

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

Complaint no. : 985 of 2022
Complaint filed on : 10.03.2022
Date of decision : 08.02.2024

Shashi Yadav

R/o: - 418, Urban Estate, Sector- 7, Gurugram- 122001

Complainant

Versus

1. M/s 4S Developers Private Limited.
 2. Shri Sarfaraz (Real Estate Agent of MS Realtors)
- Both having office at:** - 2nd floor, HUB 66, Ansal
Essencia, Sector 66, Gurugram, Haryana - 122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)

Sh. Shashi Yadav (Complainant in person)

Sh. Dhruv Rohatgi (Advocate)

Complainant

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 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. No.	Particulars	Details
1.	Name and location of the project	Aradhya Homes, Sector 67-A, Gurugram
2.	Nature of the project	Residential Floors
3.	Project area	2.58 acres
4.	RERA Registered/ not registered	Registered vide no. 27 of 2020 dated 22.06.2020
5.	RERA registration valid up to	31.01.2021
6.	Unit no.	4143, 3 rd floor
7.	Total area	Not mentioned
8.	Date of booking	25.07.2021 (Page 41 of the complaint)
9.	Allotment letter	Not annexed
10.	Date of buyer's agreement	Not executed
11.	Possession clause	Cannot be ascertained
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs.1,38,00,000/-
14.	Amount paid by the complainant	Rs.5,00,000/- (Annexure C-2 page 38 of the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Refund request made by the complainant through e-mail	13.08.2021 (Page no. 39 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -
- a. That around July, 2021, the Complainant along with her family was on the lookout to purchase a residential apartment on readily available basis for their own personal requirement and bona fide use. The respondent no. 2 namely Mr. Sarfaraz acting as authorised and registered real estate agent of M/s 4S Developers private limited approached and represented that the respondent company was developing project of exclusive independent residential floors under the name and style 'ARADHYA HOMES' in Sector 67-A, Gurugram and that the respondent company being a renowned developer is developing the project under the vide registered license and registration certificate. It was further represented by respondent no. 2 that respondent company is a well-established company in the field of real estate and represented that the respondent will fulfil all their assurances/promises and that all transactions with the respondent will be fair, transparent and as per established law.
 - b. That the respondent no. 2 shared prospectus/brochure regarding the above-mentioned project followed by various telephonic calls. Thereafter, the respondent No. 2 arranged site visit and showed 4 BHK independent floors in phase II of the said project to the complainant and her family. The respondent no. 2 represented to the complainant that an independent 3rd floor unit bearing no. 4183 in phase II of the project is available at total sale consideration of Rs.1,38,00,000/-.
 - c. That the respondent no. 2 even arranged a meeting with the sales team headed by Mr. Priyank Shukla, of the respondent/promoter. In the meeting the agents of the respondent company represented that the



respondent/promoter has obtained all requisite approvals, sanctions, etc. from the concerned Govt. Departments/Authorities and that the respondent has clear title of land (project site) and that the land was free from all kinds of encumbrances and that there was no dispute of any kind and that no litigation of any kind was pending in respect of the land for the project site. The respondents persuaded the complainant to make the booking right away to avail the prices, as the prices were soon going to be revised by the respondent. Further, it was represented to the complainant by the respondents that the independent floors in the project are readily available and possession shall be delivered in December 2021.

- d. Believing the representations, assurances and promises made by the respondent/promoter, to be true and relying upon the same, after initial apprehensions, the complainant gave in to incessant persuasion, pressure and coaxing caused by the respondents and agreed to make initial payment as demanded. Accordingly, the complainant gave a cheque bearing no. 604029 dated 25.07.2021 for an amount of Rs.5,00,000/- issued in favour of respondent company. The said cheque was encashed by respondent no. 1 on 27.07.2021. Pertinently the sales head namely Mr. Priyank Shukla acknowledged the receiving of the said cheque against the unit bearing no. 4183.
- e. That after, the initial payment of the aforementioned amount the respondent no. 2 did not show any documents viz. RERA registration, site and floor plan, project approvals etc. to the complainant. The complainant made several requests to both the respondents to show all the necessary documents related to the project. On 06.08.2021 the husband of the complainant along with her daughter-in-law, on her

behalf met sales head namely Mr. Utkarsh of the respondent company along with respondent no. 2 and both the respondents again assured to the husband of the complainant that documents will be provided. However, the agent of the respondent instead of showing the necessary documents; demanded another instalment of 30% of the total sale consideration.

