

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

Complaint no. :	6890 of 2022
Date of complaint :	02.11.2022
Order pronounced on:	02.01.2024

Saurabh Mehta And Jai Parkash Mehta.
**Regd. Office at: - Residing at C-101 Progressive
Apartment GH 69 Sector 55 Gurugram.**

Complainants**Versus**

M/s NBCC limited.
**Regd. Office at: - NBCC Bhawan, Lodhi Road,
New Delhi - 110003.**

Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Chaitanya Singhal	Advocate for the complainants
Sh. Rao Vikram Nath	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Particulars	Details
1.	Name of the project	"NBCC Green View", Sector 37D, Gurugram
2.	Project area	18.031 acres
3.	Nature of the project	Residential
4.	RERA Registered/ not registered	Not registered
5.	Allotment Letter	02.11.2012 (as per page no. 41 of complaint)
6.	Unit no.	B5.3, Type-D, 5 th floor
7.	Unit area admeasuring	1803 sq. ft.
8.	Possession clause	Within a period of 30 months from the date of allotment letter
9.	Due date of possession	02.05.2015

10.	Total sale consideration	Rs. 69,67,375/- (As per conveyance deed at page 56 of complaint)
11.	Amount paid by the complainants	Rs. 69,67,375/- (As per conveyance deed at page 56 of complaint)
12.	Occupation certificate /Completion certificate	02.08.2017 (page no. 45 of complaint)
13.	Possession Certificate	10.10.2017 (Page 47 of complaint)
14.	No dues certificate given by the respondent	08.12.2017
15.	Conveyance Deed	09.04.2018 (Page 52 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -
 1. **That on 10.03.2011** after being lured and deceived by such tall claims and representations the complainants booked a 3 BHK unit in respondent's project "**NBCC GREEN VIEW APARTMENTS**", located in Sector-37 D, Gurugram, Haryana. On **27th June 2012** the complainants

- filled an "**Application Form**" for allotment of a residential unit in respondent's project "N.B.C.C. GREEN VIEW" located in Sector- 37 D, Gurugram, Haryana and paid an amount of Rs 3,00,000/- towards the application money/ booking of the said unit.
- II. That on **2nd November 2012** the respondent sent an '**ALLOTMENT LETTER**' to the complainants according to which the complainants were allotted residential unit no. B5.3 located on 5th floor in project "N.B.C.C. GREEN VIEW" having super area of 1803 sq. ft. for a total sale consideration of Rs. 74,13,422/-.
- III. That as per the payment schedule annexed to the allotment letter the respondent had promised to deliver the possession of the booked unit within a period of **30 months** from the date of allotment letter which comes to **02.05.2015**.
- IV. That the **respondent failed to offer the possession of the said unit within a period of 30 months** which comes to 02.05.2015. The respondent lately received occupation certificate on 02.08.2017 and offered possession on 10.10.2017.
- V. That the complainants paid the final installment due on offer of possession and thereafter on **08.12.2017** the respondent gave a "**NO DUES CERTIFICATE**" to the complainants.
- VI. That on 09.04.2018 the respondent got the "**CONVEYANCE DEED**" executed in favor of the complainants. That the complainants had paid a sum of Rs. 4, 18,800/- towards stamp duty and Rs. 31,200/- towards legal fees for getting the conveyance deed executed.
- VII. That on **03.10.2021** the respondent sent a "**VACATION NOTICE**" to the complainants. It stated as follows-

"Residents are hereby informed that with a view to address the issues rose by flat owners; NBCC (I) Ltd. has decided to carry out comprehensive repair works in the complex at the earliest. It is further informed that the said activity would necessitate shutting down essential services in the complex, as it has been decided to carry out the repair works simultaneously in all towers of the complex.

To avoid inconvenience and for their safety, Residents are hereby advised to vacate their flats within 15 days of this notice.

Residents are requested to kindly contact the site office of NBCC (I) Ltd. in the complex for further information and or queries."

