

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

Complaint no.	:	1701 of 2022
Date of complaint	:	21.04.2022
Date of order	:	16.02.2024

1. Mr. Arun Sahai 2. Mrs. Rita Sahai R/o: - House No. C 46 Friends Colony, East New Delhi 110065	<b>Complainants</b>
Versus	
Silverglades Infrastructure Pvt. Ltd. <b>Regd. Office at:</b> C-8/ 1a, Vasant Vihar, New Delhi- 110057	<b>Respondent</b>

<b>CORAM:</b> Sanjeev Kumar Arora	<b>Member</b>
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<b>APPEARANCE:</b> Shri Gaurav Rawat (Advocate)	Complainants
Shri Harshit Batra (Advocate)	Respondent

**ORDER**

1. The present complaint 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 under the provisions 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 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	Merchant Plaza, Sector-88, Gurugram
2.	Nature of project	Commercial Complex
3.	RERA Registered/ Not Registered	Registered 340 of 2017 dated 27.10.2017 valid up to 20.12.2020 <b>Registration expired</b>
4.	<b>DTPC License no.</b>	1 of 2013 dated 07.01.2013
	Validity upto	06.01.2023
	Name of licensee	Magnitude Properties Pvt. Ltd.
	Licensed area	2.76 Acre
5.	Unit no.	SA-810 [page no. 39 of complaint]
6.	Unit measuring	704 sq. ft. ( page no. 39 of complaint)
7.	Approval of Building Plan	30.05.2013 (Page no. 5 of reply)
8.	Environment Clearance	28.02.2014 (page no. 5 of reply)
9.	Allotment Letter	03.01.2014



		(Page no. 39 of complaint)
10.	Date of execution of Apartment buyer's agreement	Not executed
11.	Possession clause	<b>11.1 Possession</b> Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, <b>the Company proposes to hand over possession of the Apartment within a period of 4 (four) years from the date of approval of the Building Plans or other such approvals required, whichever is later to commence construction of the Project or within such other timelines as may be directed by the Competent Authority ("Commitment Period").</b> The Buyer further agrees that even after expiry of the Commitment Period, the Company shall be further entitled to a grace period of a maximum of 180 days for issuing the Possession Notice ("Grace Period"). (Taken from unexecuted BBA)
12.	Due date of possession	28.02.2018 (Calculated from the date of approval of environment clearance, being later)
13.	Basic Sale consideration	Rs. 49,28,000/- (As per allotment letter on page no. 39 of complaint - Rs. 7000 per sq. ft. for 704 sq. ft.)



14.	Total amount paid by the complainant	Rs. 15,33,219/- (As alleged by the complainants and as per statement of account on page no. 33 of complaint )
15.	Occupation certificate dated	11.02.2020 (As per page 117 of reply)
16.	Possession Notice	17.02.2020 (As per page no. 89 of complaint)
17.	Refund request by the complainants	15.06.2016, 30.04.2017, 16.05.2017 and 13.06.2017 (Page 13 and 93 of complaint)
18.	Pre-Cancellation of unit	30.06.2017 (as per page no. 88 of complaint)
19.	Grace period	Not entitled to grace period as the clause for grace period is qualified and respondent have not fulfilled the criteria

**B. Facts of the complaint**

3. The complainants have made the following submissions: -

4. That the complainants approached the respondent initially for booking of a unit No. SA-810, 8<sup>th</sup> Floor, admeasuring 704 Sqft in the Project "Merchant Plaza, Located at Sector-88, Gurugram, Haryana and paid booking amount Rs 10,00,000/- through cheques on dated 04.02.2013 and 06.05.2013
5. That the respondent sent allotment letter dated 03.01.2014 to them providing the details of the project, confirming the booking

of the unit dated 06.05.2013 in the aforesaid project of the developer for a basic sale consideration of the unit i.e. Rs. 49,28,000.00, and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. That as per the demands raised by the respondent and based on the payment plan of the unit, they bought the captioned unit by paying an amount of Rs. 15,33,219/- against the sale consideration of Rs. 49,28,000/-.

6. That it is pertinent to mention here that even after repeated request reminders and visits the respondent company failed to get the builder buyer agreement executed with them till date.
7. That they have sent letter to the builder and asked about the refund on 15/06/2016 and not received the reply after that again sent the letter dated 30-4-2017, 16-05-2017 & 13-6-2017 but not received any reply from builder.
8. That respondent company till date failed to execute the buyer's agreement with them. Furthermore, issued cancellation letter dated 30.06.2017 to them but even then till date no refund has been credited into their account.
9. That respondent sent unilaterally demand letter dated 17.02.2020 to them raising demand of Rs.70,93,355/- on account of offer of possession. It is pertinent to mention here after cancellation of unit offer of possession is unilateral illegal and arbitrary.



10. It is pertinent to note here that respondent company instead of responding to their aforesaid queries and resolving the issues, acting arbitrary kept on sending the reminders letters to them.
11. That thereafter, respondent filed false case bearing no. 3182 of 2020 before Hon'ble Authority against them claiming various reliefs against the respondent.
12. That on 07.07.2021, Hon'ble Authority dismissed the above said complainants of the respondent stating that the Authority is of view that the present complaint for demanding the outstanding payments from the respondent and to take possession of unit is not maintainable because the builder itself sent the cancellation letter to the respondent. That the complainants continuously asking the respondent company about the refund of paid amount but respondent was never able to give any satisfactory response to the complainant.
- C. Relief sought by the complainant:**
13. The complainants have sought following relief(s).
- i. Direct the respondent to refund the entire amount deposited alongwith prescribed rate of interest.
14. 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/builder.**

15. The respondent contested the complaint by filing reply dated 01.02.2023 on the following grounds: -

16. It is humbly submitted that they herein are themselves defaulters and have failed to make payments towards the allotment of the Unit in question since the year 2013 itself and have not even paid 30% of the sale consideration, whereas the respondent has already offered the possession of the Unit in 2020 itself.

17. At the outset, it is imperative to bring to this Hon'ble Authority's notice that the present complaint has been filed after a huge gap of almost 3 years since possession has already been offered to them by the respondent herein vide possession letter dated 17.02.2020. It is submitted that they ought to have taken possession of the Unit in the first instance, however, they with a malafide intention and to circumvent its obligations under the terms and conditions of the allotment letter and the standard buyers agreement, has filed the present complaint seeking refund of the amount paid.

18. It is submitted further that they herein are misleading this Hon'ble Authority and distorting the facts of the present case. They are also liable to be prosecuted for perjury and have lied under oath and incorrectly stated that the builder buyer agreement was not executed by the respondent, when infact the

same way duly sent to them herein by the respondent on 12.08.2014 itself, however, the same was never executed by them herein. Despite material and continuous defaults on their part, the respondent duly completed the project and offered possession of the unit.

19. It is also relevant to mention at this juncture that the due date of completion of the project was contingent upon timely payments by the allottee, however, in the present case, no payments have been received from them from the year 2013 itself. The total sale consideration for the unit in question was Rs. 55,57,902/-, whereas they have only made paid Rs. 15,33,219/-. It is submitted that as per the statement of account dated 31.10.2022, an amount of Rs. 47,12,205/- is due and payable towards the principal amount and an amount of Rs. 27,59,755/- towards is payable towards interest as on 03.11.2022.

20. It is submitted that they herein specifically made a declaration to pay further instalments and other dues as stipulated under the payment plan signed by them at the time of booking the unit in question, however, despite repeated follow-ups by the respondent herein and reminders, they failed to make payment of the instalments.

21. It is submitted further that they in the present complaint have incorrectly stated that the respondent itself cancelled the allotment of the unit vide notice dated 30.06.2017, whereas the





same was in fact not the final termination notice, but in the nature of a demand notice whereby them herein were given an opportunity to clear the outstanding dues by 20.07.2017. The fact that the aforesaid notice was not in the nature of a final cancellation can also be seen from the fact that under clause 16.2 of the standard builder buyer's agreement, the respondent herein upon terminating the agreement and cancelling the sale of the apartment unit must give a notice of 30 days to the allottee, and the aforesaid notice does not satisfy the criteria. It was only a notice calling upon them herein to make the outstanding payments, failing which the Unit may be terminated by the respondent, however, no final notice for termination has been issued upon them so far.

22. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

23. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

24. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

25. 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.

26. 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.
27. 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."*

28. 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 complainant.**

**F.I. Direct the respondent to refund the entire amount deposited along with prescribed rate of interest.**

29. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

**"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 to 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."*

*(Emphasis supplied)*

30. **Due date of handing over possession and admissibility of grace period:** As per clause 11.1 of the agreement, the possession of the allotted unit was supposed to be offered within a period of 4 (four) years from the date of approval of the Building Plans or other such approvals required, whichever is later to commence construction of the Project. Therefore, the due date for handing over of possession comes out to be 28.02.2018 (Calculated from the date of approval of environment clearance, being later). Accordingly, the authority disallows this grace period of 6 months to the promoter wherein the respondent has itself failed to comply with the condition incorporated by it. Therefore, such grace period of six months as per buyer's agreement is disallowed and not included while calculating the due date of handing over of possession.
31. The Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, but before that the allottee wishes to withdraw from the project and demanded return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
32. Before going into the merits of the case there is a peculiar issue to be taken on record, is the validity of cancellation the complainants have



alleged that the respondent has sent cancellation letter but no money has been refunded till date on the contrary respondent stated that the alleged notice was a final demand letter and not a cancellation letter. Thus, the cancelation letter was only a paper transaction as neither any amount after cancelation by retaining 10 % of the earnest money was sent nor the same was received by the complainants from the respondent. Thus, the facts detailed above show that the respondent has no intention to cancel the allotment of the allotted unit of the complainants and letter dated 30.06.2017 issued by it was never acted upon. So, for all practical purposes, the respondent treated the alleged cancelation only as a formality, not to be acted from and replied to the issues raised by the them from time to time. Also, the respondent has sent offer of possession to them on 17.02.2020 which is after the alleged notice for cancellation.

33. After considering the documents available on record as well as submissions made by the parties, it is concluded that the OC of the Tower in which the unit of complainants is situated has been obtained by it on 11.02.2020 and a possession notice has also been sent to them on 17.02.2020. The due date of possession as per possession clause of unexecuted buyer's agreement was 28.02.2018 and they have surrendered the unit on 15.06.2016 before the due date of possession and even before the occupation certificate has been received by the promoter. The OC was received and offer of possession was also made but the same has happened after the request for surrender.
34. In the instant case, the unit was allotted on 03.01.2014 and the due date for handing over for possession was 28.02.2018. The OC was received on 11.02.2020 whereas, offer of possession was made on 17.02.2020. However, it is observed that they vide letter dated 15.06.2016



surrendered the unit even before filing of the complaint and before the due date of possession. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"*

35. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 15,33,219/- after deducting 10% of the basic sale consideration of Rs. 49,28,000/- being earnest money along with an interest @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 on the refundable amount, from the date of surrender i.e., 15.06.2016 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
36. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

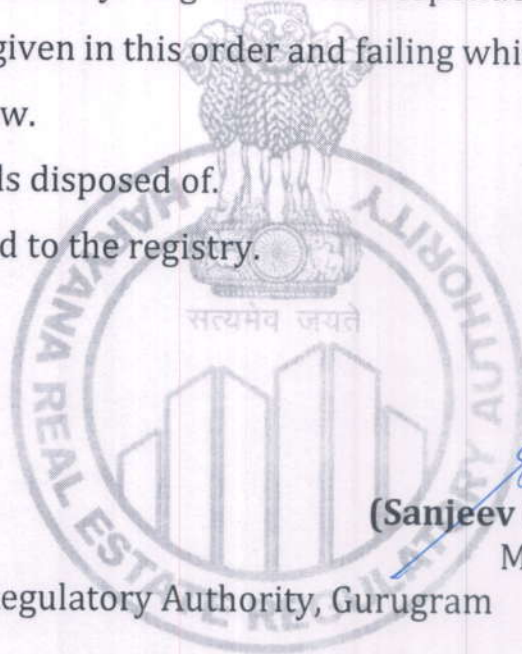
**G. Directions of the authority**

37. 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/builder is directed to refund the paid-up amount of Rs. 15,33,219/- after deducting 10% of the basic sale consideration of Rs. 49,28,000/- being earnest money along with an interest @ 10.85% p.a. on the refundable amount, from the date of surrender i.e., 15.06.2016 till its realization.
  - 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.
38. Complaint stands disposed of.
39. File be consigned to the registry.



*(Sanjeev Kumar Arora)*

Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.02.2024