- f. Despite several requests made by the complainant and her family members, the respondents did not produce any documents related to the project for verification by the complainant. The complainant got suspicious of the conduct of the respondents and did some research and the suspicion of the complainant was fortified when it was apparent that the respondent does not have necessary approvals and the possession cannot be given by December, 2021 under any circumstance. Hence, under compelling circumstance the complainant wrote an email dated 13.08.2021 to the respondent seeking refund of the amount paid.
- g. That the respondent no. 2 acting through its legal counsel Mr. Ganesh Kamath replied via email dated 14.08.2021 interalia stating that the amount paid by the complainant is non-refundable. That it came as a shock to the complainant that the respondent has arbitrarily altered the unit number and escalated the price of total sale consideration that was represented to the complainant at the time of making the booking. Apropos to submit here that the unit agreed to the complainant was 3rd floor in unit no. 4183 in phase II of the project whereas the unit mentioned in the email by the agents of the respondent company has allotted a unit bearing no. 4143 at total sale consideration of Rs.1,55,00,000/-. The complainant has not executed any document viz



- booking application, agreement etc. with the respondent company, therefore the respondent had arbitrarily altered the terms of mutual understanding between the parties. The complainant has been rendered helpless and has lost all bargaining power with the respondents after the payment of the initial amount.
- h. Thereafter, the complainant tried to contact respondent no. 2 and the concerned sales persons in respondent company seeking clarification along with request to process the refund of the amount paid. However, the respondents blatantly refused to refund the amount paid and further refused to show any documents related to the project without receiving another instalment of 30% of the balance sale consideration. She was left with no other alternative then to respond to the email dated 14.8.2021 sent by respondent/promoter.
- i. That the complainant in her email dated 23.08.2021 sent to the respondents reiterated her claim and grievances regarding change of unit and price of sale consideration. The respondent/promoter aggressively responded via email of even date and threatened the complainant to forfeit the advance paid by the complainant without any further notice. The complainant has already paid substantial amount to the respondent in good faith, whereas after facing malicious conduct of the respondents, the complainant is seeking refund of the amount paid. The complainant was in genuine need of a residential apartment and due to the mala fide actions of the respondents, hard earned money of the complainant and her family is stuck with the respondent company.
- j. That the respondent is trying to extort money from the complainant without executing any agreement to sell. Pertinently, submitted here



that copy of booking application or builder buyers agreement was never shared with the complainant and it was never informed to the complainant that the advance amount paid by the complainant is non-refundable. Further, the project is nowhere near completion. The respondent had no intention of completing the project within the timeline represented to the complainant. The acts of the respondents of alluring the complainant, demanding and receiving payment without disclosing/showing necessary documents and without disclosing terms of booking and allotment, are clearly fraudulent and malafide in nature. This amounts to gross misrepresentation by the respondent company. It is apparent from the latest photographs taken on 11.12.2021 of the site that the project was never intended to be completed and is nowhere near completion.

- k. That without the execution of the builder buyer's agreement the respondent is not entitled to forfeit any amount paid by her. Further, the complainant has requested for refund at initial stage only. There is no progress in transaction between the parties as neither allotment letter nor any confirmation letter was issued by the respondent company to the complainant. On the contrary, both the parties never reached the stage of executing the agreement to sell. Pertinently the respondent does not have necessary approvals and documents necessary for the handover of the possession by December, 2021 which was the paramount requirement of the complainant. The complainant had categorically submitted her requirement to the respondent at the time of lookout. Hence the respondents have defrauded and allured the complainant with false representations in making payment of Rs.5,00,000/-. That said, now when the

complainant is seeking refund of the paid up amount, the respondent is taking advantage of its dominant position and is causing huge wrongful loss, enormous inconvenience, mental agony, mental torture and hardship to the complainant by threatening to forfeit the amount.

