

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

Complaint no. : 947 of 2022
Date of filing complaint: 21.03.2022
First date of hearing: 09.08.2022
Date of decision : 25.07.2023

Sh. Kumar Manglam Dalmia R/O - H. No. 2/84, Vijay Khand - 2, Gomtinagar, Lucknow	Complainant
Versus	
Chintels India Pvt Ltd R/O: Chintels Corporate Park, Near Chintels Chowk, Sector - 114, Gurugram, Haryana	Respondent
CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. Charu Sagwan (Advocate) and Sh. Shubham Danya (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 details

2. The particulars of unit, 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. No.	Heads	Information
1.	Name of the project	"Chintels Paradiso", Sector 109, Gurugram Haryana
2.	Project Area	12.306 acres
3.	Nature of the project	Residential Group Housing
4.	DTCP License no. & validity status	251 of 2007 dated 02.11.2007 upto 01.11.2017 9 of 2008 dated 17.01.2008 upto 16.01.2018
5.	Name of Licensee	Chintel Exports Pvt. Ltd and 1other Intels India Pvt. Ltd
6.	Acres	12.07 0.25
7.	RERA Registered / not registered	Not Registered
8.	Unit no.	H 703 (Annexure p-7 page no. 84 of complaint)

9.	Unit admeasuring	2050 sq.ft. (Page no. 5 of complaint)
10.	Allotment Letter	30.12.2011 (As per page 53 of complaint to the original allottee) 19.05.2012 (Annexure p-7-page no. 84 of complaint to the present complainant)
11.	Date of execution of buyer's agreement	11.04.2012 (Annexure p-5 page 55 of complaint)
12.	Possession clause	11 The possession of the said apartment is proposed to be delivered by the company to the allottee within 36 months within a grace period of 6 months from the date of start of the construction of a particular tower/building in which the registration for allotment is made , subject always to timely payment of all charges including the BSP, stamp duty registration fees and other charges as stipulated herein or as maybe demanded by the company from time to time in this regard. (Emphasis supplied).
13.	Due date of delivery of possession	11.10.2015 (Taken from, the date of bba as the construction date is not mentioned)
14.	Total sale consideration	1,00,38,750/- (Calculated from the bba at page 21)
15.	Total amount paid by the complainant	1,01,32,854/- (As alleged by the complaint)



16.	Occupation certificate	18.08.2016 (Annexure r1 page 21 of reply)
17.	Offer of possession	22.01.2017 (Annexure r2 on page no. 23 of reply)
18.	Show cause notice	07.03.2018 (Annexure r-3 page 25 of reply)
19.	Reminder Letter	21.01.2016, 19.03.2016, 20.01.2018 ,16.02.2018 (Page 81 and 84 of the reply , Annexure r4 page 28 ,
20.	Cancellation letter	25.01.2019 (Page 60 of reply)
21.	Intimation Letter for Registration of Conveyance deed	16.04.2019 (Page 76 of reply)

B. Fact of the complaint

3. That in November 2011, Ms. Archana Yadav (original allottee) believing in the representation of the respondent booked a residential unit bearing No. 703 in Tower - H having a super area of 2050 sq. ft. in the project for a total sale consideration of Rs. 1,00,38,750/- under construction link payment plan and paid Rs. 13,37,625/- as booking amount. On 01.12.2011 the original allottee issued another cheque of Rs. 34,443/- to the respondent.
4. That on 30.12.2012, the respondent, issued an allotment letter in name of Ms. Archana Yadav, allotting her a unit bearing No. H - 703, on 7t Floor for size, admeasuring 2050 sq. ft. in the project of the respondent. On



27.01.2012, Ms. Archana Yadav paid Rs. 13,72,070/- against the demand to the respondent, and the respondent issued a payment receipt on 06.02.2012. On 11.04.2012, a buyer's agreement was executed inter-se the respondent and Ms. Archana Yadav original allottee. According to Clause 11 of the flat buyer agreement, the respondent was obligated to hand over possession of the unit within a period of 36 months with an additional grace period of 6 months from the date of start of construction of the particular tower. It is pertinent to mention here that construction of the project had commenced before the date of booking and as per payment plan and statement of account the respondent builder had demanded the 3rd demand on achievement of "On completion of fourth-floor slab" on 25.08.2012. It is, therefore, submitted that the due date of possession was 30.12.2014.

5. That believing on the representation and after the permission of the respondent, the complainant Kumar Manglam Dalmia purchased the above said flat from original allottee Ms. Archana Yadav and the respondent endorsed the name of the complainant in its record and on property documents. On 19.05.2012 the respondent issued a fresh allotment letter in favour of the complainant. On 22.02.2017 the respondent issued a letter for the offer of possession and asked to pay Rs. 9,55,153/-. That after receipt of an offer for the possession, in March 2017, the complainant visited the project site and found that his flat was still under construction and there were cracks on the wall and seepage in the



walls of bathrooms, the paintwork, and wooden work was incomplete, etc. The complainant informed the project management team to rectify the defects and complete of pending work and further requested for a joint inspection of the subject flat after final finishing. But the respondent always kept lingering on the matter on one pretext or another and said that the final finishing of the flat will be done only after payment of final demand. Therefore, after a long follow-up on 30.04.2019, under protest, the complainant paid Rs. 7,11,228/- through a demand draft bearing No. 009376 drawn on HDFC Bank.

6. That the complainant kept paying the demand as per payment schedule and paid Rs. 1,01,32,854/- i.e. more than 100% of original sale consideration, but the respondent failed to hand over the physical possession of the flat as per specification given in the brochure and BBA. It is pertinent to mention here that after payment of more than 100% cost, the respondent did not complete the finishing work of the flat. The complainant has availed a home loan from AXIS Bank against the said flat and paid interest of Rs. 36,47,931/- It is further pertinent to mention here that the complainant is paying the EMI on one hand and deprived by the respondent from physical possession of the complete flat.
7. That on 10.02.2022, on an unfortunate day, the apprehension of the complainant becomes true and the roof slabs of Tower D collapsed and Two women were killed in the said accident. Due to said accident, structural defects of the building arises and there were cracks in roofs,

walls including the basement. The District Town Planner Sh. R.S. Bhath declared that towers E, F, G, and H of the project are unfit for living. On 16.02.2022, the complainant sent an email to the respondent alleging that after repeated requests the respondent failed to facilitate a joint inspection after completion of finishing work and further alleged about structural/construction defects in the project and quoted the accident of collapse of the multiple floors of the Tower - D. It is pertinent to mention here that after the collapse of multiple floors on 10.02.2022, the C-complainant lost his faith in the builder and asked for the refund of paid money with interest

8. That the flat of the complainant is in Tower - H, and it is declared unfit by the competent authority. The collapse of the roof of 7 floors shows that the building was raised on inferior construction material and the respondent used sub-standard material for maximization of its profit and took the life of innocent persons. The complainant had purchased the said flat with the intention that he and his family will live in a safe and secure environment but said incident exposed the construction quality. After the incident, the complainant lost his faith in the respondent and is not ready to take the chance of his and his family's life.
9. That, since July 2018, the complainant is contacting the respondent and has called to the respondent and paid several visits to the project site and office of the respondent for seeking rectification in construction deficiencies but to no avail. The complainant has never been able to

understand/ know the actual state of construction. Though the towers seem to be built up, there has been a lack of progress in the final finishing and landscaping work since 2018. From the aforementioned facts and circumstances, it is manifest that the respondent is guilty of providing deficient services for which it is liable to be penalised and is entitled to indemnify the complainant against the losses suffered.

10. That due to the acts of the respondent highlighted above and the terms and conditions of the BBA, the complainant has been unnecessarily harassed mentally as well as financially, and therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

11. That the complainants have filed the present complaint for refund of the total paid up amount.

C. Relief sought by the complainant:

12. The complainants have sought following relief(s):

- I. Direct the respondent to refund to the complainants their paid up amount towards the allotted unit.
- II. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

13. On the date of hearing, the authority explained to the respondent/ promoters 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

14. The respondent has contested the complaint on the following grounds.
15. That the respondent is developing a residential group housing complex approximately over 17.418754 acres of land situated in village Mohammadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia".
16. That the present complaint is barred by law of limitation, the present complaint has been filed almost after five years from the date of offer of possession, the offer of possession of the apartment was sent to the complainant vide letter dated 22.02.2017, till date the complainant has not come forward to take the possession of the Apartment bearing no. H-703 (Tower no. 8 Apartment no. 703) Chintels Paradiso, Sector 109, Gurgaon Haryana.
17. It is pertinent to mention here that the answering respondent applied for grant of part occupation and respondent was granted occupation certificated vide Memo no. ZP-354/SD(BS)/2016/17307 dated 18.08.2016 before publication of said Rule. It is pertinent to mention here that the rule was published on 28.07.2017.
18. That the present complaint has been filed without any basis with sole motive to cause harassment to the respondent and malign the reputation of the respondent under the grab of the present complaint. As per agreement the respondent has offered the possession of apartment on 22.02.2017, a reminder letters dated 20/1/2018, 16/2/2018 and show cause notice was sent, but the complainant failed to respond.

19. That it is pertinent to mention here that clause 11 of the apartment buyer's agreement clearly states that time of handing over of possession is always subject to timely payment of all charges, in present case the complainant has opted for construction link plan and defaulted in making timely payment. Till date of filing of reply the complainant has principal outstanding amount of Rs 9,21,079/- against him and interest amount of Rs. 932364/- which the complainant failed to pay despite repeated reminders. It is further necessary to mention here that the offer of possession was given to the complainant vide offer letter dated 22 Feb 2017. But the complainant did not come forward to take the possession of the unit till date.
20. That the respondent sent offer of possession on 22.02.2017, the complainant did not respond to the said letter thereafter the respondent send 3 reminders to complainant vide letter dated 28 January 2018, 16th February 2018, 7th March 2018 requesting the complainant to clear the outstanding amount and to take possession of the apartment but the complainant failed to do so and till date the complainant has not cleared outstanding principal amount and interest amount further he has also not taken the possession of the apartment in question.
21. That it is submitted that on 10.02.2022 an accident took place and the cause of accident he is under investigation by appropriate authorities and further the matter is sub judice before the honourable Supreme Court of India hence answering respondent reserves its response. It is further

submitted that the structure audit of whole project is being undertaken by IIT Delhi. So before publication of the said report it cannot be said that the tower number EFGH is unfit for living. It is submitted that the incident of 10th February 2022 is under investigation, it is under investigation as what led to collapse of multiple slabs in tower D from 6th floor to second floor.

22. That it is submitted that after receipt of offer of possession letter the complainant slept over it and only after cancellation letter the complainant responded and made a part payment and promised to make the remaining payment but till date the complainant has not cleared his outstanding dues. It is submitted that that the complaint has not suffered any loss rather respondent has suffered loss due to acts and deeds of the complainant.

23. All other averments made in the complaint were denied in toto.

24. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

25. 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

26. 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

27. 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.

28. 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.

29. 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. (Supra) 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."

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants

F.I Direct the respondent to refund to the complainants their paid-up amount towards the allotted unit with interest.

31. That in the present case the allotment was done on 30.12.2011 to original allottee and subsequently the buyer's agreement was executed between the original allottee and respondent on 11.04.2012. It is observed that the complainant is a subsequent allottee. The said unit was endorsed in the favour of the complainant on 20.04.2012 which is before the due date of handing over of possession (i.e., 11.10.2015) of the allotted unit.
32. According to clause 11 of the buyer's agreement, the possession of the said apartment is proposed to be delivered by the company to the allottee within 36 months within a grace period of 6 months from the date of start of the construction of a particular tower/building in which the registration for allotment is made, the said date cannot be ascertained as no document has been placed regarding the date of start of construction of the particular tower/ building. So the due date is calculated from the date of execution of agreement i.e., 11.04.2012. Therefore, the due date of possession comes out to be 11.10.2015 (36 months from the date of execution of agreement with a grace period of 6 months). The subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession.
33. The occupation certificate was obtained on 18.08.2016 and the possession was offered to the complainant on 22.01.2017 but the complainant refused to take possession of the unit as the construction was not as per

sanctioned plans and specifications those were mentioned in BBA were not there and lastly certification of structural engineer/proof consultant and the work by the contractor were not worthy and even fraudulent.

34. Vide office order dated 12.02.2022 of Deputy Commissioner a committee was constituted to enquire into the incident occurred in "D" Block, Chintels Paradiso Housing complex, Sector-109, Gurugram whereby portion of the 6th floor collapsed all the way down to the first floor on 10.02.2022 in the evening around 06.00 PM.

35. According to para 11 point (9) of Inquiry Report of the Committee dated 08.11.2022, it was submitted that:-

"Furthermore, since signs of corrosion of reinforcement are visible in all the towers of the project, the committee reiterates that the remaining towers (towers A,B,C,D,E,F,G,H and J) be vacated until the completion of the ongoing investigations in the interest of the safety of the residents".

36. The tower in which the complainant was allotted the unit is also covered in the said report and later on Tower H was also declared unfit and unsafe for the complainants-allottee to stay. According to the administration reports it is observed that the towers including the subject tower of the complaint is unfit and unsafe and should be vacated for the safety of the allottee. The complainant is seeking refund on the ground of structural defects in the offered unit, deficient services on the part of respondent and additionally unfair trade practices were adopted by respondent.

37. As per combined reading of section 11(4)(a) and 14 of RERA Act, 2016 :-

Section 11(4) (a)

The promoter shall 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

"Section 14: Adherence to sanctioned plans and project specifications by the promoter

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

38. The RERA act, 2016 empowers Adjudicating officer to summon any person, in order to establish the veracity and extent of default and it is evident that the inquiry has to take into its ambit and relate not only to their defaults of the promoter as detailed in section 12,14,18 of the Act but also the factors detailed in section 72 (a)(b)(c)(d), while assessing the quantum of compensation. The grievance of the allottee regarding defaults or deficiencies of the promoter detailed in the complaint would in itself cast a duty upon the Adjudicating officer to hold an enquiry to ascertain the veracity of the allegations made by the allottee against the promoter.

39. In addition, discretion has been bestowed by the legislature upon the Adjudicating Officer to take into consideration any such factors as may be necessary to the case in furtherance of cause of justice. Therefore keeping in view the above mentioned observation read with the direction as was held in M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., civil appeal nos. 6745-6749 of 2021 that present complainant 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. As adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for

claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

40. After dealing with relief No. 1, the aforesaid relief sought by the complainants-allottees became redundant. Hence, no direction to this effect.

41. Complaint stands disposed of.

42. File be consigned to registry.



(Sanjeev Kumar Arora)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2023

HARERA
GURUGRAM