- VIII. That on **6th October 2021**, IIT-team Delhi carried out a "**STRUCTURAL SURVEY**" of the project. It was observed that the structure is highly unsafe for habitation and it needs to be demolished. The report stated that the whole area of structure is badly affected by corrosion and rust in steel, reinforcement further deteriorated due to poor quality of concrete work having cavities and use of untreated saline water during construction which has led to rust and poor workmanship. Cracks in beams, columns, rust. It was concluded that the building appears to be in distressed condition due to corrosion of steel, poor cement in concrete ratio. The building structure are unsafe for any habitation therefore it is recommended to demolish it.
- IX. That on the basis of follow up report of IIT, Delhi the respondent sent "**SECOND VACATION NOTICE**" dated **13.10.2021** which stated as follows -

"This is in continuation of the notice dated 03.10.2021 on the above subject which has been displayed at site.

Residents are hereby informed that considering the current conditions of the structures as opined by IIT Delhi, vacating the above premises is inevitable in view of the safety aspects.

Occupants of the flats/ shops are hereby requested to take immediate action to vacate the flats/ shops due to above reasons and flats/ shops should be vacated at the latest by 10th November 2021. Allottees are further requested to contact NBCC (I) Limited helpdesk at NBCC Green View, Sector 37-D, Gurugram site office or contact the undersigned at 8527960986, Smt. Uplabdh, Manager (Mkt) at 8527559481 and Sh. Sandeep Verma, Marketing Executive at 8826862587."

- X. That on **03.12.2021** the respondent got the valuation of flat interiors of the complainants done through the govt. approved valuers according to which the cost of interiors of flat of complainants were assessed to be Rs. 60,000/-.
- XI. That on **17.02.2022** District Magistrate cum Chairperson of District disaster management authority, Gurugram on getting reference from DTCP office Chandigarh and after conducting meeting on 16.02.2022 with the residents of NBCC society and officials of NBCC (I) Ltd. issued order dated 17.02.2022 wherein it was observed that the building is highly unfit for habitation and residents needs to be immediately vacated. That it was ordered that NBCC (I) Ltd. is directed to give alternative premises fit for accommodation within 48 hours and to provide rent for accommodation along with shifting charges and NBCC

to provide refund of money along with interest as applicable as per law, to the resident's owners within a period of 1 month.

- XII. That even after issuance of the above said order by the District Magistrate cum Chairperson of District disaster management authority, Gurugram, NBCC (I) Ltd failed to comply the order and never gave offer for refund along with interest.
- XIII. That on **29.07.2022** the respondent sent an offer letter for refund of money paid to NBCC without any payment of interest, compensation for mental agony, Taxes paid to Govt., litigation cost, cost of interior work done in flat.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the amount of Rs. 79,06,639/- along with interest.

D. Reply by the respondent/builder.

5. The respondent has contested the complaint by filing reply on the following grounds: -
- i. That NBCC (India) Limited/Respondent, developed a residential complex named "NBCC Green View Apartments" at Sector 37-D, Gurugram ("**Project**").
- ii. That the respondent had appointed IIT Delhi ("**IITD**") as a consultant in December 2020 for the structural condition assessment of the project. IITD vide a report dated 02.02.2021 suggested that certain repairs were required to be made in the towers of the project. These repairs were accordingly undertaken by the contractor engaged in the Project namely M/s Rama Civil India Construction Pvt. Ltd.

- iii. That in view of the same, opposite party being a responsible Central Public Sector Enterprise ("**CPSE**"), desirous of having the said complex vacated in order to prevent any risk to occupants, put up notices at conspicuous places in and around the project site on 13.10.2021 requesting occupants to vacate the complex by 10.11.2021 and to contact NBCC helpdesk at the site for further information.
- iv. That in view of the same, respondent put up another notice dated 18.11.2021 at the site requesting occupants to vacate the complex by 23.11.2021 and to contact opposite party no.1 help desk at the site for further information.
- v. The opposite party no.1 further communicated to the residents allottees vide email(s) dated 21.11.2021 & 18.12.2021 its offer for providing interim rentals @Rs12.50 per square feet in line with the size of their respective flat(s) for vacating the premises and assistance with respect to arranging transport/packers and movers. In this regard, several resident allottees of the towers have already availed of the interim rentals and have vacated their dwelling units.
- vi. That further the District Magistrate cum Chairperson of District Disaster Management Authority, Gurugram ("**DDMA**") vide order dated 17.02.2022 also directed the residents to evacuate the premises for safety considerations and directed to provide alternative/ suitable premises for accommodation to the willing residents within 48 hours of the passing of the said order or to provide rent for similar accommodation along with shifting charges of the entire households of the residents. As on date, the Respondent has complied with the aforesaid directions of DDMA and all residents have vacated their dwelling units.

