

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

**Complaint no.:** 1390 of 2023  
**Date of filing:** 03.04.2023  
**Date of decision:** 08.02.2024

Yash Construction Co. (Through its proprietor Mr. Yash  
Bosh Mittal)

**Address-** Street no. 6, Bibi Wala Road, Guru Teg Bahadur  
Nagar, Bhatinda Punjab-151001

**Complainant**

Versus

Today Homes & Infrastructure Pvt. Ltd.

**Registered Office at:** - UGF-08-09, Pragati Tower,  
Rajendra palace, New Delhi - 110008

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Kuldeep Kumar Kohli (Advocate)

Complainant

None

Respondent

**ORDER**

1. The present complaint dated 18.01.2023 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Canary Greens"
2.	Project location	Sector 73, Gurugram
3.	Project type	Group Housing Colony
4.	Rera registered or not	Registered 64 of 2019 07.11.2019 valid upto 31.07.2021
5.	Booking receipt	02.06.2011 (page no. 61 of complaint)
6.	Allotment letter	N/A
7.	Unit No.	T3/1102 (as per booking receipt page 61 of complaint)
8.	Unit Area	1640 sq. ft. (page no. 62 of complaint)
9.	Date of agreement for sale	Not executed
10.	Possession clause	N/A
11.	Due date of possession	N/A
12.	Total cost consideration	Rs.78,35,800/- (as alleged by the complainant)
13.	Amount paid	Rs.30,41,816/- (page no. 62 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Request for the refund by the complainant	15.01.2020 (page no. 69 of complaint)

**B. Facts of the complaint**

3. The complainant has pleaded the following facts:

- a. That the respondent Company, "M/s Today Homes and Infrastructure Pvt. Ltd", is a private limited company incorporated under the Companies Act, 1956 and is engaged among other things in the business of providing real estate services. The respondent while launching and advertising any new

housing project always committed and promised to the targeted consumer that their dream home would be completed and delivered within the initially agreed-upon time in the sales agreement and assured same to the complainant that they have secured all necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project. However, the respondent began the construction of the "Canary Greens" Sector-73, Gurugram project without obtaining the DTCP License to be issued by the Director General, Town & Country Planning, Chandigarh.

- b. That the representatives of the respondent made utterly false representations and induced the complainant to book an apartment in their project by showcasing a fancy brochure depicting the development as state-of-the-art with modern amenities and facilities and the project would be constructed, developed and designed by a team of top architects and structural designers to meet world-class infrastructure quality and standards.
- c. That the complainant based on the promises and commitment made by the respondent company booked an apartment admeasuring 1640 sq. ft. in the residential group housing project by making the payments of Rs.13,28,400/- vide Bank of India dated 11.02.2011 as the booking amount.
- d. That the total cost of the said unit was Rs.78,35,800/- inclusive of (PLC), club membership, covered car parking, EDC/IDC, power backup, external electrification charges and fire-fighting charges out of this the complainant paid the amount of Rs.30,41,816/-.
- e. That the complainant made the above payment against the total sale consideration. As per the flat buyer's agreement the actual work was not

initiated as per the payment collected, leading to the complainant's reluctance to make further payments. The respondent failed to adhere to the schedule of completion and were found to be illegally extracting money from the complainant by making false demands inconsistent with the progress on the site. The lack of activity at the site, coupled with the excessive payments collected led the complainant to feel subjected to unethical trade practices. The acts and omissions on the part of the respondent caused immeasurable mental stress and financial loss to the complainant. The slow progress and inconsistent promises regarding the physical possession of the unit reflected the irresponsible and desultory attitude of the respondent, resulting in great financial and emotional loss for the complainant.

- f. That the complainant having got tired of asking for the buyer's agreement and been convinced with the delay in project has asked for the refund from the respondent vide letter dated 15.01.2020.
- g. That an inordinate delay of over 75 months in the delivery of the possession to the complainant is an outright violation of the rights of the allottee under the provisions of the Act of 2016 as well as the agreement executed between the parties. The complainant thereby wishes to withdraw from the project and demands refund of the entire amount paid to the respondent by the complainant.

