



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

Complaint no. : 1051 of 2020
Order reserved on : 02.04.2024
Order pronounced on : 14.05.2024

Mrs. Bijoya Mohanty
R/o: B-801, Spring Valley, Plot- 3C, Sector- 11, Dwarka,
New Delhi- 110075.

Complainant

Versus

M/s Silverglades Infrastructure Private Limited.
Regd. Office at: - C-8/1-A, Vasant Vihar, New Delhi-
110057.

Corporate Office at: - 5th Floor, Time Square Building, B-
Block, Sushant Lok, Phase- 1, Gurugram- 122009

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Priyanka Agarwal (Advocate)
Shri Harshit Barta (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 under the

provision of the Act or the Rules and regulations made thereunder or to the allottees 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. No.	Heads	Information
1.	Name and location of the project	The Merchant Plaza, Sector 88, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	DTCP license no.	1 of 2013 dated 07.01.2013
	Valid up to	06.01.2021
4.	RERA registered/ not registered	Registered 340 of 2017 dated 27.10.2017 for 2.75625 acres
	RERA registration valid up to	20.12.2020
5.	Allotment letter issued in favour of the complainant on	09.06.2014 [Page 44 of reply]
6.	Date of execution of apartment buyer's agreement between the complainants and the respondent	Not executed
7.	Unit no. as per allotment letter at page 44 of reply	SA-513, 5 th floor
8.	Unit measuring	704 sq. ft.
9.	Increase in super area of the unit as per page 81 of reply	36.92 sq. ft. (740.92 sq. ft. – 704 sq. ft.)
10.	Total consideration as per statement on page 88 of the reply	Rs.53,32,858/-
11.	Total amount paid by complainant-allottee as admitted by the respondent-promoter at page 88 of reply	Rs.16,42,735/-



12.	Possession clause	N.A
13.	Due date of delivery of possession	<p>09.06.2017</p> <p>Note: Fortune Infrastructure and Anr. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.</p> <p>In view of the above-mentioned reasoning, the date of allotment letter dated 09.06.2014, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 09.06.2017.</p>
14.	Building plan approval date	30.05.2013 [Page 136 of reply]
15.	Emails sent by the complainant to the respondents seeking cancellation and refund of the amount paid	<ul style="list-style-type: none">• 30.09.2015 [Page 40 of complaint]• 20.11.2015 [Page 41 of complaint]• 21.06.2016 [Page 44 of complaint]• 10.07.2018 [Page 48 of complaint]• 06.09.2018 [Page 52 of complaint]

16.	Date of offer of possession to the complainant-allottee at page 79 of reply	17.02.2020
17.	Date of occupation certificate, page 77 of reply	11.02.2020
18.	Remarks	The respondent allottee has not paid any instalments after 12.05.2014. (As per details on page 88 of reply)

B. Facts of the complaint:

3. The complainant has made following submissions in the complaint:

- i. That the complainant has been cheated by the malpractices adopted by the respondent and has allegedly been carrying out real estate development since many years. The respondent company under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent and gullible public at large. The respondent advertised its projects extensively through advertisements. The respondent company sent an email dated 12.03.2013 in detail of PEECH TREE project which was developed by respondent and run by them successfully by paying the rental to its customers & merchant plaza is the similar concepts which will be a good source of income in retirement, and it's like buying a stake in a seven-star hotel that's the word of respondent. The complainant was allured by an enamored advertisement of the respondent and believing the plain words of respondent in utter good faith, the complainant was duped of their hard-earned monies which they saved from bonafide resources.
- ii. That one-sided development agreement has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no



