

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

Complaint no.	:	47 of 2022
Date of decision	:	22.03.2024

Parveen Kumar R/o: - Ward no. 23, Daya Nagar, Narnaul, Haryana - 123001	Complainant
Versus	
M/s IRW Builders Pvt. Ltd. Regd. office: 310, 3 rd floor, Vishal Tower, District Centre, Janakpuri, New Delhi Primetime Infra Projects Pvt. Ltd. Regd. Office - Elements Mall, Near DCM Market, Ajmer Road, Jaipur, Rajasthan - 302021	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
None	Respondent

ORDER

1. This 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 provisions 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:

Sr. No.	Particulars	Details
1.	Name of the project	Maruti kunj, Sector-1, Pataudi
2.	Acres	14 acres
3.	DTCP License no.	72 of 2017 dated 05.09.2017 valid up to 04.09.2022
4.	RERA Registration No.	11 of 2018 valid upto 20.11.2021 <i>Registration expired</i>
5.	Date of allotment	21.10.2019 (Page 36 of complaint)
6.	Date of builder buyer agreement	22.11.2019 [Page 39 of the complaint]
7.	Unit no.	100sq. yard, C-107
8.	Possession clause	<i>7.2 - shall offer in writing the possession of the plot within 12 months from the date of signing of the agreement</i>
9.	Due date of possession	22.05.2021 22.11.2020 +6 months of COVID
10.	Sale consideration	Rs. 16,84,704/- (page 37 of complaint)
11.	Total amount paid by the complainant	Rs. 2,60,000/- (As per page 13 of complaint)

12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

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

- I. That in October 2019, complainant/petitioner/allottee, Praveen Kumar received a marketing call from the office of respondent no. 1, and the caller represented himself as Marketing Manager of the respondents and marketed for booking in a residential plotted project "Maruti Kunj" situated at Sector 1, Pataudi, Gurugram, under "Deen Dayal Awas Yojana".
- II. That believing on representation and assurance of respondent no. 1, the complainant booked one plot bearing No. C - 107, having an area of 100.28 Sq. Yd. in the project and signed a pre-printed application form and paid Rs. 1,00,000/- as booking amount on 21.10.2019. The Plot was booked/purchased under the development linked payment plan for a sale consideration of Rs. 16,84,704/-
- III. That on 21.10.2019, respondent No. 1 issued an allotment letter in favour of the complainant and confirmed the booking of plot No. C - 107 for area 100.28 Sq. Yd. at the basic rate of INR Rs. 16,800/- Per Sq. Yd.
- IV. That on 22.11.2019, a pre-printed, unilateral, arbitrary plot buyer agreement/buyer's agreement was executed inter-se the parties. According to Clause 7.2 of the plot buyer agreement, the respondent

has to give possession of the said flat within a period of 12 months from the date of execution of the agreement. It is pertinent to mention here that the BBA was executed on 22.11.2019, therefore the due date of possession as per BBA was 22.11.2020.

- V. That till date, he has paid Rs. 2,60,000/- to respondent No. 1. and there is no progress towards the development of the project.
- VI. That, since January 2021 he is contacting the respondent and has made several phone calls to the respondent party and asked to refund the total paid amount. Despite several requests by the him, the respondent till today has not cancelled the unit & nor refunded the total paid amount.
- VII. That his main grievance in the present complaint is that despite the he has paid more than 15% of the actual cost of the plot and was ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of plot on promised time and till date project is without amenities.
- VIII. That for the first time cause of action for the present complaint arose in Nov. 2019, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on him. The second time cause of action arose in Nov. 2020, when the respondent party failed to hand over the possession of the unit as per the buyer agreement. Further, the cause of action again arose on various occasions, including on a) May 2021; b) August 2021; c) December 2021, and on many times till date, when the protests were lodged with the respondent party

regarding the cancellation of the unit & refund of the total paid amount.

- IX. That he wants to withdraw from the project. The promoters have not fulfilled their obligations therefore, as per obligations on the promoter under sections 12, 18(1) & 19(4), the promoters are obligated to refund the paid amount along with the prescribed rate of interest.
- X. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to refund the whole paid amount i.e. Rs. 2,60,000/- along with interest under Section 12, 18 & 19(4) of the RERA Act 2016 and the HARERA Rules & Regulations thereunder from the date of payment till realization of money.
- II. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the builder buyer agreement

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. Despite specific direction, the respondent has failed to comply with the orders of the authority as he neither appeared nor put in his appearance. It shows that the respondent is intentionally delaying the proceedings of the authority by non-filing of written reply and not putting in his appearance. Hence, its defence was ordered to be struck off for not filing reply vide proceeding dated 22.12.2023.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents submissions made by the complainant.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 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** 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to refund the entire amount paid along with interest as per the Rules of 2017 from the date of booking till the date of refund by the respondent.

14. 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)

15. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

16. 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.
17. 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., 22.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and demanding return of the amount received by the promoter in

respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

19. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. it was observed

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

20. 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 agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any

other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) 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*.
22. Accordingly, planning branch is directed to initiate separate proceedings under the provisions of the Act of 2016 as registration of the project has been expired.

F.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the builder buyer agreement

23. The aforesaid relief has not been pressed by the complainant during the course of proceeding. Hence, no direction to this effect is required to be issued.

H. Directions of the authority

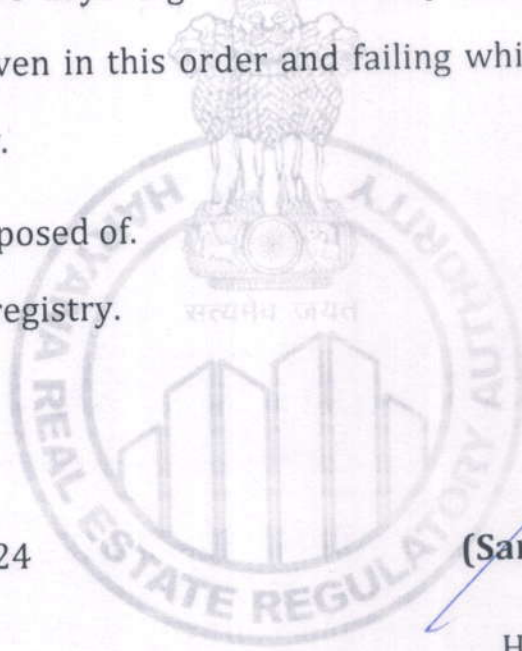
24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs. 2,60,000/- received by it from the complainant along with interest at the rate of 10.85% 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 realization 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.

25. Complaint stands disposed of.

26. File be consigned to registry.

Dated: 22.03.2024




(Sanjeev Kumar Arora)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM