

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

**Complaint no.:** 381 of 2023  
**First date of hearing:** 20.07.2023  
**Date of decision:** 08.02.2024

Mr. Rajeev Bajaj  
R/o:- BU-41, Pitampura, Delhi-110034

**Complainant**

Versus

1. M/s. DSS Buildtech Private Limited.
2. Shri Paras Kumar Jain (Managing Director), M/s. DSS Buildtech Private Limited.  
**Both having regd. Office at:** 506, 5<sup>th</sup> Floor, Time Square Building, B-Block, Sushant Lok Phase-I, Gurgaon, Haryana-122002.
3. M/s. Silverglades Holdings Private Limited.
4. Shri Pradeep Jain (Managing Director)  
M/s. Silverglades Holdings Private Limited.  
**Both having regd. Office at:** 404, Nirmal Tower, 26 Barakhamba Road, New Delhi-110001.

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Arun Kumar Khatana (Advocate) along with complainant in person

Complainant

Sh. Harshit Batra (Advocate)

Respondent No. 1

None

Respondent no. 2 to 4

**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

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be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"The Melias"
2.	Project location	Sector-35, Sohna, District Gurugram
3.	Project area	17.41875acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	77 of 2013 dated 10.08.2013 Valid till 09.08.2024
6.	Name of licensee	Smt. Aarti Khandelwal and others
7.	RERA Registered/not registered	Registered vide no. 288 of 2018 dated 10.10.2017 Valid up to 25.10.2021+6 months in lieu of Covid-19 i.e., 24.04.2022
8.	Allotment letter	Not issued
9.	Unit no. as per demand letter	Flat No. 1501, Tower- G [Page no. 60 of the complaint]
10.	Unit area admeasuring	1350 sq. ft. (super area) [page no. 36 of the complaint]
11.	Date of execution of flat buyer agreement	Not executed
12.	Possession clause	14.1 Subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of <b>48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority or the date signing of the agreement whichever is later.</b> <b>(Emphasis supplied)</b>

		(Possession clause taken from the BBA annexed in complaint no. 6845-2022 of the same project being developed by the same promoter)
13.	Date of approval of building plan	21.04.2016 (Taken from the project details)
14.	Date of environment clearances	20.09.2016 (Taken from the similar complaint of the same project)
15.	Date of consent to establish	12.11.2016 (Taken from the similar complaint of the same project)
16.	Due date of delivery of possession	20.03.2021 (Calculated from the date of environment clearance i.e., 20.09.2016 in the absence of buyer's agreement plus 6 months grace period of Covid)
17.	Sale Consideration	Rs.76,68,900/- [As per statement of account annexure R-4, page no. 47 of reply]
18.	Amount paid by the complainant	Rs.13,49,963/- [As per statement of account annexure R-4, page no. 47 of reply]
19.	Surrender request made by the complainant	10.11.2015 (As per annexure P-14, at page 49 of the complaint)
20.	Reminder letters send by the complainant to the respondent w.r.t. refund of the paid-up amount	02.02.2017, 10.07.2017, 26.12.2017, (Page no. 765 to 83 of the complainant)
21.	Legal notice send by the complainant w.r.t. refund of the paid amount	05.01.2022 (As per annexure P-41, at page 86 of the complaint)
22.	Occupation certificate	Not obtained

### B. Facts of the complaint

3. The complainant has pleaded the following facts:

- a. That the respondent no. 1 and 3 are private limited companies incorporated under the companies Act 1956, running under the name and style as mentioned above in the array of parties. The respondent no. 1



company inter-alia engaged in the business of real estate, i.e. developing real estate projects, township etc. in and around Delhi/NCR etc. and registered with HRERA vide Regd. No. 288/2017 dated 10.10.2017. The respondent no. 3 is the associate/sister concern of the respondent no.1 and engaged in the same business as that of respondent no. 1. Respondent no. 2 and 4 are the managing directors of the respondents no. 1 and 3 companies respectively and are acting as persons-in-charge and are responsible for day-to-day routine business/affairs and management of the respective companies. Thus, the respondents no. 2 and 4 are jointly and/or severally liable for all the acts and deeds of the respondent no. 1 and 3 companies.