- option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the buyer imposes unfair and discriminatory terms and conditions. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of rental income, not mentioning the details regarding fitting and fixture of unit & many hidden charges as tactics and practice used by the respondent.
- iii. That the complainant booked a service apartment bearing no. SA-513 admeasuring 703.61 sq. ft. in project namely "Merchant Plaza", Sector 88, Gurugram on 03.06.2013 and the respondent confirmed the receipt of payment of Rs.4,00,000/- in respect of said unit as an advance.
- iv. That the complainant asked the builder through an email dated 24.08.2013 for execution of builder buyer agreement with rental option which was committed by builder at the time of booking. She has paid the amount of Rs.5,00,000/- & Rs.7,30,626/- on 21.01.2014 and 25.02.2014 respectively as demand raised by builder. Thereafter, the respondent sent the letter of **Bhumi Poojan** dated 11.03.2014. The basic price of unit as per demand letter is Rs.41,51,299/-out of that complainant was paid amount of Rs.16,42,735/- before 25.05.2014.
- v. That respondent continually sent various demand letters and few general updates but did not send the copy of agreement in between 24.08.2013 to 21.05.2015 after perusal. Finally, the complainant received a copy of agreement dated 20.04.2015 and was shocked to see that the respondent has not mentioned any fitting and fixture details in agreement.
- vi. That the complainant has to spoke with employees of the respondent company through email dated 20.04.2015 regarding fitting and fixture



details but he haven't got any reply. The complainant again sent a reminder email dated 30.04.2015 and finally got reply from Sanjeev Mishra stating that they will get back soon and after that he has not received any reply from respondent. The complainant again sent an email on 15.06.2015 asking about fitting and fixture detail of & other expenses and costing part.

- vii. That after many reminders, the complainant got reply from Mr. Sanjeev Mishra through email dated 06.07.2015 about the superficial details of fitting and fixture. The complainant asked the respondent through email dated 07.07.2015 for incorporation of the detail of fitting and fixture like Ac and false ceiling in agreement and send the agreement with amendment. The respondent instead of sending the amended agreement, sent a new demand vide letter dated 23.07.2015, this reaction seems mala fide intention of the respondent. After long perusal through email dated 11.07.2015 & 21.07.2015, the respondent sent back agreement for signing on 16.08.2015 without incorporation of amendment which was discussed previously but incorporate two unilateral clauses 1 & 4.16. This is illegal, unilateral and arbitrary and the complainant was compelled to sign the agreement and wrote a letter of objection dated 01.08.2015, 21.08.2015 & 16.09.2015 respectively. The complainant again wrote an email to Mr. Sanjeev Mishra asking to send back copy of agreement with amendment.
- viii. That respondent did not sent back the agreement and the complainant again sent a reminder email dated 30.09.2015 and gave the choice to the respondent to either execute the agreement with amendment or refund the amount. But the complainant did not received any reply from the respondent. The complainant again sent a reminder on 20.11.2015



but the respondent again did not reply to the same. The complainant sent various emails dated 30.11.2015, 24.12.2015, and 26.01.2016, respectively but the respondent has not replied to them. After that the complainant visited the respondent's office on 02.02.2016 and it was promised to her for incorporation of fitting and fixture detail in agreement & to make clarity on rental aspect.

- ix. That when the respondent has not taken any action after numerous request, the complainant sent an email dated 13.04.2016 for cancelation of booking. In the reply to the same, the respondent asked the complainant to unilaterally shift from rental unit into non rental unit through email dated 14.07.2016.
- x. That the respondent sent a demand letter dated 10.02.2017 but remained silent on execution of amended agreement and the complainant was constrained to send emails regarding the execution of amended agreement on 06.06.2017, 08.09.2017 & 12.02.2017, respectively but did not get any reply from the respondent. Finally, Mr. Sanjeev Mishra replied through email dated 11.09.2018 stating that the project is ready but when complainant visited the site on 12.09.2018 and found that only super structure was ready and the respondent has raised the illegal demand.
- xi. That the complainant made various request through email dated 25.08.2018, 06.09.2018, 03.10.2018, 03.12.2018, 07.03.2019 & 22.04.2019, respectively and personally visited at office of the respondent on 16.01.2019 for refund of the paid amount but did not get any satisfactory reply from builder. The respondent sent possession letter to complainant on 17.02.2020.



- xii. That from the above it is abundantly clear that the respondent has shown rosy picture about project and verbally committed rental income & sold the unit in 2013, extracted the amount of Rs.16,42,735 before 2014 from the complainant by giving false millstone and verbal commitment and by executing illegal, unilateral, one-sided agreement.
- xiii. That keeping in view the complainant who has spent her entire hard earned savings in order to buy this unit, stands at a crossroad to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in specification of unit, rental income & completing the project on time, has caused the complainant great financial (Interest on money, Lease value, increase in taxes, opportunity loss etc.) and emotional loss. The complainant has spent 4 year w.e.f. 2013 to 2017 requesting execution of BBA and rest period from 2017 onwards to till date, requesting refund of the amount paid by her.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the paid-up amount of Rs.16,42,735/- along with interest from date of paying to till actual realization of refunded amount.
 - ii. Direct the respondent to pay an amount of Rs.5,00,000/- as damage /compensation to the petitioner for subjecting her to long period of mental harassment and agony, etc.
 - iii. Direct the respondent to pay an amount of Rs.60,000/- as damage /compensation to the petitioner for subjecting her to litigation charges, etc.

D. Reply by the respondent/builder.

5. The respondent contested the complaint by filing reply dated 08.06.2021 on the following grounds: -

i. That as per the applicable Act and rules made thereunder, a complaint may be filed by a person only if the respondent has committed any act in violation of the Act, 2016 and rules made thereunder. As the complainant has failed to bring on record any document, evidence etc. which may even allude that the respondent has violated the provisions of the Act, the complainant has no locus standi. Therefore, the complainant has no cause of action or ground to file the present complaint. It is respectfully submitted that the present complaint is not maintainable as the respondent has not violated any provisions of the Act, 2016 and rules made thereunder.

ii. The lawsuit does not fall within the four corners of section 12, section 14, section 18 and section 19 of the Act. The present complaint is without any cause of action against the respondent. The complainant is not entitle to the relief as alleged and claimed herein. The respondent has not committed any fault, default, violation and services are not deficient in any manner whatsoever. However, the complainant has made consistent default in timely payment of installment and dues as per the agreement, signed by her.

➤ **Suit is without any valid cause of action against the respondent.**

The booking of apartment was made through a real estate agent namely Prem Kumar. The complainant ought to make her necessary party to the lawsuit. The respondent do not certify or admit any exchange of communication, probate or aprobate between the complainant and real estate agent. *The respondent has not published any misleading or false information through notice or advertisement or prospectus, and the complainant has not made booking on the basis*



of model apartment, plot or building, as the case may be or has not sustains any loss, injury or damage as the case may be. The complainant has not brought any such record or proof in support of her claim and relief. Under these facts and circumstances, the complainant is not entitled to be compensated as provided under section 12 of the Act.

- That there is no allegation that project has not been developed and completed by the respondent in accordance with the sanctioned plans, layout plans and specifications and not approved by the competent authorities. The sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, are duly approved by the competent authority, and same are disclosed or furnished to the complainant in the apartment buyer's agreement. ***In addition to this, there is no allegation of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the respondent as per the agreement for sale. Under the facts and circumstance, the complainant is not affected by any incorrect and false statement cannot be allowed to withdraw from the project and is not entitle to refund of her investment along with interest in the manner provided under the Act. Therefore, the lawsuit is not covered within the four corner of section 14 of the Act.***
- There is no allegation that as to defective title of the land, on which the project is developed, in the manner as provided under this Act. There is no allegation that the promoter has failed to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. ***The development of the project has been completed and the occupancy certificate was obtained on 11.02.2021.*** The possession of the unit has been delivered to buyers. The offer of possession was also made to the complainant in accordance with the terms of the agreement for sale or, *as the case may be.* The complainant is ready and willing to compensate for the reasonable delay. ***Therefore, the lawsuit is not covered within the four corner of section 18 of the Act.***



