

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

Complaint no.:	270 of 2021
First date of hearing:	21.05.2021
Date of decision:	17.11.2023

1. Mr. Vishal Bedi
2. Rashmi Bedu

**Both RR/o** : 219, Sector 6, Nai Sadak,  
Shahtri Nagar, Meerut, UP-250004

**Complainants**

Versus

1. M/s Chirag Buildtech Pvt. Ltd.

**Office address:** 1.M-18, 3<sup>rd</sup> Floor, Greater Kailash  
(Market) New Delhi, South Delhi-110048

2. M/s Plan Reality Consuting Firm

**Office address:** 406, JMD Galeria, Sector-48,  
Sohna Road, Gurugram

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Akash Gupta (Advocate)

**Complainants**

Shri. Garvit Gupta (Advocate)

**Respondent**

**ORDER**

1. The present complaint dated 18.01.2021 has been filed by the complainants/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 as provided 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. Project and unit related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	ROF Ananda, Sector 95, Gurugram, Haryana
2.	Project area	5.04375 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no.	17 of 2016 dated 25.10.2016
	Name of licensee	Sh. Narayan Singh and others C/o Chirag Buildtech Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 184 of 2017 dated 14.09.2017 for 5.04375 acres.
	HRERA registration valid up to	13.09.2021 *Since the project registration has been expired the registration branch may



		take the necessary action under the provisions of the Act, 2016
6.	Unit no.	D-1101, 11 <sup>th</sup> floor, tower D. [page 14 of complaint]
7.	Unit measuring (carpet area)	644.12 sq. ft.
8.	Allotment letter dated	11.07.2019 [pg. 22 of complaint]
9.	Date of execution of buyer's agreement	01.04.2019 [pg. 13 of complaint]
10.	Possession clause	<b>1 (iv)</b> <i>All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.</i>
11.	Date of building plan	07.12.2016 [pg. 14 of complaint]
12.	Date of environment clearance	09.10.2017 [pg. 14 of complaint]
13.	Due date of possession	09.10.2021
14.	Total consideration as per agreement for sale dated	₹ 26,26,480/-



	01.04.2019 at page 18 of complaint	
15.	Total amount paid by the complainant as per demand letter dated 14.08.2019 at page 45 of complaint	₹ 2,62,600/-
16.	Occupation certificate	22.02.2022
17.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:-

- a. That the complainants are the law-abiding citizen of this country and living at the above-mentioned address. The complainants purchased the said apartment suggested by Gopal Gupta (Business Co-Ordinator) at property broker namely "Plan Realty Consulting" on 01.02.2019 by paying token amount of Rs 25,000/- by bank transfer to Mr. Gopal Gupta.
- b. That on dated 03.03.2019, complainants were asked by respondents to fill up application form along with cheque of 1,31,300/- for apartment launched by the respondent in the name and style of "**ROF ANANDA**" located at **Sector 95**, Gurugram. The total sale consideration amount of the apartment was Rs. **26,26,480/-** including PLC, EDC, IDC Etc.
- c. That on dated 02.05.2019, a registered builder buyer agreement was executed complainants and respondent no.1 purchased the said apartment no. D-1101 admeasuring carpet area of 644.12 sq. ft.



- d. That afterwards builder started raising illegal demands and complainants received reminder letter of 22.19 lacs which was against our verbal agreement. Ideally it should be as per the stages of construction. That on 05.08.2020 another cheque was issued by complainant of Rs. 1,31,300/-.
- e. The complainants made the payment of the installment to the respondent as and when demanded by the respondent company. The complainants have paid a sum of Rs. 2,62,600/- to the respondent company.
- f. That afterwards on 14.08.2019 complainant received another demand of Rs 18,64,866/- which was totally illegal early not as per construction plan as agreed with respondents.
- g. That complainants applied for loan with HDFC bank because of insufficient funds available with complainant but later on after loan verification the HDFC bank rejected Mr. Vishal bedi's home loan application due to some issues with the builder project on 10.09.2019 however complainants had pre-approved loan with HDFC BANK. So, clearly there was some deficiency from builders' side.
- h. That it is pertinent to mention here that due series of incidents complainants lost trust in respondent companies because of too many false statements one after another. Moreover, the respondent company kept sending early demand letters and even after the loan rejection from HDFC bank knowing that the loan application is declined by the bank.
- i. That on 13.11.2019 after getting fed up with whole situation complainants sent an email to builder regarding refund of initial

