

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

<b>Complaint no.</b>	:	<b>1542/2019</b>
<b>Date of filing complaint:</b>		<b>05.04.2019</b>
<b>Date of decision</b>		<b>21.11.2023</b>

Satish Kumar Hooda s/o Sh. Jai Singh Hooda <b>R/O:</b> F 452, Nav Sansad Vihar, Plot 4 Sector 22 Dwarka New Delhi	<b>Complainant</b>
Versus	
Dlf Utilities Limited Dlf Sales Gallery Corporate Greens, Sector 74 A, Gurugram	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Harikesh Singh (Advocate)	Complainant
Sh. J.K Dang (Advocate)	Respondent

**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 provisions 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:

S.No.	Heads	Information	
1.	Name of the project	DLF Garden City , Sector 91and 92 , Gurugram	
2.	Project Area	164.74 Acres	
3.	Nature of the project	Residential plots	
4.	DTCP License no. & validity status	59 of 2011 dated 28.06.2011 upto 27.06.2017	14 of 2012 date 26.02.2020upt o 27.02.2012
5.	RERA Registered / not registered	Registered bearing no. 23 of 2021 dated 15.06.2021 Valid till 27.06.2023	
6.	Plot no.	E-12/2	G-19/5
7.	Plot admeasuring	1183 sq. ft. (Annexure A-5-page no. 70 of complaint)	
8.	Allotment Letter	19.03.2012 Allotment of plot of E-12/2 (Annexure p-3 page	19.03.2012 Allotment of plot G-19/5 (Annexure p-4-page no. 35 of complaint)

		34 of complaint)	
9.	Date of execution of plot buyer's agreement	25.06.2012 Page 44 of complaint	25.06.2012 Page 75 of complaint
10.	Possession clause	<b>11(a). Schedule for Possession</b> The company shall endeavour to offer possession of the said plot within 24 months from the date of execution of this agreement subject to timely payment by the intending allottees of sale price, stamp duty, government charges and any other charges due <b>(Emphasis supplied).</b>	
11.	Due date of delivery of possession	25.06.2014 (Calculated from the date of execution of this agreement)	
12.	Total Sale Consideration	Rs.4,11,05,025/- (As per page 13 of the written submission by the respondent)	
13.	Total amount paid by the complainant	For plot no. E12/2 the complainant has paid an amount of Rs. 15,00,000/- (As per the written arguments filed by the respondent)  For plot no. G-19/5 the complainant has paid an amount of Rs. 12,00,000/- (As per the written arguments filed by the respondent)	



		In total the complainant has paid a total amount of Rs. 27,00,000/- for both the said plots	
14.	Completion certificate	02.07.2014 and 18.03.2016 (Page 40 annexure r-2 and page 43 annexure r-4)	
15.	Offer of possession	Not Offered	
16.	Reminder letters	For G-19/5 16.05.2012 01.06.2012 20.06.2012 25.06.2012 (Annexure 15,16,17,1 8-page no.90 to 93 of reply)	For E-12/2 14.05.2012, 29.05.2012, 18.06.2012, 21.06.2012, 16.07.2012, 30.07.2012, 17.08.2012, 22.08.2012, 14.09.2012, 03.10.2012, 03.10.2012 and 18.10.2012 (Annexure 29,30,31,32 on page no. 139 to 142)
17.	Cancellation letter	17.07.2012 (Annexure 21 page 110)	05.11.2012 Annexure 43 page 167 of reply

**B. Facts of the complaint:**

- That the complainant was induced by the tall claim and cozy picture shown by the respondent - builder for the project "Dlf Garden City Sector 91 and 92 Gurugram", which lead to booking of plot no. E-12/2 measuring 420 square meters (502/32 square

yard) and residential plot no. G-19/5 admeasuring 343/75 square meter (411 square yard) for a total sale consideration of Rs. 4,00,00,000/-