- The present complaint is not maintainable, and the complainant has no right to seek refund/cancel or withdraw from the project in absence of any fault of the respondent/developer under rule 8 of the Rules 2017.
 - The present complaint is not maintainable as the complainant has not approached with clean hands. The complainant has made default of section 19(6) and 19(10) of the Act, wherein he was responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place. The allottee shall be liable to pay interest, at such rate as may be prescribed, for delay in payment towards any amount or charges to be paid under sub-section (6) of the Act. The complainant/buyer has failed to take physical possession of the apartment within a period of two months of the occupancy certificate issued for the project, as the case may be.
- iii. That the complainant has not approached with clean hands. The complainant/allottee had agreed, under the payment plan signed by her to pay instalments on time and discharge her obligations as per payment plan schedule but the complainant/allottee made default in the payments of her respective instalments from time to time and delayed the payment of outstanding on each and every demand raised upon her. From the perusal of statement of account it is clear that complainant have made default and failed to make timely payment of dues and outstanding.
- iv. That there is no allegation that respondent has not complied with provisions of the Act of 2016. All the necessary infrastructure works have been completed for the project as per law and this is evidenced by the fact that the competent authority have issued an occupancy certificate for of the project dated 11.02.2020. Since commencement of construction the respondent had been sending monthly update of construction to the complainant. The complainant has never raised any



issue regarding the progress, timeline, quality of construction of the project and/or any other defects/deficiency in the service of the respondent. Further, the complainant has never complained of any violation of any of the provisions of the Act from the date of booking till the date of filing the present complaint.

- v. That the respondent has already offered the possession of service apartment no. SA-513 at Second Floor of Merchant Plaza, Sector-88, Gurugram, Haryana to the complainant on 12.02.2020 but the complainant failed to take possession thereof. That there is no inordinate delay in handing over the possession of unit to the buyer. However, the respondent admit reasonable delay, for which the respondent is ready and willing to compensate the buyer for the reasonable delay which has been caused due to many factors including but not limited to shortage of materials, labour, lockdown, force majeure etc. Moreover, the respondent has not violated any other provisions of the Act, 2016 and rules made thereunder.
- vi. That the respondent obtained LOI and License for development of commercial project namely "Merchant Plaza". The sanction of Building Plan (BR-III) was received on 30.05.2013, and other post construction approvals were obtained as made mandatory and specified in sanctioned building plan. The environment clearance was received vide ref no. SEIAA/HR/2014/387 dated 28.02.2014. Environment clearance makes it mandatory to obtain "Consent for Establish" before start of construction work at the site. The last approval required for commencement of construction i.e. "Consent to establish" was received on 16.06.2014, whereupon the respondent commenced construction of the project. The project was registered under the provisions of Act,



- 2016 vide registration certificate no. 340 of 2017 dated 10.10.2017 (valid up to 20.12.2020). Further, 6 months extension was suo-moto provided by HARERA vide Order No. 9/3-2020 HARERA/GGM (Adm.) dated 26.05.2020.
- vii. The complainant booked a retail shop under construction link payment plan in the project, being developed by it. Vide an allotment letter dated 09.06.2014, a unit bearing no. SA-513, admeasuring 704 sq. ft. was allotted to the complainant, and subsequently apartment buyer's agreement (for short the "Agreement") were sent to complainant on 17.04.2015 and 04.05.2017 but the complainant failed and made default to execute the same. The complainant admit receipt thereof in the complaint.
- viii. That various "demands letters and reminders" as per payment plan were sent to the complainant but in vain. The respondent has duly complied with all applicable provisions of the Act, 2016 and rules made thereunder and also that of Agreement for sale qua the complainant and other allottees. Since, the commencement of the development of the project, the respondent has been sending regular updates regarding the progress of the project regularly to all the buyers including the complainant and also the customer care department of the respondent is in regular touch with the buyers for providing them regular updates on the progress of the project.
- ix. The project development was completed in September 2019. The unit was furnished and completed in all respect. The photograph of the project is placed as Annexure-R/10. Whereupon the company applied for the issue of occupancy certificate vide application dated 11.09.2019. The competent authority issued occupation certificate on 11.02.2020.

