

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

Complaint no.	:	4883 of 2022
Date of filing complaint:		08.08.2022
Date of decision:		05.01.2024

Mrs. Bala R/O: House no. 42, Village Daryapur, Tehsil Bahadurgarh, District Jhajjar, Haryana	Complainant
Versus	
M/s 1000 Trees Housing Pvt. Ltd. (Now known as <u>M/s ATS Meadows Pvt. Ltd.</u>) Regd. office: 1. DSG-319, DLF South Court, Saket, New Delhi - 110017 also at 711/92 Deepali, Nehru Place, New Delhi - 110019	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Gaurav Kataria (Advocate)	Complainant
Sh. Vinayak Gupta (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 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"1000 Trees" situated at Sector- 105, Gurugram
2.	Project area	13.078 acres
3.	Nature of project	Group housing colony
4.	DTPC License no.	127 of 2012 dated 27.12.2012 valid up to 26.12.2022
5.	Name of licensee	Kanwar Singh, Rohtash, Krishan Pal Ss/o Jabar Singh, Narinder Pal S/o Sajjan Singh, Smt. Sharda Wd/o Dharampal, Ved and others
6.	RERA registered/not registered	Not Registered
7.	Unit no.	G-0004, ground floor, Tower/block - G [Page no. 30 of the complaint]
8.	Unit measuring	1738 sq. ft.



		[Page no. 30 of the complaint]
9.	Allotment letter	21.11.2013 [Page no. 12 and 20 of the complaint]
10.	Date of execution of Builder Buyer's Agreement	22.11.2013 [Page no. 24 of the complaint]
11.	Possession clause	4.1 Delivery of possession <i>i. Subject to the Apartment Allottee(s) complying with various terms and conditions of this Agreement and other requirements as indicated, by the Developer, the Developer proposes to issue offer/nodes of possession of the Apartment within a period of 42 months from the date of signing of this Agreement and upon execution and registration of Conveyance Deed in favour of the Apartment Allottee(s). It is understood, by the Allottee that the possession of various Towers/Blocks comprised in the Compried shall be ready and completed by the Developer in phases and handed over to the Allottee(s) of that Tower/Block accordingly.</i> [Page no. 39 of the complaint]
12.	Due date of possession	22.05.2017



		<p>[Note: - calculated from 42 months from the date of execution of agreement i.e., 22.11.2013]</p> <p><u>(Inadvertently the due date of possession is mentioned as 22.11.2017 in the proceeding dated 06.10.2023)</u></p>
13.	Total sale consideration	Rs.90,65,240/- [Page no. 50 of the complaint]
14.	Total amount paid by the complainant	Rs.25,99,370/- [As alleged by the complainant at page no. 13 of the complaint and also as confirmed by respondent at page 3 of reply]
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. That the subject matter of the present complaint is with respect to, inter-alia, obtaining the refund of the unit booked with the respondent along with the interest and compensation.
4. That in year 2012, the respondent invited the general public to buy flats in their new project. The complainant approached the respondent, seeking to buy a flat in their project 1000 Trees and got booked a unit no. G-004 on ground floor, block tower G having its super area of approx. 1,738 Sq. Ft. in the complex in "1000 Trees" which has to be developed in



Sector 105, Gurugram, Haryana. She gave two cheques in lieu of the booking amount to the respondent.