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

4. The complainant has sought following relief:

- a. Direct the respondent, not to cancel the allotment of the unit and not to allot the same to anyone else till the time the entire amount paid by the complainants is refunded to the complainants together with the interest till the date of the payment.

- b. To restrain the respondent from raising any fresh demand with respect to the project as the complainants are interested in refund of the money together with the interest due to the complainants and are not interested in retaining the unit as there has been an inordinate delay in giving possession of the unit.
  - c. Direct the respondent to pay for the loss from the date on which the breach took place.
  - d. To take Suo-moto action against the respondent for not having registered the project within the period specified in Section 3 of the RERA, 2016 as this is an ongoing project.
  - e. To punish the respondent under Section 59 for violating the conditions as specified at para XVI.
5. The present complaint was filed on 03.04.2023 in the Authority. The respondent was granted opportunity to put in appearance and file a reply. However, despite specific opportunities respondent failed to put in appearance before the Authority and also failed to file reply. In view of the same, the matter was proceeded ex-parte against the respondent vide order dated 07.12.2023.
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 complainant.

#### **D. Jurisdiction of the authority**

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

#### **D.I. Territorial jurisdiction**

8. 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.

#### D.II. Subject matter jurisdiction

9. 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.

10. 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.

11. 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."*

12. 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.

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

**E.I. Direct the respondent, not to cancel the allotment of the unit and not to allot the same to anyone else till the time the entire amount paid by the complainants is refunded to the complainants together with the interest till the date of the payment.**

**E.II. To, restrain the respondent from raising any fresh demand with respect to the project as the complainant is interested in refund of the money together with the interest due to the complainants and are not interested in retaining the unit as there has been an inordinate delay in giving possession of the unit.**

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -***

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

**(Emphasis supplied)**

14. The complainant was allotted a unit no. T3/1102, 11<sup>th</sup> floor, T3 as evident from the booking receipt dated 02.06.2011 issued by the respondent-builder for a total consideration of Rs.78,35,800/-. The complainant paid a sum of Rs.30,41,816/- to the respondent against the allotted unit. In the present matter, neither any allotment letter nor any agreement to sell was executed between the parties, hence no due date of possession could be ascertained.
15. There, are certain cases where no possession clause is provided and due date of handing over of possession cannot be ascertained. So, the Authority relying upon the judgement of the Hon'ble Supreme Court ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** where it was 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.***



16. In view of the above-mentioned reasoning, the date of booking receipt i.e. 02.06.2011 is 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 02.06.2014.

17. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

18. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."*

19. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a unit either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre-RERA cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

20. But the document/receipt so issued in favor of a person can be termed as an agreement for sale to drag the developer before RERA Authority and

compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which are evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non-banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.

21. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. The authority after considering the facts stated by the complainant and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(b) of the Act, 2016.

26. 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. Hence, it is violation of the Act, and shows his unlawful conduct.

27. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**E.III. Direct the respondent to pay for the loss from the date on which the breach took place.**

29. The complainant is seeking above mentioned relief w.r.t. compensation. ***Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, 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.

**E.IV. To take Suo-moto action against the respondent for not having registered the project within the period specified in Section 3 of the RERA, 2016 as this is an ongoing project.**

30. The complainant submitted in its complaint that the said project was not registered in the provisions of the Act of 2016. The Authority observes that the project namely "Canary Greens" was registered under section 3 of the Act of 2016 vide registration number 64 of 2019 dated 07.11.2019.

**E.V. To punish the respondent under Section 59 for violating the conditions as specified at para XVI.**

31. In view of the findings detailed above in findings no. E.IV, the above said relief become redundant.

**F. Directions of the authority.**

32. 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 amount of Rs.30,41,816/- paid by the complainant along with prescribed rate of interest @10.85% from the date of each payment till the 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.

33. Complaint stands disposed of.

34. File be consigned to registry.

**Date: 08.02.2024**

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory  
Authority, Gurugram