amount because HDFC was not funding the said project “**ROF ANANDA**” complainants had various conversations with the officials of the respondent company and showed her incapability of taking over the said apartment and requested the respondent company to refund the entire consideration amount of the complainants but the respondent company did not pay any heed to the request of the complainants.

- j. In view of the above facts, it can be clearly understood that the respondent just to harass the complainants, grabbed the hard-earned money of the complainants. The respondent failed to return the entire consideration amount paid by the complainant. The complainants have tried every possible way to take refund of the entire consideration amount paid to the respondent. But the respondent has bad intention to grab the hard-earned money of the complainant by giving vague excuses.
- k. That it is therefore, the complainants are constrained to initiate the legal proceedings to recover the hard-earned money from the respondent company. The act and conduct of the respondent have caused a lot of physical harassment, mental agony and huge financial loss to the complainants.

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

4. The complainants have sought following relief(s)
- Refund of the entire amount of ₹ 2,62,600/- paid to the respondent no.1 (builder) along with the interest @ 18% p.a.
  - Compensation of Rs. 5 lacs on account of mental harassment, agony, physical pain, monetary loss etc.



5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent no. 1 has contested the complaint on the following grounds:

- a. That it is submitted that the present complaint deserves to be dismissed at the outset as it is, inter- alia characterized by suppression of material facts and based upon false averments.
- b. That it is further submitted that the present complaint is an abuse of process of law as the complainants are trying to harass and extort money from the respondent, and the same is liable to be dismissed with costs in favour of the respondent
- c. That the respondent is a company incorporated under the provisions of the companies Act, 1956 and existing under the companies Act 2013.
- d. It is submitted that the respondent company is the sole, absolute and lawful owner of the land parcel admeasuring 40 Kanal 7 Marla (approximately 5.04375 acres) comprising in Khewat /Khata No.170/144, 171/145,74/64,72/62 and 76/66, Rect No.10 Killa no. 22,23,24/1, 25/1 and Rect No.15 Killa No.3/1/1, 3/1/2, 4 situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana.
- e. That the respondent was granted licence no.17 of 2016 dated 25/10/2016 by The Director Town and Country Planning, Haryana,

Chandigarh for construction and development of a residential project with commercial complex, comprising of multi storied Affordable Group Housing buildings known by the project 'ROF Ananda' (hereinafter referred to as Project) started in the year of 2017.

- f. That the project is registered under the provisions of the Act with the Haryana Real Estate Regulatory Authority at Panchkula, Haryana on 14/9/2017 under registration number 184 of 2017.
- g. That it is submitted that the complainants had approached the respondent company as they were interested in purchasing a residential flat in resale/re-allotment in the said Project vide application no. 15374 together with requisite affidavits in terms agreed upon by both parties. He was allotted flat no. D-1101 in Block/Tower D on 11<sup>th</sup> floor having carpet area of 644.12 Square feet and balcony area of 100 square feet, together with D-85 two-wheeler open parking site and pro rata right share in the common area at total price of Rs.26,24,480/-.
- h. That it was agreed according to BBA, that complainants shall make payments according to payment plan set out in BBA and as per clause no. 5 (iii) (k) of notification dated 19<sup>th</sup> August , 2013 amended on 5<sup>th</sup> July 2019 of Affordable Housing Policy 2013 notified on 19/8/2013 , stated as "*In case re-allotment resulting after surrender of flats as well as allotment of left over flats , the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by other allottees in the project at that stage*".





- i. That thereafter on 03.03.2019, the complainants fulfilled the requirement of filling application form along with payment of Rs.1,31,300/-.
- j. That prior to making the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project that the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- k. That it is most respectfully submitted that the contractual relationship between the parties is governed by the terms and conditions of the Agreement for Sale between the parties dated 01.04.2019 and subsequently registered on 02.05.2019.
- l. That subsequently an allotment letter dated 10.07.2019 was issued to the complainants by the respondent.
- m. That various demand letters including the demand letter of Rs.22.19 lakhs dated 30.05.2019 was sent as per the construction linked plan taken up by complainants which is duly signed in BBA and as per the notification No. PF-27/15922 issued by Town & Country Panning on dated 05.07.2019.
- n. That thereafter payment was made by the complainants to the tune of Rs.1,31,300/- in favour of the respondent. This payment was made via cheque dated 05.08.2019 and was duly acknowledged by the respondent vide receipt dated 05.08.2019.
- o. That subsequently another demand letter dated 14.08.2019 was also sent in accordance with BBA & Notification as per the



notification No. PF-27/15922 issued by Town & Country Panning on dated 5/7/2019. This demand letter was not honoured.

- p. That the loan of the complainant No. 1 from HDFC Bank was not denied because of some deficiency from the respondent's side. The complainant's loan was declined due to his personal reason by the bank. This is evident from the fact that no written letter from bank has been produced for decline the loan because of non-approval from RERA or due to any deficiency by the respondent.
- q. That the complainants were time and again called upon to make payment of balance sale consideration and complete the necessary formalities. However, the complainants failed to do the needful.
- r. That the complainants have failed to make timely payments of all the instalments as required according to the BBA. That the complainant was sent final reminder letter dated 30.05.2020 to pay the remaining dues in connection with their (Apartment no. D-1101).
- s. That it was on consistent failure of the complainants to honour their commitments towards respondent, that the respondent informed the complainants about cancellation of booking of their apartment (Apartment no. D-1101) and reminded them to collect their dues vide letter dated 18.11.2020. It is to be noted that there was no response from the Complainant's side upon the contents of this letter.
7. 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.

**E. Jurisdiction of the authority**

8. 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**

9. 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**

10. 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) 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.*

11. 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.
12. 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."*

13. 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 complainants.**

**F.I. Refund of the entire amount of ₹ 2,62,600/- paid to the respondent no.1 (builder) along with the interest @ 18% p.a.**

14. The complainants are allottees in the project "ROF Ananda", an affordable group housing colony developed by the respondent. The complainants were allotted the units in the project and then filed the complaint before the authority for surrender of the unit on 18.01.2021 i.e., before the expiry of due date.

15. It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 which states as under:

*On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;



*Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.*

16. Since the surrender of the units by the complainants was done after commencement of construction, the respondent is entitled to forfeit amount in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 09.10.2017 is later and hence, the same would be considered as date of commencement of project.
17. Accordingly, the details of the amount to be refunded as per the policy is as under:

<b>Date of surrender</b>	<b>Forfeiture of amount in addition to ₹ 25,000/-</b>
18.01.2021	Respondent is entitled to forfeit 5% of the flat cost in addition to ₹ 25,000/- as mandated by the Policy of 2013 as the request for surrender is after 1 year from the date of commencement of project. *

18. Thus, the respondent is entitled to forfeit the aforementioned amount and return the balance amount to the complainant along with interest at the rate 10.75% [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 surrender till the date of actualization within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).



**F.II. Compensation of ₹ 5 lacs on account of mental harassment, agony, physical pain, monetary loss etc.**

19. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & O* (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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the authority:**

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to return the amount of ₹ 2,62,600/- as deposited by the complainant after forfeiture of the amount as per policy, 2013 as mentioned in table annexed to para 17 of this order along with interest on the balance amount at the rate 10.75% [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 surrender till the date of actualization.



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

21. The complaint stands disposed of. True certified copies of this order be placed on the case file.
22. Files be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.11.2023



**HARERA**  
**GURUGRAM**