- vii. That, in view of the IITD report, the opposite party in the meantime also appointed an external committee of experts from IIT Roorkee and Central Building Research Institute, Roorkee in order to conduct an in-depth examination of the issues in the project and to review the report submitted by IITD for more clarity on the issue. The report of the external committee of experts has been received in April 2022.
- viii. That the respondent vide offer letter dated 29.07.2022 had offered the complainants amongst others to re-purchase the property in question and also agreed to refund the cost of the flat along with other incidental expenses subject to terms and conditions contained therein.
- ix. That, it is pertinent to mention that the complainants were fully aware of the fact the respondent has been taking reasonable steps to resolve the grievances of all the allottees of NBCC Green View Apartment, Sector 37-D, Gurugram.
- x. That a market survey dated 19.01.2023 assessing the prevailing market rates of real estate projects in the vicinity of the NBCC Green View project in sector 37-D, Gurugram was undertaken by the Respondents through Vestian Global Workplace Services Pvt Ltd. In this regard, given the fact that respondent has always been keeping the interest of its resident's paramount, respondent has freshly issued a new offer letter dated 03.02.2023 ("**New Offer**") to the complainants. As per the New Offer, respondent has agreed to re-convey the complainant's unit at the rate of Rs. 5,100 per Sqft., as a "One-Time Full and final settlement" including all costs [except the preferential location charges("**PLC**") paid, if any] / charges amounts paid by the complainants. The PLC paid, if any, shall be refunded at the actual, and stamp duty (including registration charges) paid by the original

allottees shall also be refunded as one time full and final settlement. It is pertinent to mention that the complainants had purchased the unit in question from respondent, at the rate of Rs **4,112 per Sqft**. Also, the current prevailing market rate per Sqft., of a similarly placed project in sector 37-D, Gurugram is Rs **5000- 5,250 per Sqft**, and the circle rate of sector 37-D, Gurugram is Rs **4,200 per Sqft**.

- xi. That it is unfortunate that the Project has become inhabitable, The respondent is undertaking all legal actions against the contractors who were involved in the faulty construction of the project, the respondent has in principle offered to purchase the property back from the allottees and some of them have already accepted the offer(s) and received one time full and final settlement amount. Needless to say, that the respondent had been paying rentals to the complainants for a period of 12 months until issuance of offer of settlement to the complainants.
 - xii. That, despite respondent offering 2 Offer letters to the allottees which include the present complainants, the complainants have filed the present complaint before the learned authority and also filed another complaint bearing no 82/2023 for refund before Authority which is pending as on date.
6. All other averments made in the complaint were denied in toto.
 7. 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 those undisputed documents and oral as well as written submissions made by the parties.

Written submission by the complainants.

8. That is submitted that the Proviso to Section 11(4) (a) of the Rera Act 2016 is not applicable in the present of the complainants since it is only applicable to structural defects which are curable in nature and for which repairs can be carried out and later compensation can be claimed from the promoter/ builder by the allottee. However this is not the case of the complainants since the entire building had been declared as unsafe and needs to be demolished. Therefore no structural defects can be cured and the case does not falls under Proviso to Section 11(4) (a) of the Rera Act 2016.

Written submission by the respondent.

9. It is also pertinent to mention here that a contingent of allottees for the same Project had filed a consumer complaint on the same subject matter bearing no. 1128 of 2017 before the Hon'ble National Consumer Dispute Redressal Commission ("NCDRC"). The Hon'ble NCDRC was pleased to pass an order dated 17.03.2023 directing public notices to be issued in National Dailies for interested parties to join the said cause of action.
10. It should be noted that the complaint vide impleadment application ("IA") No. 3166/2019 got himself impleaded as a party in consumer case no. 1128 of 2017 before the Hon'ble NCDRC. Further, proviso to section 71(1) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") clearly states that if any person whose complaint in respect of matters covered undersections 12, 14, 18 and section 19 is pending before NCDRC, he may, with the permission of such forum or commission, pas the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under

this Act i.e., a complaint before HRERA and NCDRC cannot be filed simultaneously.

E. Jurisdiction of the authority

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

11. 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

12. 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.