4. The complainant made a payment of Rs. 15,00,000/- on 12.03.2012 and the respondent - builder issued receipt dated 12.03.2012 and the same was regarding Plot no. DLF /276 / E- 12/2 GRD/GRV/00129/0312 .He also paid an amount of Rs. 12,00,000/- regarding Plot No. G19/5 and the respondent- builder issued receipt dated 15.03.2012.
5. That on 19.03.2012, a allotment letter was issued by the respondent - builder regarding plot no. plot no. E-12/2 and G-19/5 in DLF garden city at basic sale price of Rs. 45000/- per square yard under instalment payment plan. The complainant booked the aforesaid two residential plots for his two minor children with the hope that they would have their separate residential accommodations in Gurgram City, (Haryana).
6. That on vide letters dated 18.04.2012 and 10.5.2012, respectively the respondent- builder sent duplicate flat buyer agreement related to plot no. E- 12/2 and G-19/5.
7. That the buyer's agreement was executed between the parties on 25.06.2012 related to intently allotted in the DLF Garden City', a residential plot no. E-12/2 measuring 420 square meter (502/32 square yard) and another dated 25.06.2012 residential plot no. G-19/5 ad measuring/75 square meter (411 square yard) in DLF, Garden City, Sector 19 and Gurugram Haryana under the



instalment payment plan and the due date comes out to be 25.06.2014

8. The plot buyer agreement dated 25.06.2012 to Plot No. G19/ 5 in DLF garden city, Sector 91 and 92 was sent by respondent- builder by forwarding letter dated 16.07.2012.
9. That in the aforesaid both plot buyer agreements the clause 15 specifically stated that in the lay out plan the colony shall be a gated one surrounded by an external walls/ fence/ grill and manned by an appointed security agency with security system in place.
10. That after the execution of the buyer's agreement the complainant came to know that the land at which the plotted colony proposed to be developed was itself under litigation. He also came to know that the concerned department i.e. town and country planning department Haryana has initially granted license of the said land for developing affordable group housing project under the government polices. Subsequently, the respondent - builder in connivance with the official of the Town country planning department illegally got permission to change the nature of license for developing plotted colony.
11. That the complainant also came to know that due to the litigation and other reasons, the demarcation, zoning plan and layout plan of the colony in question was not yet being finally sanctioned by the competent authority and there was no possibility of the same being sanctioned in near future. After the site inspection the complainant also found that there were two revenue rasta near the plot of the complainant which going to Mewka to Dhorka and another going to Mewka to Hayatpur. In this regard the complainant obtained

masavi from the office of the kanungo (Tehsil harsaru, District Gurugram) and iamabandi related to revenue rasta falling in killa no. 43 and just below it the land of DIF was shown in Killa no. 10/2, 11/1, 12/1, 11/13. It shows that the said land belong to Gram Panchayat and not the DLF/Respondent- builder.

12. That another rasta from Village Mewka to Hayatpur falls in kill no. 44. As per revenue record, the ownership of the said killa no. 44 of Gram Panchayat. Just below the killa no. 44 the land of the DLF is shown which 21/20 is. The complainant also obtained sizra of the DLF plotted colony. In the said sijra the revenue rasta also still existed between the said plotted colony of the DLF.
13. That the complainant immediately thereafter, visited the office of the respondent and asked to provide the relevant documents regarding ownership of the colony, layout plan and sanctioned develop plan of the colony. Since the respondent - builder did not provide any sufficient document relating to the ownership of the land and layout plan and sanctioned develop plan of the said plotted colony, the complainant immediately stopped the further instalments regarding both the residential plots despite demands raised in this regard.
14. That because of the revenue Rasta fall in the said plotted colony, the respondent- builder was not able to make internal roads, other development work and boundary wall of the said project. Despite repeated request the respondent- builder has not provided any document of ownership, layout plan and sanctioned develop plan of the said plotted colony and illegally made a demand of instalment which the petitioner had not paid.



15. Thereafter, vide letter dated letter dated 17.07.2012, the respondent cancelled allotment of the plot no. G19/5 in its project. The respondent- builder also issued letter dated 5.11.2012 cancelling the allotment of plot no. E-12/2.
16. The complainant send a letter dated 18.12.2012 regarding illegal cancellation of Plot no. E-12/2 DLF Garden City and pointed out the deficiency on the part of respondent- builder. In the letter dated 18.12.2012 , it is specifically stated that land on which the colony proposed to develop itself was under litigation and the demarcation of the zoning plan and layout plan of the colony in question are not yet finally sanctioned by the competent authority and not likely to be sanctioned in future . There are two revenue rasta/road just near the both the plots allotted to the complainant in the said plotted colony.
17. That in the response to the aforesaid letter of the complainant, the respondent- builder issued letter dated 31.12.2012. There is no explanation regarding sanctioned of layout plan and zoning plan and nothing has been stated regarding revenue rasta existed just above the plot allotted to the complainant . In the last para of the letter dated 31.12.2012 it was stated by the respondent/ builder that if the petitioner wish to restore their allotment, he may clear all the due as on date. Since, no explanation provided by the respondent- builder regarding pending litigation about the said plotted Colony and not sanctioning the layout plan and zonal plan the claimant had not paid the illegal outstanding dues raised by the respondent/ builder.
18. That the complainant send a letter dated 02.02.2013 regarding plot no. G 19/5 in the project of the respondent. Vide letter dated