- b. That in the year 2013 complainant attracted with their lucrative advertisement and was induced for investment and thus in the hope that he will live in a good environment locality, invested in the new project of the respondent no. 1 and 3 through their booking agent M/s. Investors Clinic Infratech private limited by purchasing a unit in the project of the respondent No. 3 namely "The Melia", at Sector-35, Sohna, District Gurugram, (Haryana) for his residence.
- c. That in order to confirm the booking of a "unit" (comprising of 2 BHK + Utility) in the said project an amount of Rs.6,00,000/- was paid by complainant in the name of the respondent No. 3 on 20.07.2013 vide cheque bearing no. 453279 dated 20.07.2013, drawn on Citi Bank, New Delhi and the payment of the said amount had been acknowledged by the respondent No. 3 vide receipt no. 00030 dated 24.10.2013 against the booking of the said unit in the project namely "The Melia", at Sector-35, Sohna, District Gurugram, (Haryana).



- d. That in lieu of the payment of the booking amount as mentioned above, an application form was too executed simultaneously pursuant to which a 2 BHK + utility accommodation having a super area of 1350 sq. ft. was requested by the complainant clearly specifying his preference that the unit being applied for shall be between 4<sup>th</sup> and 8<sup>th</sup> floor. In lieu of the same an additional amount of Rs.7,49,963/- as demanded by the respondent company vide letter dated 01.12.2013 and was paid by complainant under the name of the respondent no.1 vide cheque bearing no. 319816 dated 14.12.2013 for Rs.7,49,963/- drawn on HDFC Bank Ltd, New Delhi including service tax.
- e. That as per the application form got filled by the respondents from complainant, it was categorically mentioned by the respondents that the further payments shall be paid to the respondent no. 1, and hence, the said amount was paid under the name of the respondent no. 1. The said payment being duly acknowledged by the respondent no. 1 vide receipt bearing No.00040 dated 20.01.2014.
- f. That subsequent to the payment of the amount of Rs.7,49,963/- by complainant, complainant tried to contact the respondents no. 1 to 4 numerous times and requested for the allotment of the opted unit purchased by complainant and also to execute a builder buyer agreement with respect to the opted unit purchased by complainant and also to provide an update about the status of construction, layout plan etc. in meeting and of the project and up to when the possession of the unit shall be handed over to complainant. However, the respondents linger on the matter on one pretext or the other and made complainant run from pillar to post to know about the status of his purchased unit from the respondents.

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- g. That despite numerous requests of complainant neither any update qua the construction/handing over the possession of constructed unit was provided to complainant nor any update regarding the allotment of the unit and the execution of the builder buyer agreement between complainant and the respondent was provided even after a lapse of period of 23 months and even after taking a huge amount in lieu of the unit allotted to complainant equivalent to 20% of the entire sale consideration amount of the unit booked by complainant.
- h. That on 12.12.2014 the respondent no. 1 issued a demand letter reference No. DSS/TM/INST2/56 demanding from complainant an additional amount of Rs.6,34,483/- and directed complainant to deposited the said amount on or before 31.12.2014 without having the builder buyer agreement signed with complainant and without having any intimation about the status of the construction, building plan approvals, date of handing over of the unit to complainant, nor there was any update regarding the status and allotment of the unit. Nevertheless, all the respondents, instead of providing the above said information, issued the said illegal and arbitrary demand letter to complainant directing him to make payment of an additional amount, without providing any abovementioned update to complainant.
- i. That subsequent to the numerous requests of the complainant seeking allotment of the unit the respondent no. 3 vide letter dated 13.01.2015 invited complainant to choose the unit of its preference in lieu of the application form being executed with the respondents. That against the said letter, complainant made numerous inquiries regarding the date and venue when complainant could meet the representatives of the respondents for the purpose of selecting the said unit in lieu of



complainant's preferences i.e. choice opted for at 4<sup>th</sup> to 8<sup>th</sup> floor as mentioned in the application form, however, the respondents. Despite inviting complainant, the respondents chose to further delay the said selection process by delaying the matter on one pretext or the other and not providing any specific dated, time and venue to complainant. The preference opted for by the complainant had never given heed by the respondent.