C. Relief sought by the complainant:

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

I. Direct the respondent to refund the total amount of Rs.5,00,000/- received by the respondent to the complainant along with interest from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.

II. Direct the respondent to pay litigation cost of Rs.1,00,000/-.

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 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 occupation certificate of the said project has already been received on 12.04.2022, vide memo no. 3774 from the District Town Planner, Gurugram.

c. 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 filed the present complaint based on false and misconceived facts.

- d. That no cause of action arose against the respondent as in terms of the Act of 2016, the developer has received the occupation certificate and complete their project on time. Hence, on this ground alone the complaint is liable to be dismissed.
- e. That the complainant had booked the unit bearing no. 4183 in the project of the respondent namely, i.e., "Aradhya Homes" without any pressure of respondent. The complainant was aware about the said project and when complainant came to meet the answering respondent that she has checked all project details on public domain because all details of property is available on site.
- f. That the complainant has made cheating to respondent by her act and therefore the respondent has suffered a huge loss because of default committed by the complainant by not making further payments towards the booking of the above-mentioned floor. Respondent had many call and requested to complainant to clear her dues because they are facing many problems because of complainant's conduct as many customer were in queue for purchasing the said unit/floor but respondent was helpless due to complainant misconduct.
- g. That the respondent suffered damages/losses as the said unit /floor was not allotted to any third party and it got stucked for considerable period of time in the name of complainant and therefore the amount given against the booking of floor has been forfeited and therefore the complainant is not entitled for the refund of any alleged amount.

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 as well as the written submission of the complainant.
8. The respondent has filed the written submissions on 08.02.2024 which are taken on record. No additional facts apart from the reply has been stated the written submissions.

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

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 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.

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 complainant 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 complainant

F.1 Direct the respondent to refund the total amount of Rs.5,00,000/- received by the respondent to the complainant along with interest from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.

14. The complainant submits that she paid an amount of Rs. 5,00,000/- through cheque dated 25.07.2021, for which no receipt was issued by the respondent in this regard. Vide email dated 14.08.2021, the respondent issued a plot bearing no. 4143, in 3rd floor, for a total sale consideration of Rs.1.55 Crore and with a payment term: "(i) 30% amount of the sale consideration within 15 days from the date of booking i.e., on/before 10.08.2021 and (ii) Balance 70% at the time of offer of possession." The complainant stopped further payment due to failure on the part of the respondent to provide the relevant documents after multiple reminders. Hence, the complainant vide email dated 23.08.2021 requested the respondent for refund of the paid up amount of Rs.5,00,000/- as soon as possible.
15. The respondent submits that it had made many calls and requested to the complainant to clear her dues because they were facing many problems because of her conduct as many customer were in queue for purchasing the said unit/floor, but the respondent was helpless due to complainant misconduct. That the complainant cheated the respondent



by her act and therefore the respondent has suffered a huge loss because of default committed by the complainant by not making the further payments towards the booking of the above-mentioned floor.

16. 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 filed by the respondent. **Secondly**, the respondent vide email dated 14.08.2021 has raised a demand of 30% of the consideration which was payable within 15 days from the date of booking i.e., 10.08.2021 without execution on the agreement for sale as mandated by section 13 of the Act of 2016. **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 failed to place on record any document by which the respondent has raised further demand from the complainant which she 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.

17. 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."

18. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainant. Thus, the complainant is entitled to get refund of the entire amount paid by her. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 5,00,000/- within a period of 90 days from this order.

F.II Direct the respondent to pay litigation cost of Rs.1,00,000/-.

19. The complainant is seeking above mentioned 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 & Ors. 2021-2022(1) RCR (C), 357 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 complaint in respect of compensation & legal expenses.

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):
- i. The respondent/promoter is directed to refund the paid-up amount of Rs.5,00,000/- received by it from the complainant within 90 days from the date of this order, failing which legal consequence will follow.
21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 08.02.2024

V.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram