

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

Complaint no. : 1005 of 2021  
Date of filing : 05.03.2021  
complaint: 21.05.2021  
First date of hearing: 12.09.2023  
Date of decision

1. 2.	Ashish Khanna Nejil Micah Bhatti R/O - B-133, Lajpat Nagar, New Delhi	<b>Complainants</b>
versus		
	Emaar mgf land ltd R/O: Ece House, 28 Kasturba Gandhi Marg, New Delhi-110001	<b>Respondent</b>

**CORAM:**

Ashok Sangwan

**Member**

Sanjeev Kumar Arora

**Member****APPEARANCE:**

Sh. Shivam proxy

**Complainants**

Sh. Aishwarya Hooda (Advocate)

**Respondent****ORDER**

1. The present complaint dated 05.03.2021 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 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the act or the rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project 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	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
5.	Validity of license	09.10.2020
6.	Licensee	Kamdhenu Projects Pvt. Ltd.
7.	Registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019]  ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]





8.	Provisional allotment letter	28.05.2013 [annexure R2, page 30 of reply]
9.	Unit no.	IG-01-0103, 1 <sup>st</sup> floor, building no.1 [annexure R4, page 44 of reply]
10.	Area of the unit (super area)	2025 sq. ft.
11.	Date of execution of buyer's agreement	09.07.2013 [annexure R4, page 41 of reply]
12.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee(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 compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project. (Emphasis supplied)</i></p> <p>[page 59 of reply]</p>
13.	Date of start of construction as per the statement of account	11.11.2013

	dated 01.04.2015 at page 97 of reply	
14.	Due date of possession	11.05.2017 [Note: Grace period is not included]
15.	Total consideration as per the statement of account dated 01.04.2015 at page 97 of reply	Rs.1,48,77,425/-
16.	Total amount paid by the complainants as per the statement of account dated 01.04.2015 at page 97 of reply	Rs.10,00,000/- [Note: Less than 7% of the sale consideration]
17.	Occupation certificate granted on	17.10.2018 [annexure R11, page 112 of reply]
18.	Final notice given to the complainant on	12.07.2013 [annexure R7, page 104 of reply]
19.	Cancellation letter issued on	04.06.2014 [Annexure R8, page 106 of reply]
20.	Conveyance deed in favour of third party (Mr. Tanish Singhal and Mrs. Namita Kumari)	05.10.2020 [annexure R12, page 117 of reply]

**B. Fact of the complaint**

3. That the complainants had booked a unit bearing no. IG- 01-0103 under imperial garden project located at Sector 102, Village Kherki Majra Dhankot, Gurugram. The complainants were allotted the said unit vide allotment letter dated 28.05.2013 and therefore the buyer's agreement was executed between the parties on 09.07.2013.



4. That the aforesaid agreement was carried out for a total consideration of Rs. 1,48,77,425/- coupled with the assurance by respondent company that the said project will be initiated soon and will stand complete on time. In order to execute the said agreement, a signing amount of Rs. 10,00,000/- was duly paid to respondent company by the complainants.
5. That despite the commitment of an early initiation of the said project there appeared no sign of construction on the project site even after more than a year. The officials of the said project and the respondent company were contacted several times by one of the complainants, Mr. Nejl Micah Bhatti for the information on any development but he was circumvented with unsatisfactory responses. After facing the disappointment of failure on respondent company part to keep up with the assurances and commitments in relation to the said project, complainants was left with other option than to stop paying for the further instalments until any development is made on the said project site.
6. That due to the work commitments one of complainants, Mr. Nejl Micah Bhatti had to move to Canada and thereafter when my another client, Mr. Ashish Khanna, tried to contact the officials of the said to inquire about any development or initiation on the said project, he was shocked to realize that the said allotted unit stood cancelled and the same was allotted to someone else without any prior intimation or notice to any of complainants.

7. That as per the clause 20 of the said buyer's agreement "in case the possession has not been handed over to the Allottee due to any default a notice would be served allowing the necessary rectification (within 30 days) prior to any cancellation or termination" The aforesaid conduct of respondent company can be termed as highly unprofessional and is completely against the business ethics, which has in turn caused great mental agony to both complainants.
8. That those complainants come to know that the respondent has cheated them with false promises. So the complainants have approached the respondent company several times through telephonically, through emails and even went to respondent company office to request them to refund the advance amount of Rs. 10,00,000/- along with interest from the date of booking amount.
9. That since the respondent failed to make refund of the amount, the complainants had served a legal notice dated 14.02.2020 through their advocate. The aforesaid notice was served upon the respondent, in accordance with law. However, despite service of the aforesaid statutory notice the respondent has not refunded the amount till date.
10. That the facts of the case clearly show that the respondent had dishonest intention to cheat and defraud the complainants. Due to this the complainants have gone through mental harassment for many years and caused monetary loss also to the complainants.



11. That the respondent company are not only guilty of deficiency in services by not fulfilling their promises in due course of their services towards their helpless customers/ consumers but also for mental torture and harassment to the complainants by unnecessarily misguiding and delaying the refund of advance amount of 10,00,00/- along with interest. The complainant has 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):

- 1) Direct the respondent to refund Rs. 10,00,000/ along with prescribed rate of interest paid by the complainant.
- 2) Direct the respondent to pay cost of litigation of Rs. 1,10,000/-

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**

The respondent builder by way of written reply made following submissions:

14. That the respondent has acted in accordance with the terms and conditions of the space buyer's agreement executed between the parties on their own free will. The complainants were duly informed about the

Schedule of possession as per Clauses 32 of the space buyer's agreement entered into between the complainant and respondent.

