

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

Complaint no. : 1334 of 2022
Complaint filed on: 06.04.2022
Date of decision : 22.02.2024

Shashi Vermani
R/o: - 317, Diamond Square Society, Plot No. 13A,
Sector 6, Dwarka, New Delhi-110075

Complainant

Versus

M/s 4S Developers Private Limited.
Office at: - 1X-63, ILD Trade Centre, Sector 47,
Gurugram, Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Pawan Kumar (Advocate)
Sh. Shashi Vermani (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. 75 of 2017 dated 21.08.2017
5.	RERA registration valid up to	30.09.2018
6.	Unit no.	Not Offered
7.	Total area	2692 sq. ft Page 43 of complainant)
8.	Date of booking	12.12.2021 (Page 27 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
14.	Amount paid by the complainant	Rs.1,00,000/- (Annexure A 27 page of the complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Refund request made by the complainant through letter dated	19.01.2022 (Page no. 28 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That the real estate project named "Aradhya Homes", which is the subject matter of present complaints, is situated at Sector-67-A,

A



District Gurugram, therefore, the Authority do have the jurisdiction to try and decide the present complaint.

- b. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in genera.
- c. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and the consumer will not go through the hardship of paying rent along-with the instalments of home loan like in the case of other builders in market.
- d. That the respondent is in right to exclusively develop, construct and build residential building, transfer or alienate the unit's/floor/space

A



and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc in favour of the allottee.

- e. That the complainant is a senior citizen and retired from Ministry of Agriculture, Govt. of India. The complainant received a phone call from Sh. Priyank Shukla, AGM (sales) of the respondent company for visiting the site of their above said project i.e. "Aradhya Homes" at Sector- 67A, Gurugram, Haryana, the complainant along with her husband visited at the site of the respondent on 11-12-2021 and after discussion, the AGM of the respondent asked the complainant to handover a cheque of Rs. 1,00,000/- for blocking the flat no. 4143 with the condition that they would not be dropping the cheque without the prior approval of the complainant.
- f. That on this the complainant had issued a cheque bearing no. 625107 dated 12-12-2021 of Rs. 1,00,000/- drawn on State Bank of India, branch at Apra Plaza-II, Plot No. 14, Central Market, New Delhi-110075 in favour of the respondent/developer and handed over the same to the said AGM of the respondent.
- g. That thereafter, the complainant discussed about the location of the flat with her other family members and finally decided by the complainant that the above said flat would not have been suitable to cover their future requirements, and the complainant did not want to purchase the above said flat/unit and informed about the same to the AGM of the respondent on the very next day i.e. 12.12.2021 and requested him to return/refund back her above said cheque as assured by him to the complainant and her husband on 11.12.2021, but the above said official of the respondent linger on the matter on one pretext or the other and tried to fall the complainant in his sweet talks to buy the said flat. It is pertinent to mention herein that on

A



14.12.2021, the respondent encashed the above said cheque without any prior intimation and permission of the complainant illegally and unlawfully just to cheat and misappropriate of the funds of the complainant. On the other hand, at the time of taking the said cheque by the AGM of the respondent, he assured the complainant that they would not be dropping the cheque without the prior approval of the complainant.

- h. That, when the respondent failed to return/refund the above said amount to the complainant, the complainant sent a letter dated 19.01.2022 to the respondent and again requested to refund her amount but the letter was returned back to the complainant with the endorsement "refused". She sent many letters to the respondent and its directors but the letters were returned back every time to the complainant as the officials of the respondent company and its directors have all knowledge about the said cheque amount of Rs.1,00,000/- as they had cheated the complainant.
- i. That the respondent and its officials and directors have also not performed their part as assured by them. Further, the respondent is under the legal obligation to refund the entire amount along with compensation of Rs. 50,000/- to the complaint. That the respondent has also committed the offence of "Criminal Breach of Trust" which is also punishable under the provisions of the "Indian Penal Code" as the respondent had dishonestly misappropriated the hard-earned money of the complainant by making false promises.
- j. That the respondent after indulging in unfair trade practice had intentionally grabbed the hard-earned money of the complainant and violated the general principals of the real estate business. Moreover, the respondent had given the highly deficient & inadequate services to

A✓



the complainant as the respondent had not kept their promises and had also taken the undue advantages by grabbing the hard money of the complainant. That the respondent has ignored the request of the complainant to refund his amount.

- k. That under the above said provision 18 of the Act of 2016, the respondent is bound, and the complainant is entitled for refund the paid amount along with penalty amount from the respondent. That the cause of action accrued in favour of the complainant and against the respondent on 14.12.2021 when the respondent encashed the cheque issued by the complainant, without any prior intimation or permission of the complainant and it further arose when Respondent failed to refund the amount to the complainant illegally and unlawfully. The cause of action is continuing and is still subsisting on day-to-day basis.

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.1,00,000/- 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 charges of Rs. 20,000/- to the complainant
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



- 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 the complaint is not maintainable and same is liable to be dismissed on the ground that the complainant seeks suitable interest and compensation which falls under the ambit of the adjudicating officer (under RERA) and not this Authority. That the complainant has concealed the true and material facts from this Authorities and has filed the complaint on false and frivolous grounds.
- e. That the complainant had issued a booking amount cheque i.e., the cheque bearing number 625107 amounting to Rs.1,00,000/- to respondent, without any pressure of respondent, of her own. In response to the same, respondent had denied accepting the cheque because cheque amount was very short for booking but complainant made request to respondent to accept the said cheque and assured to the respondent to come on next date with full amount cheque for booking i.e., 5% of total sale price.
- f. That it is pertinent to mention here that the respondent had made many requests to complainant to clear the balance amount, but

✓



complaint always assured to respondent that she would clear the balance booking amount as soon as possible.

g. That the respondent suffered damages/losses as the said unit /floor was not allotted to any third party and it got stuck 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. That no proper court fees had been paid by the complainant, hence the complaint is liable to be dismissed.

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 22.02.2024 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

A

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

fa



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.1,00,000/- 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.1,00,000/- through cheque dated 12.12.2021, for which no receipt was issued by the respondent in this regard. Vide letter dated 19.01.2022 the complainant wrote to the respondent to return back the above-mentioned the cheque (which was already been encashed on 14.12.2021) as she is no longer willing to invest in the project. Hence, the complainant requested the respondent for refund of the paid up amount of Rs.1,00,000/- 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 customers 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 further payments towards the booking of the abovementioned 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.1,00,000/- 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 had not placed any documents on record supporting that the respondent raised any demand for further payments. No demand letter or reminder has been placed on record. **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. Moreover, the respondent has never shared any copy of agreement with the complainant and no BBA was executed inter se parties. It is beyond once imagination as to why the respondent has forfeited the booking amount paid by the complainant without even

19



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:

*"..... 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. 1,00,000/- within a period of 90 days from this order.
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.1,00,000/- 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: 22.02.2024

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