The respondent vide its letter dated 17.02.2020 issued notice of possession to the complainant, but the complainant has failed to take possession thereof, and filed present complaint before this Authority.

6. 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.
7. The application for refund was filed in the form CAO with the adjudicating officer. After taking reply and considering the documents on record, the complaint was allowed vide order dated 29.10.2021, with a direction "..... Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainant i.e., Rs.16,42,735/- to the later, within 90 days from today, along with interest @ 9.30% p.a. from the date of each payment till its realization. A cost of litigation etc., Rs.1,00,000/- is imposed upon the respondent to be paid to complainant." Being aggrieved with the same, the order was challenged by the appellant/respondent before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 17.03.2023, set aside the same with a direction to the authority for fresh decision of the complaint in accordance with law. So, in pursuant to those direction, both the parties put in appearance before the authority. Therefore, the complaint is being deal with the authority. Now, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.05.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and was observed that

there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

8. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (2021-2022 (1) RCR (C), 357*, the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the basis of proceedings and submissions made by both the parties.
9. The respondent has filed the written submissions on 24.04.2024, which is taken on record. No additional facts apart from the reply has been stated the written submissions.

E. Jurisdiction of the authority

10. 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

11. 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

12. 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.

13. 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.
14. 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(C), 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*** and 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."

15. 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 paid-up amount of Rs.16,42,735/- along with interest from date of paying to till actual realization of refunded amount.

16. The complainant is seeking refund of the amount deposited for allotment of the commercial unit bearing no. SA-513, on 5th floor for an area admeasuring 704 sq. ft. in the project of the respondent i.e., "Merchant Plaza" situated in Sector 88, Gurugram, Haryana. The complainant had deposited an amount of Rs.16,42,735/- against consideration price of Rs.53,32,858/-. An allotment letter dated 09.06.2014 was issued by the respondent in favour of the complainant for said unit. Thereafter, the respondent company continuously sent demands letter/reminders letter and few general updates. However, the BBA was not executed inter se parties due to various reasons.

17. During proceedings on 19.12.2023, the counsel for the complainant stated that the BBA was not executed due to non-supply of project specifications plan and other details which were demanded through email from the respondent multiple times. The counsel for the respondent stated that in response to above query of the complainant, the details were provided and were also part of initial advertisement/application form/BBA which was sent to the complainant. The counsel for the respondent further stated that refund at this stage may not be allowed as project is completed and OC is obtained and offer of possession is also made and is placing on record the order passed by the Maha RERA where balance has been struck between the rights under section 18 and 19 of the Act. However, the counsel for the complainant denied the same and stated that the complainant is seeking refund of the paid-up amount due to non-execution of BBA and for not providing the requisite specifications before making further payment and hence the allottee is entitled for full amount deposited along with interest.
18. During proceedings on 02.04.2024, the counsel for the complainant stated that the complainant is seeking refund of the amount deposited along with interest at the prescribed rate on account of non-fulfilment of the promises made at the time of allotment w.r.t the specifications of the apartment in question. The respondent was forcing the complainant to sign BBA without incorporating the specifications as promised and as a consequence, the complainant repeatedly requested the respondent to refund the amount. The counsel for the respondent stated that the respondent has not made any such promise and the reference made by the complainant pertains to one Investors Clinic which has not been made party in the matter. Further, the complainant has failed to execute the BBA despite repeated requests. He

further states that the request for refund has been made prior to the due date for handing over of possession of the unit.

19. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Further, the Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**"*
20. In view of the above-mentioned reasoning, the date of issuance of allotment letter ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 09.06.2017.
21. The authority is of the view that vide email dated 24.08.2013, the complainant requested the respondent to provides certain information such as unit details, floor lay out map, copy of draft agreement, payment schedule etc. Thereafter, vide letter dated 09.06.2014, allotment letter was issued by the respondent in respect of the subject unit and a copy of BBA for execution was sent to the complainant vide letter dated 17.04.2015. Subsequently vide email dated 15.06.2015 and reminder dated 18.05.2015, the complainant communicated to the respondent that she has received the agreement but

there is no annexure in respect of list of furnishing to be done by the respondent company. The requisite information regarding fitting and fixture was thereafter provided by the respondent through an email dated 06.07.2015. Another email was sent by the complainant on 07.07.2015 and reminder dated 21.07.2015, seeking clarification with respect to AC/lights and requested the respondent to incorporate the furnishing details in the amended agreement. In response to the same, the respondent vide email dated 24.07.2015 stated that "AC and light will be provided and other interior work will be as decided at the stage of finishing". It is pertinent to note that the complainant has sent various reminders to the respondent vide emails dated 01.08.2015 and 07.08.2015 requesting the respondent to provide amended agreement. Vide letter dated 06.08.2015, the respondent has intimated the complainant that the subject service apartment would be fully air conditioned and had mentioned the furniture and fixtures. Finally, the BBA was received by the complainant on 16.08.2015, however some of the terms of the same were challenged by the complainant vide email dated 21.08.2015. However, the complainant has placed an email dated 30.09.2015 whereby she has sought refund of the paid-up amount with interest before the due date of possession. The relevant extract of email dated 30.09.2015 is reproduced as under for ready reference: -

*From: bijoyamohanty12@hotmail.com
To: ic.premmadaan@gmail.com
CC: [sanjeevmishra@silverglades.com](mailto:sanjeemishra@silverglades.com):troika56@gmail.com*

Subject: FW: non receipt of agreement copy

Date: Wed, 30 Sep 2015 21:18:08 +0530

Dear Prem,

What is my Silver Glade agreement?

***Either send me the agreement copy or refund the amount along with the interest.** It is height of non-cooperation by you. Why Sliver Glade is making so much delay. What is the reason? Are they not sure what they are selling and going to do?*

*What is the matter? I need the revert ASAP. Treat this as most urgent. I have been following up this matter from last 8 months. **I am tired of the same and***



now I just need refund. If they harass me so much now then what are they going to do later? I have asked the same question so many times to you.

Anyway please revert back.

Bijoya

22. In the present complaint, the complainant withdrew from the project even prior to the due date. The complainant vide emails dated 20.11.2015, 21.06.2016, 10.07.2018, 06.09.2018 and 03.10.2018 has also sought cancellation of the allotment and refund of the paid-up amount. However, the respondent has not proceeded with the cancellation of the allotment and withheld the paid-up amount after permissible deduction in terms of application form. However, the complainant is entitled to refund of the amount deposited but only 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"

23. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.16,42,735/- after deducting 10% of the sale consideration of Rs.53,32,858/- 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/withdrawal request i.e., 30.09.2015 till actual realisation of the amount within the timelines provided in rule 16 of the Haryana Rules 2017
ibid.

F.II Direct the respondent to pay an amount of Rs.5,00,000/- as damage /compensation to the petitioner for subjecting her to long period of mental harassment and agony, etc.

F.III Direct the respondent to pay an amount of Rs.60,000/- as damage /compensation to the petitioner for subjecting her to litigation charges, etc.

24. With respect to the aforesaid reliefs, the complainant is seeking 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)*, has 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 complaints in respect of compensation & legal expenses.

G. Directions of the authority

25. 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.16,42,735/- after deducting 10% of the sale consideration of Rs.53,32,858/- being earnest money along with an interest @ 10.85% p.a. on the refundable amount, from the date of surrender/withdrawal request i.e., 30.09.2015 till actual realisation of the amount.



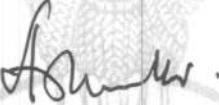
ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2024

HARERA
GURUGRAM