5. That the respondent gave two credit notes both dated 18.11.2013 in lieu of the cheques given by her which were duly encashed by the respondent. Moreover, the respondent issued a demand letter cum service invoice dated 18.11.2013 to her and also issued an allotment letter dated 21.11.2013 in her favour. It is pertinent to mention herein that the respondent has defrauded her as the abovesaid payment of Rs. 14,16,100/-, vide two cheques, has been paid to the respondent in October 2012 and December 2012 and the respondent cleverly issued credit notes regarding the same in November 2013.
6. That after that on 22.11.2013 the respondent called upon the complainant and asked her to execute a Builder Buyer Agreement (hereinafter called as BBA). Simultaneously the Respondent also raised a demand of Rs. 11,83,270/-. It is most important to mention herein that when she asked the respondent to amend some of the terms and conditions of BBA. the officials of respondent stated that the builder buyer agreement has to be signed as it is otherwise the earnest money will be forfeited. That the complainant was left with no choice but to sign the already prepared documents by the respondent. It is pertinent to mention herein that the payment plan is construction linked plan. Further, she paid the sum of Rs. 11,83,270/- to the respondent and after the said payment the BBA was executed on 22.11.2013.
7. That as per the clause 4 (i) of the builder buyer agreement the respondent has to give the possession of the said flat in 42 months, i.e. by the end of May 2017. But even after a lapse of 62 months the respondent

has not even started the construction on the said land given the possession of the said flat booked by her.

8. Further, she tried to contact with the respondent but all went in vein. That despite the timely payments by her, the respondent failed to deliver the flat in time i.e. 22.05.2017 and the construction of the said project has not been started yet. That the respondent is not complying with terms and conditions of the BBA dated 22.11.2013. She has made a payment of more than 25 lakh rupees and till now there is no sign of construction or possession in near future. The respondent have miserably failed to comply with its contractual obligations qua said project. In the present circumstances, she had been left with no other option but approach and seek justice at Haryana Real Estate Regulatory Authority at Gurugram, Haryana.
9. The cause of action is recurring in nature and subsisting and has accrued finally when the respondent has not submitted any justified response to her. Thus, the complaint has been filed within time with effect from accrual of the cause of action.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
- a) Direct the respondent to refund the total deposited amount, that is, Rs. 25,99,370/- along with interest @ 18% p.a from the date of deposit till the date of refund to her;
 - b) Direct the respondent to pay Rs. 2,00,000/- to her for the deficiency of services, unfair trade practices and agony caused due to the acts / omissions of the respondents.

- c) Direct the respondent to pay a sum of Rs. 75,000/- to her towards the cost of litigation;

D. Reply by respondent:

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

11. That builder buyer agreement dated 22.11.2013 was executed between the parties. That the non-delivery of the flat/apartment to the complainant by the respondent company is due to the reasons beyond its control and due to external factors that lead to delay in offering possession. At the very outset it is submitted that all the contents of the complaint under reply are vehemently denied in their entirety, except wherein the same are specifically admitted by the respondent.
12. That complainant has paid only total amount of Rs. 25,99,370/- to the respondent company qua the booked unit in the project "1000 Trees". The complainant inspected the project site, seen the title documents of the land including the License No. 127 dated 27.12.2012, sanctioned building plan and all other relevant documents related to the competency of the respondent including area calculation and after conducting due diligence pertaining to rights, interest, title, limitation and obligations of the appellant had decided to purchase the purchase flat in question. The complainant failed to make the payment of further instalment within due date and on account of non-payment of the said instalment by the respondent-complainant within due date, reminders were also sent to the complainant.
13. That over the years, the respondent company has successfully developed various real estate projects. That due to its uncompromising work ethic,

honesty, quality of construction and timely delivery of its projects to the utmost satisfaction of its customers, the respondent has established an impeccable reputation in real estate business circles. Due to the reputation and prestige of the respondent company, the complainant had voluntarily invested in the project of the respondent company, namely – 1000 Trees Housing Pvt. Ltd. That since the Municipal Corporation, Gurugram started the work at the site in complete violation thereby completely blocking the access to the group housing colony area of the Respondent Company from Dwarka Expressway through the dividing road of sector 104 & 105; which is the entry to the project site as per the duly sanctioned plans.; the respondent again submitted representations dated 01.06.2018 & 05.06.2018; requesting the Authorities not to construct the “Ramp Like inclined road”, as the same had completely blocked the access to the group housing colony area of the respondent from Dwarka Expressway through the dividing road of sector 104 & 105 thereby denying any access to the respondent to carry out the material required for carrying out construction at the site and also committing violation of the Master Plan (FDP – 2031); however of no avail.

