

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

**Complaint no.** : 2410 of 2021  
**Date of filing of  
complaint:** 14.06.2021  
**Date of decision** : 05.09.2023

Vikas Kumar

R/o: New Janta Hardware, Near Chaudhary Devi  
Lal Park, Bio Diversity Park, Wazirabad Market,  
Near Sabji Mandi, Sector-52, Gurugram-122022

**Complainant**

Versus

M/s Landmark Apartments Private Limited  
Office: Landmark House-65, Sector-44, Gurugram,  
Haryana.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Member  
Member**

**APPEARANCE:**

Sh. K.K. Kohli (Advocate)  
Sh. Amarjeet Kumar (Advocate)

**Counsel for the complainant  
Counsels for the Respondent**

**ORDER**

1. The present complaint dated 14.06.2021 has been filed by the complainants/allottees 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

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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 unit details, sale consideration, the amount paid by the complainants, 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                    | "Landmark Corporate Centre" at Sector 67, Gurugram, Haryana.   |
| 2.    | Nature of the project                               | Cyber Park   |
| 3.    | Project area  | 8.3125 acres   |
| 4.    | DTCP license no.                                    | 97 of 2008 dated 12.05.2008 valid upto 11.05.2020  |
| 5.    | Name of licensee                                    | M/s Landmark Apartments Pvt. Ltd.  |
| 5.    | RERA Registered/ not registered                     | Registered vide no. 61 of 2019 dated 25.11.2019  |
| 6.    | Unit no.  | Executive suites, 4 <sup>th</sup> floor in landmark Corporate Centre<br>(Page no. 48 of reply)   |
| 7.    | Unit admeasuring                                    | 150 sq. ft.  |
| 8.    | Date of builder buyer agreement                     | Not executed   |
| 9.    | Date of execution of MoU                            | 29.08.2016<br>(as per page no. 47 of reply)  |
| 10.   | Possession Clause<br>(As per provisional allotment) | THAT the possession of area shall be offered by the Company to the intending Allottee(s) within 36 months from the date of signing of the agreement to sell subject to force majeure circumstances and upon registration of sale deed provided all amounts due and payable by the intending allottee(S) as provided herein and as per agreement to sell have |

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|     |                                |   |
|-----|--------------------------------|---|
|     |                                | been paid to the company. It is, however, understood between the parties that various blocks comprised in the landmark The outlet shall be ready and completed in phases and handed over to the allottee(s) accordingly. The Company shall be entitled to reasonable extension in delivery of possession of the space to the allottee(s) in the event of any default or negligence attributable to the Allottee(s)' fulfilment of Terms & Conditions of this allotment. |
| 11. | Due date of possession         | 29.08.2019<br>(Taken from the date of MoU, as BBA is not executed)  |
| 12. | Total sale consideration       | Rs. 15,30,000/-<br>(As per page no. 19 of complaint)  |
| 13. | Amount paid by the complainant | Rs. 14,88,000/-<br>(as per page no. 19 of complaint)  |
| 15. | Occupation certificate         | 26.12.2018<br>(As per page no. 52 of reply)   |
| 16. | Reminder for taking possession | 09.09.2019 & 14.04.2021<br>(As per page no. 54 & 61 of reply)   |

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That the complainant on various representations and assurances by the respondent filed the booking application of the unit in the project on 18.11.2011 and later, on the demand raised by the respondent for the booking amount, the complainant paid sum of Rs. 5,00,000/- vide Cheque no. 016493 dated 18.11.2011 drawn on Gurgaon Gramin Bank, Haryana, of the said unit bearing Shop-24 at "OUTLET" in Sector 67, Gurugram having super area measuring 460.00 sq. ft. to the respondent. The project 'OUTLET' however did not commence due to unexplained reasons.



- II. That a settlement agreement was executed between the complainant and respondent dated 24.09.2015 stated that the complainant has requested to cancel the unit at the "THE OUTLET" project and to transfer the paid amount of Rs. 14,88,000/- to book an executive suit measuring super area of 150 sq. ft. having total consideration of Rs. 15,30,000 in the respondent's another project "CORPORATE CENTRE" and left with only a payment of Rs. 42,000/- which would be paid at the time of offer of possession and thus no other liability was left except the abovementioned against the unit booked in the 'OUTLET' project.
- III. That no buyers agreement has been executed between the parties but a Memorandum of Understanding was executed between the respondent and complainant on 29.08.2016.
- IV. The complainant made a payment of approximately 98% of the total consideration towards the basic sale price, car parking, external development charges /infrastructure development charges, IBMS/IFMS, Power Backup, PLC of the unit from 2011 onwards. The complainant opted for the construction linked payment plan and made payments promptly and in a timely manner as and when the demand letters were raised by the respondent.
- V. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the physical possession.
- VI. That the respondent had applied for the occupation certificate on 17.01.2015 and the same was granted by the competent authority on 26.12.2018.

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VII. The complainant received a Reminder to take possession vide letter dated 09.09.2019 by respondent wherein it was stated that complainant shall clear all outstanding dues. However, despite receiving, a total amount of 98% against the unit, the project is still far from complete.

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

4. The complainants have sought following relief(s).
  - I. Direct the respondent to refund the paid-up amount.
  - II. Direct the respondent to award a compensation of Rs. 30,00,000/- towards unfair practices and providing deficient services to the complainant.
  - III. Cost of litigation and mental agony of Rs. 10,00,000/-.
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.
  - a. That complainant booked a retail outlet admeasuring area 460 sq. ft. in a project developed by the respondent by the name "Landmark the Outlet" part and parcel of project namely Landmark Cyber Park, situated in Sector 67 Gurugram for a basic sale price of Rs. 64,40,000/- and the complainant made a payment of Rs 14,88,000/-.
  - b. That thereafter since the complainant was unable to adhere to the terms and condition of the allotment/payment schedule it requested the respondent for cancellation of booking in 'landmark the outlet' and transfer of paid sum for its subsequent booking for executive suite in Landmark Corporate Centre in Landmark Cyber Park, Sector 67, Gurgaon, Haryana.

