

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

Complaint no.: 1433 of 2022
Date of decision: 29.11.2023

1. Sheela Devi

Address:- R/o 738/23, Laxmi Garden, Oposite DAV
School Gurugram

2. Suruchi Sharma

Address:- R/o 738/23, Laxmi Garden, Oposite DAV
School Gurugram

3. Ritu Sharma

Address:- R/o 738/23, Laxmi Garden, Oposite DAV
School Gurugram

Complainants

Versus

BPTP Limited

Registered office At M-11, Middle circle Connaught
Circus, New-Delhi -110001

Also at :- BPTP Crest, Floor 15, Udyog Vihar Phase-IV,
Gurugram -122015, Tel no:- 0124-3852787

Respondent

CORAM:

Shri Ashok Sangwan

APPEARANCE:

Shri Maninder Singh

Shri Harshit Batra

Member

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 31.03.2022 has been filed by the complainants 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 and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Amstoria" Sector- 102, Gurugram
2.	Allotment letter	07.07.2011
3.	Date of execution BBA	22.03.2012
4.	Unit no.	A-162-FF-, First floor
5.	Super area	1999 sq. ft.
6.	Possession clause	5.1 <i>With a period of 24 months from the date of sanction of building plan or date of execution of buyer's agreement or 180 days grace period for filling and pursuing the OC from DTCP under the Act.</i>

7.	Grace period	Not allowed
8.	Date of sanction of building plan	05.10.2012
9.	Due date of possession	05.10.2014
10.	Sale consideration as per BBA at page 25 of complaint.	Rs. 85,31,992/-
11.	Total amount paid by the complainant	Rs. 27,48,007/-
12.	Occupation certificate on	22.01.2020
13.	Offer of possession	12.02.2020
14.	Reminder's letter	07.03.2018, 09.04.2018,
15.	Final opportunity letter	04.08.2018
16.	Termination letter	15.03.2022 Page 88 of reply

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- a. That the real estate project named "Amstoria", the subject matter of the present complaint is situated at Sector-102, Gurugram, therefore, this Authority has the jurisdiction to try and decide the

present Complaint. The respondent is the developer/promoter of the aforesaid residential project and has developed, sold and marketed the aforesaid residential project.

- b. That the Respondent had always advertised itself to be a very ethical business group that lives onto its commitments in delivering its projects as per promised quality standards and agreed timelines. That the Respondent while launching and advertising any new project always commits and promises to the targeted customers that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the unit to them. They also assured to the consumers like the Complainant(s) that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project being developed and sold by them.
- c. That the Respondent was very well aware of the fact that in today's scenario looking at the status of the construction of residential projects in India, especially in NCR, the key factor to sell is the delivery within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing. The respondent, therefore, used this tool, which is directly connected to emotions of consumers, in its marketing plan and always represented and warranted to the consumers that their dream Floor will be delivered within the agreed timelines.

- d. That in 2011, the Respondent through its marketing executives and advertisement done through various medium and means approached the Complainant(s) with an offer to invest and buy a Floor in the proposed project being developed by the respondent namely "Amstoria" in Sector-102 Gurugram (hereinafter referred to as the "Said Project"). The Respondent had represented to the Complainant(s) that the Respondent is very ethical business house in the field of construction of residential project and in case the Complainant(s) would invest in the project of Respondent then they would deliver the possession of proposed Floor on the assured delivery date as per the best quality assured by the Respondent. The Respondent had further assured to the Complainant(s) that the Respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The Complainant(s) while relying on the representations and warranties of the Respondent and believing them to be true had agreed to the proposal of the Respondent and booked a Floor in the said project of the Respondent.
- e. That the respondent arranged the visit of its representatives to the Complainant(s) and they also assured the same as assured by the Respondent to the Complainant(s), wherein it was categorically assured and promised by the Respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project

and would allot the Floor in the name of Complainant(s) immediately upon booking. Relying upon those assurances and believing them to be true, the Complainant(s) booked a Floor and was allotted Floor bearing A-162 on 1st Floor admeasuring 1999 Sq. Ft for a basic sale price of Rs.85,32,000/- in the said project. It was assured and represented to the Complainant(s) by the respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the said project on the time as assured by the Respondent. Accordingly, the Complainant(s) paid Rs.8,53,200/- on 31.08.2011 towards booking amount.

- f. That the respondent assured the complainant(s) that it would execute the buyers' agreement at the earliest and maximum within one month. However, the respondent did not fulfill its promise and finally executed the same on 22.03.2012 with a delay of almost 5 months. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on the Complainant(s) towards the sale consideration of the said delay on their part. floor and the complainant(s) have duly paid all those demands without any default or
- g. That the complainant for the smooth payment of aforesaid floor approached the bank and sanctioned a loan for the remaining payment for which a tripartite agreement has been executed on 29 January 2014 between all the parties i.e. Complainant,

respondent and the Bank. The loan amount was subjected to the demand by the respondent on time.

