

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

Complaint no. :	18 of 2019
Date of filing complaint:	23.01.2019
Date of decision :	23.02.2023

Sh. Satish Gupta Both R/O: O-16, South City-1, Gurugram	Complainant
Versus	
M/s Samyak Projects Private Limited Regd. office: 201/202, Solitaire Plaza, opp. Garden estate, M.G. Road, Gurugram.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rahul Yadav (Advocate)	Complainants
None	Respondent

EX- PARTE ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"The Market Square", Sector 67, Gurugram.
2.	Total area of the project	1.75 acres (178.412 acres)
3.	Nature of the project	Commercial project part of residential colony
4.	DTCP license no.	18 of 2010 dated 10.03.2010 valid up to 09.03.2018 21 of 2011 dated 24.03.2011 valid up to 23.03.2019 26 of 2012 dated 30.03.2012 valid up to 26.03.2018
5.	Name of licensee	M/s Sukh Dham Coloniser Pvt. Ltd. c/c Ansal Properties Infrastructure Pvt. Ltd.
6.	Registered/not registered	Not Registered
7.	Date of booking	02.05.2013 (as per page no. 10 of complaint)
8.	Unit no.	Not known
9.	Area of the unit	358.80 sq. ft. on 3 rd floor [annexure 3, pg. 11 of complaint]
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	Not known
12.	Date of commencement of construction as per customer ledger dated 16.07.2019	Not known

13.	Due date of possession	Not known
14.	Basic sale consideration	₹ 30,49,800/- [annexure 3, pg. 11 of complaint]
15.	Total amount paid by the complainant	₹ 3,79,642/- [annexure 1, pg. 9 of complaint]
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant booked a unit cum office space in the future project of the respondent in Gurugram by showing false and rosy picture by the representatives of the developer / promoter. The representatives of M/s. Samyak Projects Private Limited Pvt Ltd represented to the complainant that M/s. Samyak Projects Private Limited developing the project namely "The Market Square", Sector 67, Gurugram. It was stated that the project is a premium high-end multi-storey commercial project being developed with the assistance of internationally renowned architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.
4. That on the assurance and representations of the respondent the complainant paid a sum of Rs. 3,79,642/- through cheque to the respondent.
5. That the complainant had been regularly following with the respondent inquiring the status of the project, but the respondent did not give any heed to it. The respondent finally for the first time issued a letter dated

02.05.2013 whereby the respondent confirmed the booking of the complainant.

6. That in term of the booking, the unit cum office space was to be handed over to the complaint within a period of 3 years. The complainant on various occasions approached the respondent to provide the status of the construction of the project, but the respondent kept avoiding the same and did not provide the complainant with actual construction status of the project.
7. That no builder buyer agreement was ever signed between the parties till date despite various follow ups made by the complaint for executing a builder buyer agreement for the said booking. That the intention of the respondent since inception was not to start the project and as on date the project has been scrapped despite of the fact that the respondent has collected booking money from the complaint.
8. The Respondent have committed various acts of omission and commission by making incorrect and false statement in the advertisement material. The project has been scrapped. The complainant is entitled for refund of its entire amount paid to the respondent along with interest @ 15% p.a. from the date on which the complainant made payment towards booking of the unit cum office space till realisation.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the amount paid by them along with interest @ 24%.
 - ii. Direct the respondent to pay a sum of Rs. 5,00,000/- to the complainant towards undue hardship and injury, both physical and mental.
 - iii. Direct the respondent to pay a sum of Rs. 55,000/- to the complainant towards the cost of the litigation.
10. The authority issued a notice dated 24.01.2019 & 01.02.2019 of the complaint to the respondent by speed post and also on the given email address at samyakprojects.sales@gmail.com. The delivery reports have been placed in the file. Thereafter, reminders dated 25.09.2019, 14.10.2020, 22.05.2021, 16.08.2021 for filing reply were sent to the respondent on email address at samyakprojects.sales@gmail.com. Despite service of notice through email and public notice, the respondent preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
11. 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.

D. Jurisdiction of the authority:

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

D.1 Territorial jurisdiction

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.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.

E. Entitlement of the complainant for refund:

- E.I Direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest.**
13. The complainant booked a unit cum office space in the future project of the respondent and paid a sum of Rs. 3,79,642/- to the respondent. The respondent issued a letter dated 02.05.2013 whereby it confirmed the booking of the complainant. The complainant draws attention towards Annexure R2 wherein the respondent-promoter has undertaken to refund the amount paid by the allottee in case the allottee is not interested in continuing in the upcoming project. Subsequent to the same, neither any allotment letter has been issued nor any BBA has been executed and hence, the complainant is seeking refund as already undertaken by the respondent-promoter.
 14. Further, it brought to the notice of the authority that the authority has appointed a local commission to visit the site of the project and as per the report of the local commission dated 07.10.2022, no work has been done by the promoter on the project site. The project site is left vacant, and no construction activity has been carried out and project seems to have been abandoned.
 15. Keeping in view the fact that the allottee- complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit.
 16. Further, in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)* 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 observed as under:

25. The unqualified right of the allottees 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 allottees, if the promoter fails to give possession of the apartment, plot or building within 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 allottees/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 allottees 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

17. 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 under section 11(4)(a). Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
18. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 3,79,642/- with interest at the rate of 10.70% (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 each payment till the

actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

E.II Direct the respondent to pay a sum of Rs. 5,00,000/- to the complainant towards undue hardship and injury, both physical and mental.

E.III Direct the respondent to pay a sum of Rs. 55,000/- to the complainant towards the cost of the litigation

19. 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.

F. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the amount i.e., **Rs. 3,79,642/-** received by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
 - ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint stands disposed of.
 22. File be consigned to the registry.



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2023

HARERA
GURUGRAM