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- c. That upon such request of the complainant, a settlement agreement dated 24.09.2015 was executed between the parties vide which the complainant unit in landmark the outlet was cancelled and funds were transferred to its subsequent booking of an executive suite measuring 150 sq.ft in project Landmark Corporate Centre part and parcel of Landmark Cyber Park, Sector 67, Gurgaon. The complainant as per the terms of the agreement was also supposed to make other payments w.r.t EDC/IDC, maintenance, parking etc as per the demands raised by the respondent at the time of delivery of possession apart from the pending basic sale price.
- d. That an MOU dated 29.08.2016 was executed between the parties w.r.t subsequent booking of the complainant in Landmark Corporate Centre part and parcel of Landmark Cyber Park, Sector 67, Gurgaon, as per the MOU, the complainant had made the payment of 98% of the basic sale price against the executive suite @ Rs.10.200/- per sq. ft for total area of 150 sq.ft
- e. That after receipt of occupation certificate the respondent has sent a letter dated 09.09.2019 thereby intimating the complainant for taking over of possession or exercising its option to give its unit on lease and also requested the complainant to clear its pending dues.
- f. That since the complainant did not come forward to clear its dues, the respondent again issued a letter dated 14.04.2021 to the complainant for completion of documentation for possession/leasing of the unit of the complainant in Landmark Corporate Centre part and parcel of Landmark Cyber Park, Sector 67, Gurgaon. The complainant was requested to visit the corporate office for necessary documentation. However, the complainant very conveniently ignored the said letter

and never contacted the respondent with respect to the delivery of possession of the unit.

7. All other averments made in the complaint were denied in toto.
8. 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 submission made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

10. 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**

11. 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**

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(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*

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*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.*

12. 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.
13. 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(C), 357 and followed 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*

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*functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 amount paid by the complainant.**

15. The complainant booked a unit bearing no. GF-24 admeasuring area 460 sq.ft. in the project developed by the name "Landmark the outlet" for a basic price of Rs. 64,40,000/- against which the complainant paid sum of Rs. 14,88,000/-. Thereafter a settlement agreement was executed between the parties on 24.09.2015 as the project 'Outlet' did not commence due to unexplained reasons by the respondent and complainant requested the respondent to cancel the unit and transfer of paid sum for its subsequent booking for executive suite in Landmark Corporate Centre in Landmark Cyber Park, Sector 67, Gurgaon, Haryana. It is pertinent to mention here that no buyer's agreement has been executed between the parties, but a MoU has been executed between the complainant and respondent on 29.08.2016.

16. The complainant took a plea that the respondent-builder obtained occupation certificate on 26.12.2018 but no offer of possession was made to him till date. On the contrary, the respondent builder states that the occupation certificate has been obtained from the competent authority and vide letter dated 09.09.2019, the respondent-builder intimated the complainant for taking over of possession or exercising its option to give its unit on lease and also requested the complainant to clear its pending

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dues but complainant never come forward to clear its outstanding dues. So, the respondent again issued a letter dated 14.04.2021 to the complainant for completion of documentation for possession but complainant did not pay any heed to the respondent.

17. Vide proceeding of day dated 18.07.2023, both the parties were given last opportunity to submit their written submissions but till date no written submissions has been filed by both the parties, and hence matter is being further proceeded with on basis of facts filed by the complainant and reply by respondent.
18. The Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
19. The due date of possession as per agreement for sale as mentioned in the table above is 29.08.2019. The allottees in this case has filed this application/complaint on 14.06.2021 after intimation of possession of the unit cum demand letter was offered to them on 09.09.2019 and 14.04.2021. As per the section 19(10) every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building , as the case may be. In the present case, the complainants did not take the possession as they had objection to completion of the unit as well as demands which were raised by the

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respondent. It is pertinent to mention here that the allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made and demand for due payment was raised, then only, he filed a complaint before the authority.

20. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by 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

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*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"*

21. 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 allottees as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. But the complainant-allottee failed to exercise his right although it is unqualified one. The complainant has to demand and make his intentions clear that he wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.

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22. The authority has observed that the respondent-builder has intimated for the possession of the unit on various dates i.e. 09.09.2019 and 14.04.2021 respectively, after obtaining occupation certificate on 26.12.2018 but the complainant wants to surrender the unit and refund the amount paid by him . Keeping in view the aforesaid circumstances, that the respondent builder has already offered the possession of the allotted unit after obtaining occupation certificate from the competent authority, and judgment of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202*, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"*

23. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.14,88,000/- after deducting 10% of the sale consideration of Rs.15,30,000/- being earnest money along with an interest @ 10.75% p.a. (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 on the refundable amount, from the date of filing of this complaint i.e., 14.06.2021 requesting for refund of the amount till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

### **FII: Compensation**

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

### **G. Directions of the authority**

25. 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):

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- i. The respondent is directed to refund to the complainants the paid-up amount of Rs.14,88,000 /- after deducting 10% of the sale consideration of Rs.15,30,000/- as earnest money with interest at the prescribed rate


i.e., 10.75%, from the date of filing of this complaint i.e., 14.06.2021 till the date of realization of payment

- 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.

26. Complaint stands disposed of.

27. File be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023

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**HARERA**  
**GURUGRAM**