- h. That the complainant(s) had paid Rs.27,48,007.00/- towards the sale consideration as on today to the respondent as demanded by it from time to time. That the Complainant(s) thereafter had tried their level best to reach the representatives of the Respondent to seek a satisfactory reply in respect of delivery and possession of the said Floor but all in vain and the respondent has started to ignore the Complainant(s) and had not given any reply regarding the delivery and possession. That according to Clause 5.1 of the Agreement dated 22.03.2012 the promised date of delivery of the said Floor was 24 months with a grace period of 180 days from the date of execution of the agreement i.e., 22.09.2014 but the respondent has not handed over the said Floor as per its promise.
- i. That the conduct on the part of the respondent has cleared the dust on the fact that all the promises made by the Respondent at the time of sale of said Floor were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the Complainant(s) to buy the said Floor basis its false and frivolous promises, which the respondent never intended to fulfill. The Respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the Complainant(s).

- j. That the Complainant no 1 being a senior citizen had to face all these financial burdens and hardship from their limited income resources, only because of the respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made the Complainant(s) to suffer grave, severe and immense mental and financial harassment with no-fault on their part. The Complainant(s) being common person just made the mistake of relying on Respondent's false and fake promises, which lured them to buy an Floor in the aforesaid project of the Respondent. That the cause of action accrued in favor of the Complainant(s) and against the respondent on 22.09.2014 when the respondent was to hand over the delivery and possession of the said Floor to the Complainant(s) and the cause of action is still continuing.

C. The complainants are seeking the following relief:

4. The complainants have sought following relief(s):
- (i) Direct the respondent to refund the total amount along with interest at the prescribed rate.
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 filed by the respondent

6. The respondent had contested the complaint on the following grounds:

- a. That at the outset, it is most respectfully submitted that the complaint filed by the complainants is grossly misconceived, erroneous, wrong, unjustified and untenable in law besides being clearly extraneous and irrelevant having regard to facts and circumstances of this case. The complainants approached the respondent out of their own freewill and consent and also after carrying out the necessary due diligence and further after evaluating the commercial viability of the project of the respondent with the other options available in the vicinity.
 - b. The complainant himself is a defaulter/offender under section 19 (6) and 19 (7) of The Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainant cannot seek any relief under the provision of The Real Estate (Regulation and Development) Act, 2016 or rules frame thereunder. The complainant has failed to clear the outstanding dues in terms of offer of possession and other previous dues despite various reminder letters. Thereafter, the respondent was constrained to issue termination letter dated 15.02.2022 and terminate the booking of the complainant.
 - c. That without accepting the contents of the complaint, in any manner whatsoever and without prejudice to the above-mentioned contentions, it is submitted that if in the circumstance refund is allowed, it has to be after deduction of statutory charges like GST, VAT, Service Tax, EDC, IDC, EEDC.
7. 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

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

10. Section 11(4)(a) of the Act 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.

11. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. 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."

13. 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 paid up amount along with interest at the prescribed rate.

14. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building:-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. The complainants were allotted unit no. A-162-FF, First floor, admeasuring 1999 sq. ft. (super area) in the project "Amstoria" Sector 102" by the respondent-builder for a sale consideration of Rs. 85,31,992/- and they had paid a sum of Rs. 27,48,007/- which is approx. 47% of the sale consideration. A buyer's agreement dated 22.03.2012 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 05.10.2014. The Occupation Certificate for the project of the allotted unit is obtained on 22.01.2020. The complainants failed to pay amount due against the allotment unit.
16. As per 7 the terms of the builder buyer agreement the complainants were liable to made the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

Termination, Cancellation and Forfeiture: 7.1 The timely payment of each installment of the Total Sale Consideration i.e. Basic Sale Price and other charges as stated herein is the essence of this transaction / agreement. In case payment of any installment as may be specified is delayed, then the Purchasers) shall pay interest on the amount due @ 18% p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, if the Purchaser(s) neglects, omits, ignores, or fails for any reason whatsoever to pay in time to the Seller any of the installments or other amounts and charges due and payable by the Purchaser(s) within three (3) months from the due date of the outstanding amount or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions on his/her part herein contained within the time stipulated or agreed to, the Seller/Confirming Party may at its sole option forfeit the

amount of Earnest Money and other charges including late payment charges and interest deposited by the Purchasers), and any other amount of a non-refundable nature including Incentive, brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker, etc. and in such an event the allotment shall stand cancelled and the Purchaser (S) shall be left with no right, lien or interest on the said Floor and the Seller/Confirming Party shall have the right to sell the said Floor to any other person. Further, the Seller/Confirming Party shall also be entitled to terminate/cancel the allotment of the Purchaser(s) in the event of default of any of the terms and conditions of this Agreement.

17. The respondent issued a final opportunity letter and thereafter, issued a cancellation letter to the complainants. The Occupation Certificate for the project of the allotted unit was granted on 22.01.2020. It is evident from the above mentioned facts that the complainants paid a sum of Rs. 27,48,007/- against sale consideration of Rs. 85,312,992/- of the unit allotted to them 07.07.2011. The complainants have failed to adhere to the terms and conditions of the builder buyer agreement. The respondent cancelled the unit of the complainants with adequate notices. Thus, the cancellation of unit is valid.
18. 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."

19. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 15.03.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

20. 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):
- i. The respondent is directed to refund the paid-up amount of Rs. 27,48,007/- after deducting 10% of the sale consideration of Rs. 85,31,992/-with interest at the prescribed rate i.e., 10.75% on such balance amount, from the date of cancellation i.e., 15.03.2022 till the actual date of refund.
 - ii. A Period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.11.2023



HARERA
GURUGRAM