19.02.2013 the respondent- builder send reply to that letter. In the said reply/letter there is no explanation regarding sanctioned of layout plan and zoning plan and nothing has been stated regarding revenue rasta existed just above the plot allotted to the complainant.

19. That since no response was given by the respondent- builder to the notice dated 02.02.2013 the complainant again a sent reminder on 30.03.2013, 30.04.2013, 30.06.2013 to the complainant again sent reminder to the respondent- builder.

20. That vide letter dated 28.02.2014 the complainant issued letter regarding Plot No. G19/5 .The complainant also send notice dated 28.02.2014 regarding Plot no. E-12/2 DLF Garden City. On 11.11.2014, the complainant again issued reminder to the executive director of the respondent- builder regarding refund of booking amount, but met with no response.

21. That the complainant again visited in the office of the respondent - builder on 15.03.2016 and made a written request regarding refund of the booking both the plots booked by him . On 01.09.2018 the complainant gave a final notice dated 01.09.2018 to the respondent - builder and in response to that letter it sent a letter dated 04.09.2018 saying that both these allotment were cancelled because of non - payment of dues and the entire amount paid by the complainant has been forfeited .

22. That on 17.02.2019 the complainant visited the said site of the respondent- builder and took the latest photographs As per the photographs, the two revenue rasta one from village mewka to dhorka and another village mewka to hayatpur just above the plot

numbers were still existing in the plotted colony. . Due to the revenue rasta , the entire internal road , boundary , park , and other development work could not be completed and there was no possibility of the said plotted colony in the near future .

23. That the complainant have been regularly following up with the respondent – builder for refund of his amount through various notices but it came to the notice of the complainant that the plotted colony is under litigation and no layout plan and zonal plan has been sanctioned till date and there is no rasta / road to the plotted colony lead to filing this complaint seeking refund of the paid up amount besides interest and other charges.

24. Written submissions filed by the complainant to substantiate their averments made in the pleadings as well as in the documents and the same is taken on record and have been perused.

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

25. The complainant has sought the following relief(s):

- i. Direct the respondent – builder to register the project.
- ii. Direct the respondent – builder to place on record all statutory approvals and sanctions of the project.
- iii. Direct the respondent – builder to provide the complete details of EDC and IDC and statutory dues paid to the competent authority and pending demand if any.
- iv. Direct the respondent – builder to refund the paid-up amount.
- v. Direct the respondent – builder to pay compensation of Rs. 5,00,000 on account of harassment, mental agony and undue



hardship caused to the complainant and Rs. 1,00,000/- as litigation expenses.

**D. Reply by respondent:**

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

26. That the complainant was an allottee of the above-mentioned units for a total sale consideration of Rs. Rs.4,00,00,000/-
27. That the complaint is bad for mis-description of respondent. There is no entity known as "DLF Sales Gallery". Since, intimation of the present complaint had been given in the site office, present reply is being filed through M/s DLF Utilities Ltd. having its Regd office at Shopping Mall, 3rd Floor, Arjun Marg, DLF City, Ph-1, and Gurugram-122002 for the sake of abundant caution.
28. That the respondent has conceptualised a residential project known as DLF Garden City, situated in Sector 91 and 92, Gurugram, in accordance with permissions, approvals and sanctions from the competent authorities vide licences no 59 of 2011 and 14 of 2012 granted by the competent authority in respect of the project.
29. That the complainant had approached the respondent for purchase of residential plots in the aforesaid colony. It is pertinent to mention that the complainant prior to approaching the respondent for purchasing residential plots had undertaken detailed and elaborate verification of the title of the project land as well as competence, capacity and capability of the respondent with regard to the execution of the project and availability of resources (financial as well as infrastructural).

30. That the revised license layout plan for the plotted colony had been sanctioned by Directorate of Town & Country Planning, Haryana, Chandigarh on 22.01.2013. The revised zoning plans for the plotted colony had been sanctioned by Directorate of Town & Country Planning, Haryana, and Chandigarh on 19.09.2014. Similarly, the layout plan for the plotted colony had been initially sanctioned by Directorate of Town & Country Planning, Haryana, and Chandigarh on 26.06.2011. The layout plans were revised by the aforesaid statutory authority on 10.10.2018.
31. That the complainant submitted an application dated 14.03.2012 for allotment of residential plots in DLF Garden City, Gurugram . On the basis of application for allotment submitted by the complainant with the respondent , plot bearing Number G - 19/5 in DLF Garden City was allotted to him svide allotment letter dated 19.03.2012
32. That it was clearly mentioned in clause 9 of the application for allotment referred to above that the payment on or before due date of the sale price/other amounts payable by the complainant as per payment plan appended to the application as Annexure-II would be the essence of the application and plot buyers agreement. It had also been mentioned in clause 8 of the aforesaid application for allotment that in the event of failure of the complainant to make payments as per payment plan appended to the application as Annexure-II, the earnest amount component would be forfeited and the allotment would stand cancelled. It had been provided in clause 20 of the application form referred to above that besides earnest money, interest on delayed payments, brokerage, service tax, other charges and taxes would also be forfeited and the transaction would stand cancelled.



33. That it was further provided in clause 20 of the application form that in the event of cancellation of transaction, the complainant would not be left with any right, title or interest of any nature in the plot. Furthermore, it had been provided that the amount over and above the earnest money, processing fee, interest on delayed payment, brokerage, other charges and taxes etc. would be refunded to the complainant by the respondent without any interest or compensation only after realising such amounts on lease of the plot. The application for allotment had been voluntarily and consciously submitted by the complainant after fully understanding its contents and implications.
34. That the plot buyers agreement had been sent for execution to the complainant by the respondent vide letter dated 10.05.2012. The complainant proved to be a chronic defaulter in making timely payment of amounts of sale consideration. Letters dated 16.05.2012, 01.06.2012, 20.06.2012 and 25.06.2012 had been sent by the respondent to the complainant calling upon him to make payment of the outstanding amount of consideration in respect of plot referred to above.
35. That the Plot Buyers Agreement dated 25.06.2012 had been voluntarily and consciously executed by the complainant after fully understanding the contents and implications of the covenants incorporated therein. The plot buyers agreement referred to above had been sent by the respondent to the complainant along with covering letter dated 16.07.2012. It was specifically mentioned in the buyer's agreement that the complainant would not commit any default in payment of consideration in respect of the plot in question. It was stipulated in clause 7 of the aforesaid contract that

earnest money paid by the complainant would be liable to be forfeited along with interest on delayed payments, brokerage, other charges and taxes etc. in case of non- fulfilment of terms and conditions contained in the contract. The timely payment of consideration was further provided to be the essence of the contract, in terms of clause 8. The consequences of failure on the part of the complainant to make timely payment were clearly provided in clause 17 of the aforesaid contract and in terms thereof, the respondent was entitled to cancel the contract and to forfeit amount as provided therein and mentioned hereinabove.

36. . That as highlighted above, several reminders had been sent by the respondent to the complainant calling upon him to make payment of agreed sale consideration in respect of the plot in question along with accumulated interest. However, despite receiving the aforesaid reminders, the complainant failed to come forward to make payment of the outstanding amount. The respondent was left with no option but to cancel the allotment vide letter dated 17.07. 2012.

37. That despite being conscious and aware of the fact that the allotment of plot bearing number G- 19/5, Garden City, Sectors 91 and 92, Gurgaon had been cancelled by the respondent and the complainant had got absolutely no right in respect of the same, letter dated 20.12. 2012 had been sent by him to the respondent intimating change of his address. The said letter had been responded to by the respondent vide letter dated 30.01.2013 along with which copy of cancellation letter dated 17.07.2012 had been sent by it to the complainant.