13. 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.
14. 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.*" 2021-2022(1)RCR(C), 357 and followed 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."*
15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 the entire amount paid by the complainants alongwith prescribed rate of interest..

16. The complainants were allotted a unit bearing no. B5.3 located on 5th floor in the project 'N.B.C.C. green view' having super area of 1803 sq.ft. for a consideration of Rs. 69,67,375/-. As per the possession clause of the allotment letter, the respondent had to deliver the possession of the booked unit within a period of 20 months from the date of allotment letter. So, the due date comes out to be 02.05.2015 but the respondent failed to deliver the possession of the unit within stipulated time.
17. The respondent builder offered possession of the subject unit on 10.10.2017 after obtaining occupation certificate on 02.08.2017. Thereafter, the complainants paid the final instalment due on offer of possession and on 08.12.2017, the respondent gave a 'No Dues Certificate' to the complainants. On 09.04.2018, the respondent got the conveyance deed in favour of the complainants.
18. The respondent had appointed IIT Delhi as a consultant in December 2020 for the structural condition assessment of the project. IIT Delhi vide report dated 02.02.2021 suggested that certain repairs were required to be made in the towers of the project. In lieu of the report, the respondent requested the occupants of the premises to vacate the complex in order to prevent any mis happenings. The respondent stated that it offered the allottees to provide interim rentals @Rs. 12.50 per sq. ft which was also availed by various allottees. Thereafter, the District Magistrate, Gurugram vide order dated 17.02.2022 directed respondents to evacuate the building and also directed the respondent to provide alternative/ suitable premises for accommodation along

- with shifting charges. The respondent thereafter offered the complainants to re-purchase the property vide letter dated 29.07.2022.
19. It is pertinent to mention here that the respondent builder issued offer letter dated 03.02.2023, agreed to re-convey the complainant's unit at the rate of Rs. 5,100/- per sq.ft. as a 'one time full and final settlement' including all costs/charges paid by the complainant. It is important to note that the complainants had purchased the unit in question from respondent at the rate of Rs. 4,112 per sq.ft. The respondent builder again sent final offer letter dated 21.11.2023 to the complainant for refunding the actual principle amount paid by the complainant along with a simple interest of 6% P.a. along with flat interior cost as per architect valuation report of approved valuer.
20. The respondent states that the complainants have also approached the Hon'ble NCDRC regarding the same unit with similar relief. On the contrary, the complainants state that the matter before NCDRC stands withdrawn on 20.10.2023. The complainant also states that case for compensation has already been filed before the Adjudicating Officer of this authority and the present matter before this authority is under section 18 of the Act as the respondent has got the unit vacated from the complainants after it has been held to be un-inhabitable.
21. After consideration of facts and circumstances, the authority is of view that vide order dated 17.02.2022, the District Magistrate, Gurugram directed the respondent to provide alternative/suitable premises for accommodation along with shifting charges but respondent-builder did not comply with the same.
22. It is pertinent to mention here that as per clause 16 of the application for allotment, in case of payment in delayed, the allottee shall have to

pay simple interest on the amount due @15% p.a. while offer letter dated 21.11.2023, the respondent agreed to refund to the complainants actual principle amount along with a simple interest of 6% P.a. along with flat interior cost as per architect valuation report of approved valuer. Since, the respondent has already committed to refund the amount of consideration to the complainants on its accord, the only issue left to be adjudicated by the authority pertains to the interest to be paid on the above amount. The Authority is of view that it would be fair and reasonable that the rate of interest already prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 of the Act shall be paid on the refund amount. Therefore, the authority hereby directs the respondent to return the entire amount received by it i.e. Rs. 69,67,375/- alongwith prescribed rate of interest i.e. 10.85% p.a from the date of payment till its realization.

23. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest and intend to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates


which the State Bank of India may fix from time to time for lending to the general public.

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 02.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (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 filling of complaint till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

27. 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/promoter is directed to refund the entire amount of Rs. 69,67,375/- paid by the complainants along with prescribed rate of interest @ 10.85% (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 its realization. The respondent is further directed to refund an amount of Rs. 60,000/- interior cost as per architect valuation report of approved valuer.
- 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.
28. Complaint stands disposed of.
29. File be consigned to registry.


Sanjeev Kumar Arora
Member
Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.01.2024