

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

Complaint no. : 6193 of 2022
Complaint filed on : 06.09.2022
Date of decision : 02.02.2024

Seikh Imtiaz Ali

R/o: - B402, Ireo Skyon, Sector-60, Gurugram

Complainant

Versus

M/s 4S Developers Private Limited.

Regd. Office at: - 2nd floor, HUB 66, Ansal Essencia,
Sector 66, Gurugram, Haryana - 122002

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Sunil Kumar

Sh. Amit Sharma

On Behalf of Complainant

Legal Officer for the respondent company

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 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 to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Aradhya Homes", Sector-67A, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	27 of 2020 dated 22.06.2020 Valid upto 31.09.2021
4.	DTPC License no.	Not provided
5.	Allotment letter	N/A
6.	Unit no.	N/A
7.	Unit measuring	N/A
8.	Date of execution of Apartment buyer's agreement	N/A
9.	Possession clause	N/A
10.	Total Sale Consideration	N/A
11.	Total amount paid by the complainant	Rs. 5,00,000/- on 06.12.2021 (as alleged by both parties)
12.	Occupation certificate dated	N/A
13.	Offer of possession	N/A

B. Facts of the complaint

3. The complainant has made the following submissions: -

a. That the complainant booked a residential unit in project namely, Aradhya Homes and asked to pay a sum of Rs. 5,00,000/- vide dated 06.12.2021 as booking amount. The complainant paid as and when the respondent asked to pay. Further there is no allotment made, no application made, no application letter provided nothing in this regards to the complainant by the respondent. Thus, the present complaint seeking the refund of the amount so paid by the complainant.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund the entire amount i.e., Rs.5,00,000/- to the complainant along with interest from the date of respective payments till its complete realization.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:

- a. That the project namely "Aradhya Homes", Sector 67A, has been developed on land situated in Tehsil and District Gurugram. That the respondent has already obtained registration in respect of the said project vide no. RC/REP/HARERA/GGM/411/143/2020/27 dated 22.06.2020 from the authority.
- b. That the complaint filed by the complainant is highly misplaced, misconceived and premature, hence is not maintainable under the facts and circumstances of the case. That the complainant has

2. The particulars of unit details, sale consideration, the amount paid by

approached to the Hon'ble Authority in a malicious way in complete derogation as the complainant has not approached to the Hon'ble authority with clean hands and intentionally suppressed the material and true facts in the instant matter.

- c. That the prayer sought by the complainant is not maintainable as the complainant has sought the refund with interest in the instant complaint whereas the respondent is not in violation of any provision of the Act and the complainant would not be entitled for refund of his amount as no failure on the part of the promoter to deliver the possession of the unit or any discontinuance of business by a developer on account of suspension or revocation of registration.
- d. That there is no failure on the part of the respondent to discharge any obligation imposed by virtue of the Act. In fact the complainant is herself in default of payment to respondent. It is pertinent to mention here that the complainant approached to the respondent and showed his willingness to make an investment in real estate market and in furtherance of which, has booked the floor into the project of the respondent by handing over the cheque amounting to Rs. 5,00,000/- and assured to make further payment i.e., remaining earnest money alongwith execution of an agreement to sell within two days, but unfortunately the complainant did not come forward

for remitting the further payments for execution of an agreement to sell.

- e. That the complainant linger on the further payment towards purchase of floor on one or the other pretext and believing on a concocted story of the complainant, the respondent has completed a construction of floor by investing its own money and obtained the occupation certificate from the competent authority and resultantly the respondent suffered damages/losses as the said unit /floor got stucked for considerable period of time in name of complainant and therefore amount given against booking of floor has been forfeited. So, the complainant is not entitled for refund of any alleged amount along with alleged interest. Suddenly complainant filed the instant complaint which is based on the frivolous and wrong facts and hence the instant complaint is liable to be dismissed outrightly.
- f. That respondent was always ready to execute the sale deed in favour of the complainant before the concerned Sub-Registrar and to give the possession of the unit but failure was totally on part of the complainant by not remitting any further payments after the booking amount. Moreover the respondent is a customer oriented organization and has always endeavor to provide the units/ floors to its customers/ allottees with complete transparency. And hence the instant complaint is liable to be dismissed on this point alone.

- g. That the enactment of RERA Act is to provide housing facilities with modern infrastructure to the allottee and to protect their interests but not to spoil development of the project by refunding the amount to allottee or complainant especially when no any fault has been attributed on the part of respondent as per the Act.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

7. 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

8. 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.

9. 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.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs***



Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

- F.1 Direct the respondent to refund the entire amount i.e., Rs.5,00,000/- to the complainant along with interest from the date of respective payments till its complete realization.**
12. The complainant submits that he has paid an amount of Rs. 5,00,000/- through cheque on 06.12.2021 for which no receipt was to be provided, the complainant stopped further payment to the respondent leading to the cancellation by the builder.

13. The case of the respondent is that it has never demanded any amount from the complainant to be paid in cash and due to failure of the complainant to remit the future payments, the respondent has forfeited the entire amount given by the complainant towards booking.
14. Upon perusal of the documents on record, the authority observes that the pleas raised by the respondent are not sustainable for the following reasons. **Firstly**, the complainant has made a payment of Rs.5,00,000/- to the respondent towards booking amount and the respondent has also admitted payment of the same in the reply so filed by the respondent. However, the respondent has failed to issue any receipt w.r.t to the payment made by the complainant-allottee and has not annexed the same with the reply so filed by the respondent. **Secondly**, the complainant has made the payment in favour of some Sky Space Developers Pvt. Ltd. However, the Sky Space Developers Pvt. Ltd. is a group company/sister concern of the respondent company. Absence of such information calls for an adverse inference against the respondent. **Thirdly**, it is pertinent to note that the respondent has even failed to place on record any application form through which the complainant has approached the respondent for booking of a unit in the said project. Also, the respondent upon receipt of the booking amount has failed to issue any allotment letter in favour of the complainant allotting a unit in the said project. The respondent has failed to state any reason as to why an allotment letter was not issued by respondent despite receiving



the said amount from the complainant. Further, the respondent has failed to place on record any document by which the respondent has raised further demand from the complainant which she has failed to pay. No demand letter or reminder has been placed on record. Moreover, the respondent has never shared any copy of agreement with the complainant and no BBA was executed inter se parties. It is beyond the imagination of the authority as to why the respondent has forfeited the booking amount paid by the complainant without even fulfilling the obligations cast upon it and in absence of any application form/allotment letter/BBA.

15. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

*"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. **In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever***

amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."

16. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainants. Thus, the complainant is entitled to get refund of the entire amount paid by him along with interest at the prescribed rate.
17. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 5,00,000/- 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 Rules *ibid*.

G. Directions of the authority

18. 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 amount i.e., Rs.5,00,000/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,



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2017 from the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to registry.

Dated: 02.02.2024



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory
Authority, Gurugram

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