38. The complainant was conscious and aware of the fact that persistent and deliberate defaults had been committed by him in fulfilling his financial obligations in terms of application for allotment submitted by him as well as covenants contained in Plot Buyers Agreement dated 25.06.2012. The complainant had sent letter dated 02.02.2013 to the respondent whereby he had challenged the cancellation of allotment made by it way back in the year 2012. The complainant had admitted the receipt of letter dated 30.01.2013 as well as letter of cancellation dated 17.07.2012.
39. That the dispatch of a letter dated 02.02.2013 by the complainant to the respondent was an exercise in futility. The limitation for challenging the validity of cancellation of allotment had expired long ago. The frivolous contentions put forth by the complainant vide letter dated 02.02.2013 had been responded to by the respondent vide letter dated 19.02.2013. Although, the answering respondent was not obliged to restore the allotment, yet it had stated in letter dated 19.02.2013 that in case the complainant was desirous of restoring the allotment, he could get the same done after clearing all outstanding dues at the earliest.
40. That the complainant had failed to justify the wilful, intentional and deliberate defaults committed by him in complying with and fulfilling contractual and financial obligations. No lapse of any nature can be attributed to the respondent. The cancellation of allotment was validly and legally done in light of persistent and conscious defaults on the part of the complainant in payment of agreed consideration in respect of the plot in question.
41. That the complainant had submitted application for allotment of residential plot in DLF Garden City. The complainant had submitted

application dated 06.03.2012 for allotment of plot. The schedule of payments formed an integral part of the application referred to above. On the basis of application for allotment submitted by the complainant with the respondent, plot bearing Number E - 12/2 in DLF Garden City had been allotted to him vide allotment letter dated 19.03.2012.

42. That it was clearly mentioned in clause 9 of the application for allotment referred to above that the payment on or before due date of the sale price/other amounts payable by the complainant as per payment plan appended to the application as Annexure-II would be the essence of the application and plot buyers' agreement. It had also been mentioned in clause 8 of the aforesaid application for allotment that in the event of failure of the complainant to make payments as per payment plan appended to the application as Annexure-II, the earnest amount component would be forfeited and the allotment would stand cancelled. It had been provided in clause 20 of the application form referred to above that besides earnest money, interest on delayed payments, brokerage, service tax, other charges and taxes would also be forfeited and the transaction would stand cancelled.
43. That it was further provided in clause 20 of the application form that in the event of cancellation of transaction, the complainant would not be left with any right, title or interest of any nature in the plot. Furthermore, it had been provided that the amount over and above the earnest money, processing fee, interest on delayed payment, brokerage, other charges and taxes etc. would be refunded to the complainant by the respondent without any interest or compensation only after realising such amounts on lease



of the plot. The application for allotment had been voluntarily and consciously submitted by the complainant after fully understanding its contents and implications.

44. That the plot buyers' agreement had been sent for execution to the complainant by the respondent vide letter dated 18.04.2012. The complainant proved to be a chronic defaulter in timely payment of sale consideration amounts. The letters dated 14.05.2012, 29.05.2012, 18.06.2012 and 21.06.2012 had been sent by the respondent to the complainant calling upon him to make payment of the outstanding amount of consideration in respect of plot referred to above.
45. That letters dated 16.07.2012, 30.06.2012, 17.08.2012, 22.08.2012, 14.09.2012, 03.10.2012 another letter dated 03.10.2012 and letter dated 18.10.2012 had been sent by the respondent to the complainant calling upon him to make payment of the outstanding amount of consideration in respect of plot referred to above.
46. That as highlighted above, several reminders had been sent by the respondent to the complainant calling upon him to make payment of agreed sale consideration amount in respect of the plot in question along with accumulated interest. However, despite receiving the aforesaid reminders, the complainant failed to come forward to make payment of the outstanding amount. The respondent was left with no option but to cancel the allotment vide letter dated 05.11.2012.
47. That despite being conscious and aware of the fact that the allotment of plot bearing number E- 12/2, Garden City, Sectors 91

and 92, Gurgaon had been cancelled by the respondent and the complainant had got absolutely no right in respect of the same, sent a letter dated 18.12.2012 challenging the cancellation of allotment validly and legally made by the respondent. False, frivolous and baseless insinuations had been levelled by the complainant in the said letter. The dispatch of letter dated 18.12.2012 by the complainant to the respondent was an exercise in futility. The limitation for challenging the validity of cancellation of allotment had expired long ago. The frivolous contentions put forth by the complainant vide letter dated 18.12.2012 had been responded to by the respondent vide letter dated 31.12.2012. Although, it was not obliged to restore the allotment, yet the respondent had stated in letter dated 31.12.2012 that in case the complainant was desirous of restoring the allotment, he could get the same done after clearing all outstanding dues at the earliest. The said letter dated 31st of December 2012 had been duly received by the complainant.

48. That the complainant failed to justify the wilful, intentional and deliberate defaults committed by him in complying with and fulfilling contractual and financial obligations. No lapse of any nature can be attributed to the respondent. The cancellation of allotment was validly and legally done in light of persistent and conscious defaults on the part of the complainant in payment of agreed consideration in respect of the plot in question.
49. That a belated and legally unsustainable attempt was made by the complainant to seek refund of the forfeited amount in respect of both the plots referred to above by dispatch of letter dated 01.09.2018. The limitation for seeking refund had expired long ago. The



letter dated 04.09.2018 had been sent by the respondent whereby it was conveyed to the complainant that cancellation of allotment of plot bearing number G - 19/5 had been done on 17.07. 2012 and cancellation of Plot bearing number E-12/2 had been done on 05.11.2012 on account of non-payment of dues. It was also once again communicated that earnest money stood forfeited and that no amount whatsoever was liable to be refunded to the complainant. The present complaint has been maliciously preferred by the complainant to needlessly harass and victimise the answering respondent.

50. That the payment in respect of both the plots had not been made by the complainant. The repeated opportunities had been made available to the complainant by the respondent to make payment of the agreed amount. However, the same was not done by the complainant and the same culminated in cancellation of allotment in both the plots.
51. By way of written submissions the respondent has stated that with regard to plot E-12/2 the plot buyer's agreement had been sent by the respondent to the complainant for execution along with covering letter dated 18.04.2012. The buyer's agreement was executed between the parties on 25.06.2012. The duly executed plot buyer's agreement had been sent by the respondent to the complainant along with covering letter dated 12.07.2012. With regard to plot no. G-19/5 the plot buyer's agreement had been sent by the respondent to the complainant for execution along with covering letter dated 10.05.2012. The buyer's agreement was executed between the parties on 25.06.2012. The duly executed

plot buyer's agreement had been sent by the respondent to the complainant along with covering letter dated 16.07.2012.

52. All other averments made in the complaint were denied in toto.
53. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

54. 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**

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**

55. 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) *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.*

56. 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.

57. 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 judgements passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** 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."*

58. 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 objections raised by the complainant.**

**F.I Objection w.r.t to the changes in the approved plan**

59. The complainant stated that the demarcation, zoning plan and layout plan of the colony in question was not yet being finally sanctioned by the competent authority and there is no explanation regarding the sanction of the layout plan and zoning plan and nothing has been stated regarding revenue rasta which existed just above the plot.

60. The respondent stated that revised license layout plan for the plotted colony had been sanctioned by Directorate of Town & Country Planning, Haryana, and Chandigarh on 22.01.2013. The revised zoning plans for the plotted colony had also been sanctioned by Directorate of Town & Country Planning, Haryana, and Chandigarh on 19.09.2014. Similarly, the layout plan for the



plotted colony had been initially sanctioned by Directorate of Town & Country Planning, Haryana, and Chandigarh on 26.06.2011. The Authority is of the view that all the plans were already approved by the competent authority i.e DTCP and were approved before the commencement of the Act of 2016. Even the part completion certificate was obtained on 02.07.2014. Therefore at this belated stage, if the complainant still has any objection, the same may be agitated before the competent Authority for the same.

**G. Findings on the relief sought by the complainant:**

**G.I Direct the respondent – builder to register the project.**

61. The said project i.e DLF Garden City, Sector 91 and 92 , Gurugram is registered with the Authority vide no. 23 of 2021 dated 15.06.2021. Therefore no direction to this effect needs to be given.

**G.II Direct the respondent – builder to place on record all statutory approvals and sanctions of the project.**

**G.III Direct the respondent – builder to provide the complete details of EDC and IDC and statutory dues paid to the competent authority and pending demand if any.**

62. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties.

63. The basic sale price of the unit is exclusive of EDC and IDC and other statutory deposits. These are charges required to be paid by the

company to relevant authorities and shall be payable by the buyer at such rates as may then be applicable and in such proportion as the sale area of the apartment bears to the total sale area of all the apartments in the project.

64. The respondent is justified in demanding EDC & IDC as it is included in the total sale consideration as per clause 1 (b) and clause 6 of the agreement on page no. 47 and 50 of the complaint but since these charges are payable on actual payment basis the respondent cannot charge a higher rate against EDC/IDC as actually paid to the concerned authority. The license details along with status of approvals and status of payments of EDC / IDC etc is available on the official website of DTCP viz [www.tcpharyana.gov.in](http://www.tcpharyana.gov.in) and the complainant may take the same from the website.

**G.IV Direct the respondent - builder to refund the paid up amount.**

65. The complainant has filed the present complaint with regard to two plots i.e E 12/2 and G 19/5 which were allotted to him vide allotment letter dated 19.03.2012. The complainant had paid an amount of Rs. 15,00,000/- for plot no. E 12/2 and Rs. 12, 00,000/- for plot no. G-19/5. Therefore, the complainant had paid a total amount of Rs. 27, 00,000/- for both the plots against the sale consideration of Rs. 4,11,05,025/-. Two builder buyer agreements were executed between the parties in this regard on the same day i.e on 25.06.2012 for each plot. So, the due date for offer of possession of the said plot is taken from clause 11 (a) and the same comes out to be 25.06.2014. The completion certificate of the project was received on 02.07.2014 and 18.03.2016 respectively



and the possession was not offered. Both of the plots were cancelled by the respondent in the year 2012. A brief detailed of reminders and cancellation letters is detailed below with the help of table for clear understanding of the matter-

Plot No. G-19/5	Plot No. E12/2
❖ Reminder Letter - 16.05.2012, 01.06.2012, 20.06.2012, 25.06.2012 (Annexure 15,16,17,18-page no.90 to 93 of reply)	❖ Reminder Letter - 14.05.2012, 29.05.2012, 18.06.2012, 21.06.2012, 16.07.2012, 30.07.2012, 17.08.2012, 22.08.2012, 14.09.2012, 03.10.2012, 03.10.2012 and 18.10.2012 (Annexure 29,30,31,32 on page no. 139 to 142)
❖ Cancellation Letter dated 17.07.2012 (Annexure 21 page 110 of reply)	❖ Cancellation Letter dated 05.11.2012 (Annexure 43 page 167 of reply)

66. As per section 19 (6) of Act of 2016, every allottee is under obligation to make timely payment towards the consideration of the allotted unit / plot. The complainant continued with his default in making payment even after various reminder letters, which led to cancellation of his plot.

67. The counsel for the complainant stated at bar that the complainant after cancellation made a visit to the office of the respondent as well as sent a letter dated 30.03.2013 requesting refund of the entire deposit with interest which is evident from page no. 136 and 137

of the complaint. Even though the cancellation is valid in nature, the balance amount has not been refunded which is a subsisting obligation of the promoter.

68. The complainant sent the request w.r.t refund of the amount and surrendering the plots on 30.03.2013 and subsequently, he filed the present complaint on 05.04.2019 with a delay of almost 7 years after the date of cancellation. The complainant has requested numerous times for refund of the paid-up amount but the said request was never acknowledged/accepted. The counsel for the respondent stated at bar that this complaint should be barred by the provisions of limitation act but the authority is of the view that cause of action in case of seeking refund is a subsisting obligation of the respondent and till refund is not made or account is not settled, the case cannot be barred by limitation. Moreover in the instant case, the complainant has been repeatedly seeking claim of refund and on not getting response, has filed the above complaint and hence objection of respondent that the complaint is barred by limitation is not sustainable.

69. It is a settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India* AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors, Civil Appeal No. 7266 of 2009* decided on 01.12.2015 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified.

70. 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."*

71. Thus, keeping in view the aforesaid factual and legal provisions, the respondent was required to refund the amount paid by the complainant against the allotted unit after deducting 10% of the basic sale consideration being earnest money. However, it is observed that the amount paid by the complainant i.e. Rs. 27,00,000/- constitutes only 6.5% of the basic sale consideration i.e. Rs. 4,11,05,025/- which is less than 10% of total consideration. Thus, no direction to this effect is given.

**G.V. Cost of Litigation**

72. 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


may approach the adjudicating officer for seeking the relief of compensation, if any.

**H. Directions of the authority**


73. 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 dismissed and as such is rejected.

74. Complaint stands disposed of.

75. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 21.11.2023**

**HARERA**  
**GURUGRAM**