account of non-payment of the outstanding amount.





29. That it would not be out of place to mention that the complainant did not come forward to collect the balance amount from the respondent. On account of the same, the respondent had issued a memorandum of forfeiture dated 07.08.2021 vide which the complainant had been called upon to contact the customer relations team of the respondent to collect the refundable amount on account of cancellation of allotment of unit bearing no.27.

30. That it is submitted that after cancellation of the allotment of both the units, the two units have already been sold to other allottee(s) by the respondent.

31. 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 these undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the authority:**

32. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.1 Territorial jurisdiction**

As per notification no. 1/92/2017-1/TCP 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**

33. 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.*

34. 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.

35. 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 judgements 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."*

36. 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. Entitlement of the complainant for refund:**

**F.1 Direct the respondent to refund the entire amount of Rs. 53,21,796/- paid by the complainant along with interest.**

37. In the present matter, the complainant has filed the present complaint with respect to two units. The counsel for the respondent takes objection to the fact that two separate complaints are required to be filed for each unit. The counsel for the complainant stated at bar that even though the complainant has booked two units but in the present matter the authority may proceed with unit no. 27 and only for the other unit, a fresh complaint would be filed.



38. With respect to unit no. 27 the complainant started making payments against the allotted unit no. 27 and paid a sum of Rs. 31,87,148/- against total sale consideration of Rs. 55,17,215/-. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has failed to construct the project as per the agreement and has not offered the possession.

39. The subject unit was allotted to the complainant on the basis of booking application form on 31.10.2014. No buyer's agreement was executed between the parties. The date of signing of application form, is therefore to be taken as the date for calculating the due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 31.10.2017. No occupation certificate has been received by the respondent. No possession was offered by the respondent till date.

40. The respondent raised various demands on 12.02.2015, 15.04.2015, 12.02.2020 against the complainant for the amount due which were not cleared by him. So, the respondent sent pre termination letters on 10.01.2017, 16.09.2017, 29.07.2020, 27.08.2020, 30.03.2021 and 11.07.2021 following which the respondent cancelled the unit of the complainant on 16.07.2021.

41. The due date of completion of project expired on 31.10.2017. However no request from the complainant was made to the respondent to withdraw from the project after the due date. Therefore it is implicit that the complainant wished to continue in the project. Had the allottee continued with the project, then she would be entitled to DPC under section 18(1) of the Act of 2016.

42. In the present case, the complainant has paid an amount of Rs. 31,87,148/- against a total consideration of Rs. 55,17,215/-. The respondent





has cancelled the unit after numerous reminders and the cancellation cannot be faulted.

43. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

**"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."*

44. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land . But in the case in hand , after cancellation of the unit , the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India*, AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors*, Civil Appeal No. 7266 of 2009 decided on 01.12.2015 , followed in *Jayant Singhal v/s M3M India Ltd*. Consumer case no. 27669 2017 decided on 26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view the



principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to return the balance amount after deducting 10% of the basic sale price from the date of cancellation of the unit i.e, 16.07.2021 till the date of refund along with interest @ 10.75 % per annum within a period of 90 days.

**G.II Direct the respondent to pay compensation of Rs. 1,00,000/- for mental agony and harassment and Rs. 50,000/- as litigation expenses.**

45. The the complainant is seeking above mentioned 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. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the Authority:**

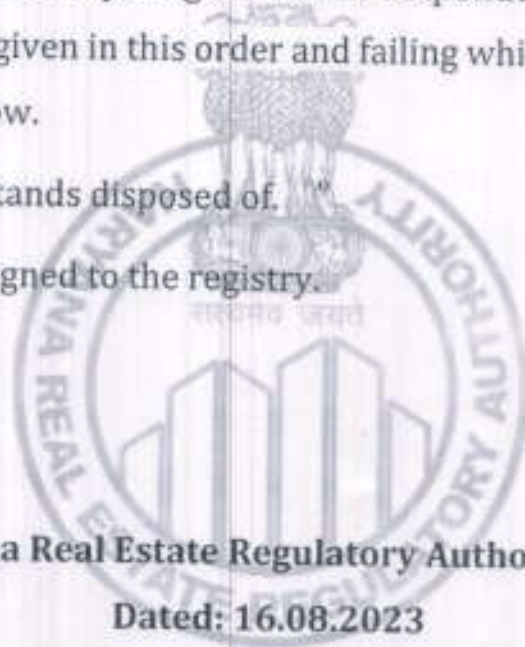
46. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations





cast upon the 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 of Rs. 31,87,148/- after deducting 10% of the basic sale price of the unit being earnest money along with interest @ 10.75% p.a. on the refundable amount, from the date of cancellation i.e. 16.07.2021 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.
47. Complaint stands disposed of.
48. File be consigned to the registry.



(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023