

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

Date of decision: 05.07.2024

NAME OF THE BUILDER		M/S ASTER INFRAHOME PVT. LTD.	
PROJECT NAME		GREEN COURT	
S. No.	Case No.	Case title	Appearance
1	CR/6542/2022	Vandana Khanna and Anuj Khanna V/S M/S Aster Infrahome Pvt. Ltd.	Sh. Himanshu Gautam Sh. Shankar Wig
2	CR/6400/2022	Taranpreet Kaur and Sarabjeet Singh V/S M/S Aster Infrahome Pvt. Ltd.	Sh. Himanshu Gautam Sh. Shankar Wig

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Green Court situated at Sector-90, Gurugram being developed by the same respondent/promoter i.e., M/s Aster Infrahome Pvt. Ltd. The

terms and conditions of the application form fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Green Court" at sector 90, Gurgaon, Haryana.
Project area DTCP License No.	10.125 acres 61 of 2014 dated 07.07.2014 valid upto 06.07.2019 62 of 2014 dated 07.07.2014 valid upto 06.07.2019
Rera Registered	Registered vide no. 137 of 2017 dated 28.08.2017 valid upto 22.01.2020 Extension certificate no. 09 of 2020 dated 29.06.2020 valid upto 22.01.2021
Possession clause:	NA
Due date of possession:	NA
Occupation certificate:	Not obtained
Offer of possession:	Not offered

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/6542/2022 Vandana Khanna and Anuj Khanna	B-19, Ground floor	NA	NA Date of booking: 17.09.2015	NA	TSC: - NA AP:- Rs. 3,00,000 /-	Refund



	V/S M/S Aster Infrahome Pvt. Ltd. DOF: 29.09.2022 2 Reply status: 25.04.2023 3						
2.	CR/6400/ 2022 Taranpreet Kaur and Sarabjeet Singh V/S M/S Aster Infrahome Pvt. Ltd. DOF: 29.09.2022 2 Reply status: 25.04.2023 3	B-18, Ground floor	NA	NA Date of booking: 17.09.20 15	NA	TSC: - NA AP: - Rs. 3,00,000 /-	Refund

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviation Full form
TSC Total Sale consideration
AP Amount paid by the allottee(s)

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter

/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6542/2022 Vandana Khanna and Anuj Khanna V/S M/S Aster Infracore Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Project and unit related details

6. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/6542/2022 Vandana Khanna and Anuj Khanna V/S M/S Aster Infracore Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Green Court", Sector-90, District Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing Project
3.	Project area	10.125 acres
4.	RERA Registered/ not registered	Registered 137 of 2017 dated 28.08.2017 valid upto 22.01.2020
	Extension Certificate no.	09 of 2020 dated 29.06.2020



		Valid upto 22.01.2021
5.	DTCP License No.	61 of 2014 dated 07.07.2014 valid upto 06.07.2019 62 of 2014 dated 07.07.2014 valid upto 06.07.2019
6.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)
7.	Date of booking	17.09.2015 (as per payment receipt on page no. 11 of complaint)
8.	Shop no.	B-19, GF (Page no. 11 of complaint)
9.	Unit admeasuring	NA
10.	Flat Buyer Agreement	Not executed
11.	Possession clause	NA
12.	Due date of delivery of possession	NA
13.	Total sale consideration	Cannot be ascertained
14.	Total amount paid by the complainants	Rs. 3,00,000/- (as per receipt on page no. 11 of complaint)
15.	Occupation certificate	17.11.2022 (page no. 3A of reply)
16.	Offer of possession	Not offered
17.	Cancellation by respondent	22.03.2022

B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

7. The complainants booked a unit in the Green Court project in Sector-90, Gurugram, and paid a booking amount of Rs. 3,00,000 on 17.09.2015.
8. That at the time of booking, the respondent committed to the complainants that the sale price of the said shop would be Rs. 7000/- per sq. ft. and also demanded a cheque of Rs. 3,00,000/- to confirm the booking of the said shop selected by the complainants and further assured the complainants that the cheque would be presented for payment only after submission of the booking application form, which was to be provided by the respondent and to be filled by the complainants.
9. However, despite making payments as requested by the respondent, no allotment was made, nor were any formalities like application submission or receipt of an application letter fulfilled. As a result, the complainants are seeking a refund of the amount paid.

C. Relief sought by the complainants: -

10. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount paid by the complainants along with the interest at the rate prescribed under the Real Estate (Regulation and Development) Act, 2016. (amended vide application dated 16.10.2023)

11. 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.