- j. That after many requests of complainant, the respondent No.2, chose to meet complainant on 20.06.2015 and it was discovered by complainant that despite the fact that sufficient amount had already been taken by the respondent no. 1, in the year 2013 itself, however, the plans of the project were actually approved in the April 2015 only i.e. after years of getting 1<sup>st</sup> payment on 20.07.2013. Even after that, despite numerous requests of complainant, neither the original block layout plan nor the building sanction plan and environment clearance permission for the project was shown/provided to complainant as per clause XIII of registration letter dated 10.10.2017 for the project.
- k. That it was to shudder of complainant that the respondents, chose to take a volte-face from the assurances and promises being advanced by the respondents, to complainant was told about non-availability of the required unit between 4<sup>th</sup> to 8<sup>th</sup> floors as against the opted preference in the application form. In lieu of this situation, complainant agreed to look into alternate options, and surprisingly only 8 units were offered to complainant to choose from.
- l. That since, even the plans were not even approved by the respondents, and the construction of the said unit was a far-fetched dream to complainant, hence, complainant requested the respondents, to allot unit

- no. H-703 to complainant from the tower under hold by the respondents as and when the said will be launched by the respondents, to the public. In case it was not launched for public in that case complainant proposed the respondents, to return the amount advanced by him to the respondents, along with interest.
- m. That since complainant had no other option except to choose 1 unit out of the 8 units proposed by the respondents no. 1 and 3. Complainant chooses G-1501 unit subject to a confirmation that there shall be no high-rise construction in the adjoining plot in front of this unit blocking the views of Aravali. However, despite assurance and promise made by the officials to complainant to provide such assurance in writing to complainant, all the respondents failed to send the same to complainant.
- n. That by the time complainant was waiting for confirmation of the proposal as above from the respondents, and instead of getting the said proposal in writing, complainant received a reminder demand letter dated 08.07.2015 thereby demanding a sum of Rs.6,84,028/-including interest of Rs.49,542/-. That it was to the utter shock of complainant that there was no update qua the allotment/selection of the unit and the execution of the builder buyer agreement between the parties nevertheless, the respondent no.1 chose to send another demand letter to pay an additional amount as mentioned above without providing any update to complainant with respect to the unit purchased by him.
- o. That respondents ignored the said email and letter dated 23.07.2015 sent by complainant and since complainant received no response from the respondents as such complainant was constrained to send another letter vide speed post and email dated 10.11.2015 requesting the respondents



- to cancel the booking of the unit which was booked by complainant and refund the amount with interest paid by complainant in lieu of the same.
- p. That subsequent to the request of cancellation of booking being made by complainant, the respondents requested complainant vide email dated 16.11.2015 to come to the office of the respondents to resolve the issues amicably and as such to resolve all the issues complainant visited the office of the respondent no.1 and met with the representatives of the respondents namely Mr. Sanjeev Mishra and Mr. Sandeep Handa, numerous times but to no avail as officials of the respondents were adamant to ruin complainant and never had the intention of redressing the grievances of complainant and only harassed complainant.
- q. That having no other option complainant again letter dated 26.09.2016 sent through speed post and through email requested the respondents to cancel the booking being made by complainant in the project and immediately refund the money being advanced by complainant to the respondents along with interest, however, no such response was provided to complainant.
- r. That complainant been constrained by the illegal and unlawful demands and acts being carried out by the respondents on all occasions had been requesting the respondents vide numerous letters and emails dated 23.07.2015, 10.11.2015, 26.09.2016, 02.02.2017, 10.07.2017, 26.12.2017, 26.12.2017(e-mail), etc., to cancel the booking of complainant and return the amount being paid by complainant till date along with interest however, no heed was given by the respondents to the bonafide requests of complainant till date.
- s. That there after the complainant issued another legal notice dated 05.01.2022 to the respondents which was duly served upon the