14. That C.W.P. No. 17920 of 2018 was eventually disposed of by the Hon'ble High Court vide order dated 23.07.2018 of with a direction to the Director General, Town and Country Planning Department, Haryana to ascertain the correct facts and if need be, hear the representatives of the Respondent Company as well as Municipal Corporation, Gurugram and take an appropriate decision within a period of four months. That now vide order dated 02.04.2019, an order has been passed by Ld. DTCP, Haryana vide which direction has been issued to GMDA to redesign the

junction leading to the licensed colony on first priority to provide proper approach to the licensed land/project site in order to redress the grievance raised by the coloniser regarding movement of heavy vehicle for building material for construction of site.

15. That, Deputy Commissioner, Gurugram vide order dated 09.11.2017 i.e. even after passing of 2 years of orders passed by Hon'ble National Green Tribunal, New Delhi while complying with directions of NGT appointed PWD, MCG, HUDA, NHAI, HSAMB, TCP, HSIIDC to prohibit construction activity of any kind in the entire NCR. In fact, only internal finishing and interior work was allowed to be undertaken where no construction material was to be used. Further direction was given to Haryana State Pollution Control Board to maintain due records of air quality in the areas falling under their jurisdiction being part of NCR. That due to demonetization that took place in India in November 2016, a situation of financial crisis had arisen due to which not only the Applicant suffered severely but in fact every person in the country did. The sudden scarcity of valid currency notes and consequent lack of funds affected the construction activity at site which only got resolved after a period of 2 (two) months.
16. The prayer clause of the complaint is misconceived, wrong and denied. The complainant are not entitled to any relief much less the reliefs claimed by the complainant or any part thereof. The complaint is misconceived, frivolous and without any cause of action and as such liable to be dismissed with costs.
17. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

18. 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

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

Section 11(4)(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.

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.

19. 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 (Civil), 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."

20. 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. Entitlement of the complainant for refund:

F.I Direct the respondent to refund the entire amount of Rs.25,99,370/- paid by the complainant to the respondent.

21. The builder buyer agreement has been executed between the parties on 22.11.2013 and as per possession clause the due date of handing over of possession comes to be 22.05.2017. The total basic sale consideration was Rs.90,65,240/- out of which the complainant has paid an amount of Rs. 25,99,370/-. The due date of possession was 22.05.2017.
22. As per complainant she made the timely payments, irrespective of that the respondent failed to deliver the flat in time. On the contrary respondent alleges that due to demonetization and various orders passed by DTCP, GMDA and Deputy Commissioner, the project has been delayed.
23. But the plea of respondent is devoid of merit as the events such as demonetization and various orders were for a shorter duration of time and were not continuous where as there is a delay of more than three years even after due date of handing over of possession and there is nothing on record that the respondent has even made an application for grant of occupation certificate. The complainant-allottee has already wish to withdraw from the project and she has become entitled to their right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as it failed to complete or



unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by it from the allottees in respect of that unit with interest at the prescribed rate

24. Keeping in view the fact that the allottee-complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
25. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (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 allottee 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 allottee, 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 allottee/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 allottee 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

26. 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 or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
27. The authority hereby directs the promoter to return the amount received by her i.e., Rs. 25,99,370/- with interest at the rate of 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 the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

F.II Direct the respondent to award compensation of Rs. 2,00,000/-+ litigation cost of Rs. 75,00,000/-

28. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. ***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.(supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

29. Separate proceeding to be initiated by the planning branch of the Authority for taking an appropriate action against the builder as the project has not been registered.

G. Directions of the Authority:

30. 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 received from the complainant i.e., Rs. 25,99,370/- along with interest at the rate of 10.85% p.a. from the date of each payment till the actual date of refund of amount.



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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.

31. Complaint stands disposed of.

32. File be consigned to the registry.



Sanjeev Kumar Arora
Member



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.01.2024

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