12. That the complainants booked a shop bearing unit no. B-19 (Ground Floor) in the project named "Green Court" commercial complex in Sector 90, Gurugram, Haryana (hereinafter "Suit Property") on 03.09.2015 by making the advance token payment of Rs. 3,00,000/- (Rupees Three Lakhs Only). The complainants did not have the booking allotment application form with him because the same was never issued by the respondent.
13. That after paying the initial amount of Rs. 3,00,000/- the complainants were under an obligation to pay the balance amount as per the schedule of payments @ 14,500 per sq. feet, plus EDC, ITC etc., prescribed but he did not paid any amount after the initial payment and accordingly the number of letters were sent to the complainants to come forward and pay the balance consideration but all effect gone in vain.
14. That the broker engaged by the complainants were also intimated at regular intervals but to no avail.
15. That the complainants have not made any payment of any amount except Rs. 3,00,000/- which he had paid at the time of the soft launch of the project wherein it was absolutely confirmed to the broker of the complainants to pay the balance amount as per the scheduled payment then the said amount will be forfeited.
16. That communication in regard to non-payment of dues for the shop no. B - 19 (GF) at Times Court at Sector 90, Gurugram, Haryana was sent to the complainants vide letter bearing reference no. TC009/22367 dated 09.11.2021.
17. That the respondent waited for a long time but receiving no response from the complainants cancelled the tentative booking of the suit property vide letter dated 22.03.2022.
18. Despite the delay in construction which were beyond the control of the

opposite party, the occupation certificate with respect to the same was received from the concerned authority on 17.11.2022.

19. That the broker of the complainants who were acting in the capacity of an attorney to the complainants were also served with the said cancellation letter dated 22.03.2022 and informed that the respondent had forfeited the said amount.
20. That a contract primarily rests on the principle of ad idem i.e., meeting of minds of both the parties to the contract and in this case the suit property as described by the complainants in a shop whereas the property admitted to be handed over the complainants.
21. That the complainants only paid a provisional/ deposit amount of Rs. 3,00,000/- at the time of soft launched of the project. The complainants was under an obligation to pay the balance sale consideration as per the schedule in a phased manner but the complainants had probably some other plans or was not able to arrange the amount and hence maintained stoic silence despite the various verbal written reminder to him and his broker and needless to mention even the builder buyer agreement ("BBA") was not executed and the said deposit amount only remained as a deposit amount and the said BBA if executed would have been the basis for any relief for recovery of any immovable property by the complainants but in the instant case no such agreement has been executed.
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 submission made by the parties.

E. Jurisdiction of the authority

23. 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

24. 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

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. (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."

28. 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.

G. Findings on the relief sought by the complainants.



G. I Direct the respondent to refund the entire amount paid by the complainants along with the interest at the rate prescribed under the Real Estate (Regulation and Development) Act, 2016.

29. The complainants submits that they has paid an amount of Rs. 3,00,000/- through cheque on 04.09.2015 for which receipt was issued by the respondent/builder on 17.09.2015. Thereafter no allotment letter was issued and no builder buyer agreement was executed between the parties. The complainants stopped making further payment to the respondent leading to the cancellation by the builder.
30. According to the respondent/builder, they assert that the complainants did indeed book a unit by paying Rs. 3,00,000 on 17.09.2015, and a receipt was issued for this transaction. However, they claim that they never provided an allotment application form to the complainants. Instead, they sent several letters requesting payment of the remaining balance. Subsequently, after a prolonged period of waiting, they cancelled the unit on 22.03.2022 and forfeited the entire booking amount.
31. Upon perusal of the documents on record, the authority observes that they paid Rs. 3,00,000 via cheque on 04.09.2015, with the respondent/builder issuing a receipt for this payment on 17.09.2015. However, despite this payment and issuance of a receipt, no allotment letter was provided, nor was a builder-buyer agreement executed between the parties. 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 complainants. The complainants fulfilled their part of the agreement by making the initial payment, but the builder failed to provide the necessary documentation and formalize the transaction through an allotment letter or builder-buyer agreement. Without these crucial documents, the

complainants may have been justified in withholding further payments.

32. Secondly, the respondent issued a cancellation letter dated 22.03.2022, stating that the commercial unit was cancelled due to the complainants' non-compliance with timely payment of allotment money and subsequent installments. However, the authority observes that no terms and conditions regarding payment plans were agreed upon between the parties.
33. This presents a discrepancy in the situation. If there were no agreed-upon terms and conditions regarding payment plans between the parties, then the cancellation of the unit based on non-payment is unjustified. In the absence of a formal agreement outlining payment schedules and deadlines, the respondent may not have had grounds to cancel the unit solely due to non-payment.
34. The authority seems perplexed as to why the respondent forfeited the booking amount paid by the complainants without fulfilling their obligations and in the absence of any application form, allotment letter, or builder-buyer agreement (BBA). Forfeiting the booking amount without fulfilling obligations or providing essential documentation seems unjust.
35. 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:

- i. "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."**

36. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainants. Thus, the complainants are entitled to get refund of the entire amount paid by them along with interest at the prescribed rate.
37. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 3,00,000/- with interest at the rate of 10.95% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

H. Directions of the authority

38. Hence, the authority hereby passes this order and issues the following



HARERA
GURUGRAM

Complaint No. 6542 of 2022 &
other

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 amount received by it from the complainants (in both cases) along with interest at the rate of 10.95% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited 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.

39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

40. The complaints stand disposed of.

41. Files be consigned to registry.

HARERA
GURUGRAM

(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024