- respondents, but the respondents failed to comply the said legal notice. Respondents took hard earned money of complainant against the sale of a unit which was neither owned/allocated to the respondents at the time when the above-mentioned amount was taken by the respondents from the complainant. The respondents never considered about the opted preference for flat between 4<sup>th</sup> to 8<sup>th</sup> Floor.
- t. That the respondents have not started the construction for almost 30 months even after receiving booking amount from complainant as such it is clear that respondents have malafide intention from the starting to cheat complainant. That negligent, liberal and careless approach of the respondents towards complainant resulted in undue losses, mental torture, inconveniences and harassment to complainant. That such being illegal and unlawful conduct of the respondents and further the respondents are committing unfair trade practice. The respondents are also guilty of deficiency in services to complainant.
- u. That despite the fact that the possession of the unit was to be handover within the time bound schedule, respondents did not start the project even after 3 years of receiving the part sale consideration amount from complainant. As per the promises made by the respondents at the time of booking of the unit with the respondents, complainant parted with their hard-earned money in the hope that the respondents are a reputed builder and did not cheat them. However, all the promises made by the respondents in their brochures and advertisement also by other electronics modes seems to be false and bogus.
- v. That from the above act and conduct of the respondents, it is clear that respondents are involved in malafide restricted trade practice and are making huge profits by making false representations and selling the

units/flats by making false promises and representations. That the respondents have caused harassment mental tension, humiliation to complainant without any basis, cause or reason as such respondents are liable to pay damages for causing harassment to complainant. That the respondents are legally bound to pay the interest on the amount deposited by the complainant with the respondents till refund of the said amount to the complainant for the time respondents utilized the hard-earned money of the complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought following reliefs:
  - a. Direct the respondents to refund a sum of Rs.13,49,963/- to the complainant which amount was paid by the complainant to the respondents on various dates;
  - b. The complainant prays that interest @ MCLR + 2% which comes to Rs.20,98,219/- (interest calculated on amount Rs.6,00,000/- from 20.07.2013 to 31.12.2022 and on Rs.7,49,963/- from 14.12.2013 to 31.12.2022) (interest is calculated @ 8.75% + 2% = 10.75%) may kindly be paid to him from the date of receipt of the payment by the respondents till actual realization.
  - c. Litigation expenses Rs.5,51,000/-
5. On the date of hearing, the authority explained to the respondents /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. The present complaint was filed on 25.01.2023 in the authority. Despite the proper service of notice to the respondents, the respondent nos. 2 to 4 have neither appeared before the authority nor have filed any reply to the

complaint. In view of the same, vide order dated 08.02.2024, the matter was proceeded ex-parte against respondent no. 2 to 4.

7. Vide order dated 20.07.2023 and 02.11.2023, the Authority imposed a cost of Rs.5,000/- and Rs.7,500/- for non-filing of reply. The respondent no. 1 was filed the reply on 11.01.2024 along with application for waiver of cost imposed by the Authority during proceeding for non-filing of reply which is taken on record.

**D. Reply by the respondent no. 1.**

8. The respondent no. 1 has contested the complaint on the following grounds:
- At the outset, it is most humbly submitted that the name of the respondents no. 2 to 4 should be deleted from the array of parties as they have no bearing with the present matter. The respondent no. 2 is director of the respondent no. 1 and the respondent no. 4 is neither the director and nor the shareholder of the respondent no. 1/developer company and respondent no. 4 is separate legal entity. That the project in question is being developed by the respondent no. 1 only and the registration certificate no 288 of 2017 has been granted by this Authority in favour of respondent no. 1 only. That, moreover, no relief has been sought from respondents no. 2 to 4. That the respondents no. 2 to 4 are neither necessary nor proper parties and hence, the name of same needs to be deleted from the array of parties.
  - That the complaint needs to be dismissed on account of maintainability. It is submitted that as the complainant is not an allottee in the said unit therefore the complaint is not maintainable before the authority for this very specific reason. The complainant herein has himself defaulted in making timely payments to the respondent no. 1 herein and on that account alone is not entitled to any equitable relief under law. That, the

complainant had agreed, under the payment plan of application form signed by him to pay instalments on time and discharge his obligations as per application form. Pertinent to note that complainant failed to clear the instalments dues despite repeated reminders given by the respondent.