15. That the complainants had approached the respondent and expressed an interest in booking a unit in the residential group housing project being developed by the respondent known as "Imperial Gardens" situated in Sector 102, Village Kherki Majra Dhankot, Tehsil & District Gurgaon (hereinafter referred to as "said project").
16. That the complainants were provisionally allotted apartment number IG-01-0103 vide provisional allotment letter dated 28.05.2013 in the said project. The buyer's agreement was executed between the parties on 09.07.2013.
17. That the total sale consideration amount for the said unit was Rs.1,54,98,767/-. The complainants had opted for a construction linked payment plan. The complainants had only made payment of the booking amount of Rs. 10,00,000/- to the respondent. Despite booking such an expensive unit, the complainants had paid less than 7% of the total sale consideration amount to the respondent.
18. That the respondents had regularly raised payment demands from the complainants as per the construction linked payment plan chosen by the complainants. In fact, the respondent had issued multiple payment demand letters along with reminder letters to the complainants even though it was under no obligation to do so. However, the complainants



failed to make payment of the demanded amount despite receiving the aforesaid letters.

19. That thereafter, the respondent was forced to issue final notice dated 12.07.2013 to the complainants wherein it had been duly mentioned that the complainants had chosen to ignore all communication from the respondent and had failed to make payment of the outstanding amount as per the terms and conditions incorporated in the buyer's agreement. It had further been mentioned that in case the complainants did not make payment of the outstanding amount, the buyers agreement dated 09.07.2013 would stand terminated. However, the complainants chose to ignore the aforesaid final notice as well.
20. That the respondent was finally constrained to issue cancellation letter dated 04.06.2014 vide which the allotment of the complainants pertaining to the said unit had been cancelled. It had further been mentioned in the aforesaid cancellation letter that the total forfeitable amount inclusive of earnest money along with delayed interest liable to be paid by the complainants to the respondent was Rs.32,28,168.75. It had also been stated in the aforesaid cancellation letter that the complainants had made a payment of only Rs.10,00,000/- to the respondent till date and therefore, no balance amount was liable to be refunded to the complainants by the respondent.
21. That it is pertinent to mention that the earnest money amount had been calculated as per Clause 1.2(i) of the Buyers Agreement dated 09.07.2013.

It would not be out of place to mention that the bifurcation of the earnest money component had also been included in clause 25 of Allotment Letter dated 28.05.2013. The respondent had strictly abided by the terms and conditions incorporated in the buyer's agreement in order to calculate the earnest money complainants and the total forfeitable amount. Therefore, the complainants had been duly informed vide cancellation letter dated 04.06.2014 that no amount whatsoever was liable to be refunded to them by the respondent.

22. That the complainants have intentionally concealed the fact that they had duly received final notice dated 12.07.2013 and cancellation letter dated 04.06.2014 from the respondent. The allotment of the complainants ought to have been cancelled within a span of 30 days from the issuance of final notice dated 12<sup>th</sup> of July, 2013 and the same had been incorporated therein as well. However, the respondent as gesture of goodwill did not cancel the allotment of the complainants within the said time period in order to provide more time to the complainants to make payment of the outstanding amount. The respondent however was constrained to cancel the allotment of the complainants vide cancellation letter dated 04.06.2014.

23. That occupation certificate dated 17.10.2018 has already been received for the Tower wherein the said unit is located. Moreover, the said unit had already been sold to another allottee. In fact, conveyance deed bearing



vasika no. 1666 dated 05.10.2020 has already been executed and registered in favour of the said allottee.

24. All other averments made in the complaint were denied in toto.
25. 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**

26. 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**

27. 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**

28. 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.

29. 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.
30. 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."*

31. 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 complainant**

**F.I Direct the respondent to refund Rs. 10,00,000/ along with prescribed rate of interest paid by the complainant.**

32. The complainants are admittedly the allottee of respondent - builder of a residential unit on the basis of letter of allotment dated 28.05.2013 for a total sum of Rs.1,48,77,425/-. A buyer's agreement was executed between the parties in this regard on 09.07.2013. The due date for completion of the project was fixed as 11.05.2017 So, in this way, the complainants have paid a total sum of Rs. 10,00,000/- against the allotted unit. The occupation certificate of the project was received on 17.10.2018 and the possession was not offered.

33. However, the complainants have paid an amount of Rs. 10,00,000/- against a total consideration of Rs.1,48,77,425/- constituting 6.7% of total consideration, which is less than 10% of total consideration. Hence, no direction for refund of the paid-up amount by the complainant to the respondent can be given as the cancellation was done in a valid manner.

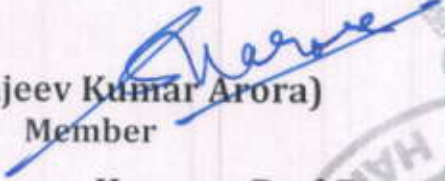
**F.II Direct the respondent to pay compensation of Rs. 1,10,000/- as litigation expenses**

34. The the complainants are 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:**



35. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
36. Complaint stands disposed of.
37. File be consigned to the Registry

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2023

  
**HARERA**  
GURUGRAM