

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

Complaint no. :	5556 of 2022
First date of hearing:	16.11.2022
Order reserved on:	19.10.2023
Order pronounced on :	14.12.2023

Sh. Harish Arora

R/o: 98, Street No. 4, Dhawan Colony,
Ferozepur City, Ferozepur, Punjab-152002

Complainant

Versus

1. Royal Blue City Developers Pvt. Ltd.
Regd. Office at: Unit No.-314, 3rd floor, ILD
Trade Centre, Sohna Road, Sector-47,
Gurugram-122001

Respondents

2. Royal Infra Buildtech Private Limited
Regd. Office at: Office No.-220, 2nd floor, ILD
Trade Centre, Sohna Road, Sector-47,
Gurugram-122001

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Daggar Malhotra(Advocate)

Complainant

None

Respondents

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 under the

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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.No.	Particulars	Details
1.	Name and location of the project	"Royal Homes", Sector39, Gurugram
2.	Nature of the project	Residential Unit
3.	RERA Registered/ not registered	Unregistered
4.	Unit no.	Flat no.-001, Upper Ground Floor, Tower-A (As per page no. 14 of the complaint)
5.	Unit area admeasuring	850 sq. ft. (Super Area) (As per page no. 28 of the complaint)
6.	Allotment letter	01.09.2019 (As per page no. 15 of complaint)
7.	Date of execution of agreement to sell	06.11.2019 (As per page no. 13 of the complaint)
8.	Possession clause	Not mentioned in agreement to sell
9.	Due date of possession	Cannot be ascertained
10.	Penalty to be paid as per agreement to sell in case of delay in handing over of possession	Clause 2 <i>That the work of building stops before the possession, then I will refund the money.</i>
11.	Total sale consideration	Rs.52,00,000/- (As per payment plan on page no. 15 of

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		complaint)
12.	Amount paid by the complainant	Rs.15,51,000/- (As per page no. 16 of the complaint)
13.	Occupation Certificate/ Completion Certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the respondents had advertised under-construction residential units in its project namely, Royal Homes situated in Jharsa, Sector-39, Gurugram. The complainant found the said residential units, as advertised, suitable to his requirements. Accordingly, on 20.10.2019, the complainant paid a booking amount of Rs.51,000/- to the respondents for Flat No.001 in Tower A. Thereafter, the complainant entered into an agreement to sell with respondent no.1 on 06.11.2019 in regard to Flat No.001, Tower A on Upper Ground Floor, having covered area of 850 sq. ft. in the total plot admeasuring 325 sq. yards. The respondents had failed to issue one receipt but the said payment is duly recorded with cheque number, date and amount in clause 1 of the agreement to sell. Some payments were sought in the names of respondent no.1 and some payments were sought in the name of respondent no.2 and thus the complainant had made the payments as sought by the respondent no.1.
4. That the total sale consideration of the unit is Rs.52,00,000/- and the complainant has paid to the respondents an amount of Rs.15,51,000/- till date. That the pace of construction of the unit was very slow and the complainant brought that up before the respondent several times but to no avail. As per clause 2 of the agreement to sell, the respondent undertook to

refund the entire amount so paid by the complainant in case the work of the building stopped before possession. The status of construction was nearly at a halt since several months and seeing the same, the complainant sought for refund of his hard-earned money from the respondent. The respondent instead of abiding by the terms of clause 2 of the agreement, stopped picking up the phone calls of the complainant. Later, the complainant stumbled upon a piece of information regarding the project and was shocked to learn that the Authority vide order dated 10.11.2020 in complaint bearing number RERA-GRG-2553-2020 ordered sealing of the said project premises on account of non-registration of the project with the Authority.

5. That the complainant seeks refund of the entire amount paid by the complainant to the respondents with interest as it is clearly mentioned in the clause 2 of the agreement to sell that the respondent will refund the amount paid if the work of building stops before the possession.
6. That on account of all of the above-mentioned reasons, sealing of site premises, failure of the respondents to carry out their obligations as per section 11(4) (a) the complainant in line with section 18 and 19(4) wishes to withdraw from the project and humbly prays for his hard earned money to be refunded to him with interest.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s):
 - i. Direct the respondents to refund the entire amount of Rs.15,51,000/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - ii. Direct the respondents to pay the litigation cost of Rs.1,00,000/-.
8. The authority issued a notice dated 18.08.2022 to the respondents by speed post and also on the given email address at advocatedaggarmalhotra@gmail.com, info@rbcdevelopers.co.in and

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0@gmail.com. The delivery reports have been placed in the file. The counsel for the respondents neither put in appearance nor filed a reply to the complaint within the stipulated period despite publication dated 16.03.2023 in various newspapers. Accordingly, the authority is left with no other option but to struck off the defence of the respondents and proceed ex-parte against the respondents and decide the complaint on the basis of documents and pleadings filed by the complainant.

D. Jurisdiction of the authority:

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.II Subject matter jurisdiction

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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.
11. 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.* SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

E. Findings on relief sought by the complainant:

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E.I Direct the respondent to refund the entire amount i.e., Rs.15,51,000/- to the complainant at the prescribed rate of interest from the date of respective payments till its complete realization

13. The complainant was allotted a unit in the project of respondent "Royal Homes", in Sector 39, Gurugram vide allotment letter dated 01.09.2019 for a total sum of Rs.52,00,000/-. An agreement to sell dated 06.11.2019 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.15,51,000/.
14. The due date of possession cannot be ascertained as there is no possession clause in the agreement to sell. The occupation certificate of the project where the unit is situated has still not been obtained by the respondents/promoter.
15. That it is evident from the above mentioned facts that respondents will refund the amount paid if the work of the construction stops before the possession.
16. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which s\he has paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021: -

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

17. 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. (Supra)* 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.

18. 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 application form or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
19. **Admissibility of refund along with prescribed rate of interest:** In the present complaint, the complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under section 18(1) of the Act. Sec. 18(1) reads as under:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

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(Emphasis supplied)

20. The complainant is seeking refund of the amount paid by him with interest at the 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]

(1) 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.

21. 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.

22. 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., 14.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

24. The authority has taken suo-moto action against the respondents/promoter in complaint no. 2553-2020 and imposed a penalty of Rs.50,00,000/- vide order dated 10.11.2020 as the respondents/promoter have never applied for registration in the Authority and directed the promoter to apply for registration within a period of one month from the date of that order and ordered sealing of the said project premises on account of non-registration of the project with the Authority. But the respondents/promoter had not applied for registration till date and the occupation certificate of the project is not obtained till date and no offer has been made. Thus, authority after considering the facts stated by the complainant and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(a) of the Act, 2016.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs.15,51,000/- with interest at the rate of 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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- E.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant as cost of present litigation.**
26. The complainant is seeking relief w.r.t compensation in the aforesaid 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* 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

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adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

F. 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 respondents /promoters are directed to refund the amount i.e., **Rs.15,51,000/-** received by them from the complainant along with interest at the rate of 10.75% p.a. 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.
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii) The respondents are further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

28. Complaint stands disposed of.

29. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2023