- c. That the complainant has approached respondent no. 1 and submitted an application dated 07.02.2014 for booking of a 2 BHK apartment admeasuring 1350 sq. ft. at the basic sale price of Rs.4750/- per sq. ft. plus other statutory charges and taxes, as applicable, for the total sale consideration of Rs.76,68,900/-.
- d. Thereafter, the respondent no. 1 issued demand letter dated 01.12.2013 asking the complainant herein for a payment of Rs.7,49,963/- in accordance with the agreed payment plan. That on 20.01.2014, the respondent no. 1 herein issued a receipt of a payment of Rs.7,49,963/-. The complainant has stopped making payments towards the allotted unit in the year 2014 itself, and has now filed the present complaint seeking refund of the payment made by him on baseless and frivolous grounds. That the complainant has till date paid only 13,49,963/- against the said unit.
- e. That in terms of the agreed payment plan, the complainant is obligated to pay the instalments within the time agreed there in and any delay in making payment shall be chargeable with 15% simple interest. That, the complainant had agreed, under the payment plan of application form dated 07.02.2014 signed by him to pay instalments on time and discharge his statutory obligations. However, the complainant/allottee has failed to make payments of his respective instalments as demanded by respondent no. 1 in accordance with the payment plan from time to time. As per section 19(6) of the Act 2016, the complainant is under obligation and



responsibility to make necessary payments in the manner and within the time as agreed. He is under obligation and responsibility to make necessary payments in the manner and within the time and as and when demanded by the respondent/promoter. However, till date the complainant has only paid an amount of Rs.13,49,963/- out of the total sale consideration of Rs.76,68,900/-. Further, as per statement of account dated 03.01.2024, an amount of Rs.56,91,341/- is outstanding and payable towards principal and Rs.33,36,298/- is outstanding towards interest.

- f. That the complainant has not made timely payment of due instalments despite, repeated demands raised by respondent no. 1 from time to time and thus the complainant has failed to comply with the payment terms subject to which the said unit had been agreed to be sold to the complainant. The complainant has failed to fulfil his part of contract, obligations, commitment and payment plan. In total violation to that and in terms and conditions agreed between the parties, he has made defaults in payments dues despite the repeated request and demands of the respondent no. 1. The complainant has also clearly failed to fulfil his responsibilities under the section 19(6) of the Act, 2016.
- g. That the respondent no. 1 obtained the building plan (BR-III) on 21.04.2015. Clause 3 of the sanctioned plan stipulates that the developer shall obtain clearance/NOC from the Fire Department, Gurugram before starting the construction/execution of development works at site. Furthermore clause 17 (iv) of the sanctioned building plan stipulated that the developer shall obtain an NOC from the Ministry of Environment & Forests as per provisions of the Notification No. S.O. 1533 9El dated 14.09.2006, before starting the construction/execution of development



works at site. Further, the fire clearance/NOC was obtained by company on 09.02.2016 and the same was submitted to DTCP Haryana. It is pertinent to mention that section 15 of the Haryana Fire Safety Act, 2009 makes it mandatory for a builder/developer to obtain the approval of the fire fighting scheme conforming to the National Building Code of India and obtain a no objection certificate (NOC) before commencement of construction.

- h. That on 20.09.2016 respondent no. 1 received the environmental clearance from State Environment Impact Assessment Authority (SEIAA). That Clause 1 of the environment clearance stipulate that the developer has to obtain "Consent to Establish" from the Haryana State Pollution Control Board under Air and Water Act, and a copy shall be submitted to the SEIAA before the start of any construction works at site. Thereafter, in terms of the provisions of the environmental clearance dated 20.09.2016, the respondent no. 1 herein applied for the 'Consent to Establish' from the Haryana State Pollution Control Board, and the same was granted on 12.11.2016. It is submitted that 'Consent to Establish' is the last necessary approval required for commencement of construction activity.
- i. That the said project of respondent no.1 is duly registered under the Act, 2016 and the Rules, 2017 vide HRERA registration no. 288 of 2017 dated 10.10.2017. The respondent had applied for extension of RERA registration certificate before this Authority and the same is extended /renewed dated 28.11.2022 and is valid till 26.04.2025.
- j. That since no allotment or builder buyer's agreement has been executed in the present matter, the due date can be referred from the date of expiry of registration. As stated above, the validity of the registration certificate stands till 26.04.2025. Thus, the proposed due date for offer of possession

can be regarded as 26.04.2025. That a similar proposition was observed by this Authority in the matter of **Ashrita Singh and Ors. Vs. Landmark Apartments Pvt. Ltd. MANU/RR/0148/2020** bearing complaint no. 3013 of 2019, where the promoter has not mentioned a due date of the project in the agreement to sell or memo of understanding, it was noted that in such a circumstance, the date of validity of the RERA registration certificate shall be treated as the due date of possession of the project.

- k. That, hence the present relief of refund is also pre-mature and should not be entertained at this stage. That additionally, it needs to be categorically noted that no section of the Act has been invoked by the complainant while seek refund as the complainant is well aware of the fact that no violation has been committed by the answering respondent.
- l. That despite the complainant herein having stopped making any payments toward the sale consideration as per the agreed payment plan as back in 2014 and despite stay on construction being imposed by the National Green Tribunal at several instances, the construction work of the said project is complete and the internal and external development work of the said project is going on with full swing. The aforesaid fact is clearly reflective of the malafide intention of the complainant herein. On 17.08.2023, vide application before the DTCP, respondent no.1 herein has also applied for the occupation certificate for towers A, D, E & F of the said project.
- m. That since the commencement of the development of the project, the respondent no. 1 has been sending regular updates regarding the progress of the project to all the buyers including the complainant and also the customer care department of respondent no. 1 is in regular touch with the buyers for providing them assistance and updates on the progress of the



project. That as noted by the complainant himself, he was invited to choose the unit and the present unit is as per his own choice, despite which, the complainant is seeking refund, which cannot be allowed.

- n. That the complainant has now filed the present complaint before this Authority, Gurugram for refund of the amount paid by him by making false averments whereas the complainant overlooked the fact that he himself has failed to comply with his obligation of making payment on time. Pertinent to note that since January 2014 the complainant has not paid any amount towards the total consideration of the said unit.
- o. That the Hon'ble Supreme Court in catena of judgments has upheld that no one can take benefit of its own wrong, here the complainant has failed to oblige his duty of making payment as per payment plan duly executed by him but is seeking refund from the respondent. Therefore, the relief sought by the complainant herein should not be granted and the complaint filed by the complainant should be dismissed.
- p. That as per applicable Act and rules made there under 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 there under. 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.

**E. Jurisdiction of the authority**

9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I. Territorial jurisdiction**

10. 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**

11. 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.

12. 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.
13. 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."*

14. 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 objections raised by the respondent no. 1:**

**F.I Objection with regard to mis-joinder/deletion of respondent no. 2 to 4 in the present complaint.**

15. While filing the complaint the complainant sought relief against M/s DSS Buildtech Private Limited, M/s Silverglades Holding Private Limited and both its managing director being the developers of the project. On failure to fulfil their obligation to complete the project, the complainant approached the authority seeking relief of refund the amount received against the allotted unit. A perusal of various documents placed on the record shows

that respondent no. 1 is a group company of respondent no. 3 i.e., "M/s Silverglades Holding Private Limited". The respondents no. 2 & 4 are neither necessary nor a proper party in the present complaint. It is not disputed that all the demands raised by the respondent no. 1 and all the receipt was issued of the unit in favour of the complainant was made by the respondent no. 1 though it is group company i.e., of respondent no. 4. Further, the said project is being developed by the respondent no. 1 only and the RERA registration certificate no. 288 of 2017 has been granted by this Authority in favour of the respondent no. 1 only. Thus, it shows that there is no privity of contract between respondent no. 2 to 4 and the complainant and as such the plea of the respondent no. 1 with regard to deletion of name of respondent no. 2 to 4 is hereby allowed.

**G. Findings on the relief sought by the complainant.**

**G.I. Direct the respondents to refund a sum of Rs.13,49,963/- to the complainant which amount was paid by the complainant to the respondents on various dates;**

**G.II The complainant prays that interest @ MCLR + 2% which comes to Rs.20,98,219/- (interest calculated on amount Rs.6,00,000/- from 20.07.2013 to 31.12.2022 and on Rs.7,49,963/- from 14.12.2013 to 31.12.2022) (interest is calculated @ 8.75% + 2% = 10.75%) may kindly be paid to him from the date of receipt of the payment by the respondents till actual realization.**

16. The complainant has paid an amount of Rs.6,00,000/- and Rs.7,49,963/- on 20.07.2013 and 14.12.2013 respectively, to the respondent/promoter towards the booking of the residential unit in the project of the respondent namely "The Melia" Stiuated in sector - 35, Shona Gurugram and the same amount acknowledge by the respondent vid receipt dated 24.10.2013 and 20.01.2014. Thereafter, on 31.01.2017, the respondent has raised a demand of Rs.12,68,721/- towards the unit bearing no. G-1501, 15<sup>th</sup> floor, tower - G, having admeasuring 1350 sq. ft. The complainant has paid an amount of Rs.13,49,963/- against the sale consideration of Rs.76,68,900/-. Neither the

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allotment letter for the said unit was not provided by the respondent and nor the BBA was not executed between the parties.

17. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14.1 of the buyer's agreement (possession clause taken from the BBA annexed in complaint no. 2617-2021 of the same project being developed by the same promoter), the possession of the subject apartment was to be delivered within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority or the date signing of the agreement whichever is later. The due date of possession calculated from the date of environment clearance i.e., 20.09.2016 in the absence of buyer's agreement which comes out to be 20.09.2020. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 20.09.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of handing over possession is 20.03.2021.
18. The authority has further, observes that due date of possession of the same project being developed by the same promoter is specifically mentioned that the possession will be offered within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority or the date signing of the

agreement whichever is later. In the present case, the environment clearance i.e., 20.09.2016 which comes out to be 20.03.2021 (included grace period).

19. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that the respondent has failed to execute the buyer's agreement as per the model agreement provided in Real Estate Regulation and Development Rules, 2017 in according to section 13(1) of the Act, 2016 the respondent shall not accept a sum more than ten percent of the cost of the apartment, plot or building, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. However, the complainant has placed an email dated 10.11.2015 on page no. 49 of the complaint and sought refund of the paid-up amount with interest before the due date of possession which is reproduced as under for a ready reference: -

*Subject: Refund against Booking for a Unit at the Mella, Sector 35, Sohna, Distt. Gurgaon, Haryana,*

*Dear Mr. Jain/Mishra,*

*Customer ID: DSS/TM/APP/SG*

*This is in furtherance to my earlier letter dated 23 July, 2015 and 10th Nov., 2015 with reference to my above booking with your company, first payment of Rs.5,00,000/- towards the same made in July, 2013, These two letters of mine remain unanswered till date.*

*I visited the site in the month of May, 2016 as well, only to observe some excavation in place, without any construction taking place even after 3 years of booking the flat. The Company has committed a series of irregularities such offering allotment when it was not entitled to, never shared complete set of approvals except for basic layout plan, never offered the desired flat, claiming interest on the payment which was never due, not confirming even the alternate option, inordinate delay in terms of commencement of construction etc. in-spite of my specific choices mentioned in the application form, submitted along with my cheque dated 14.12.2013 for an amount of Rs.7,49,963/- towards 20% stage*

*I had requested for refund of the amount deposited by me in my letter dated 10" November, 2015. It has been close to a year since then and there is no response/commitment from your end to refund the amount deposited with you. I have met Mr. Sanjeev Mishra and Mr. Sandeep Handa quite a few times requesting for expediting the return of money.*

*Through this reminder letter, I once again request you to refund the deposited amount along with the interest for this period and oblige.*

*Failing the above, I would be constrained to take remedial steps through Court of Law on all the concerned points i.e. booking of flats and collecting payments in advance without having confirmed approvals at your end, and delaying the project.*

*I await your confirmation at the earliest.*

*Thanking you, Yours Sincerely,*

*(Rajeev Bajaj)*

*BU-41, Pitam Pura Delhi-110034.*

20. So, in such a situation, the complainant withdrew from the project even prior to the due date. So, he is not entitled to refund of the complete amount 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.*

21. It is evident from the above mentions facts that the complainant paid a sum of Rs.13,49,963/- against basic sale consideration of Rs.76,68,900/- of the unit allotted. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.13,49,963/- after deducting 10% of the basic sale consideration of Rs.76,68,900/- being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of

surrender i.e., 10.11.2015 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**H. Directions of the authority**

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent/promoter is directed to refund the paid-up amount of Rs.13,49,963/- after deducting 10% of the sale consideration of Rs.76,68,900/- being earnest money along with an interest @10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 10.11.2015 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.

Dated: 08.02.2024

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram