



Complaint No. 5012 of
 2020 clubbed with
 complaint no. 2039 of 2021

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

Complaint no.	CR/ 5012 of 2020 clubbed with CR/2039 of 2021
Date of decision	05.03.2024

1. Dss Buildtech Pvt. Ltd. 2. Mr Paras Kumar Jain Both Regd. Office: 506, 5th Floor, Time Square Building, B-Block, Sushant Lok-1, Gurugram		Complainants
Versus		
Nitin Kapoor R/O: C-4, Geater Kailash Enclave-I, New Delhi		Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Harshit Batra (Advocate)	Complainant
Sh. Varun Tyagi (Advocate)	
Sh. Vishesh Chauhan (Advocate)	Respondent

ORDER

1. This order shall dispose off two complaints bearing CR.No. 5012-2020 which was filed on 27.01.2021 by the promoter 'Dss Buildtech Pvt. Ltd.' against the allottee 'Nitin Kapoor' seeking direction against the respondent-allottee to clear the outstanding dues and CR.No. 2039 of 2021 which was

filed by the complainant-allottee namely Nitin Kapoor against the respondent-promoter 'Dss Buildtech Pvt. Ltd.' on 12.04.2021 under section 31 read with sections 35, 36, 37 and 38 of the Real Estate (Regulation and Development) Act, 2016 seeking refund of the entire amount paid by the complainant along with interest at prescribed rate.

- The complaint bearing no. 2039 of 2021 was clubbed with complaint bearing no. 5012 of 2020 by the authority vide orders dated 17.10.2023 being counter complaint. Thus, the present order shall dispose of both the aforesaid complaints.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"The Melia", Sector 35 ,Sohna Gurugram
2	Nature of the project	Group Housing
3	DATEDCP license no. and validity status	77 of 2013 dated 10.08.2013 valid upto 09.08.2024
4	RERA Registered/ not registered	Registered 288 of 2017 valid upto 25.10.2021
5	Unit no.	D 406 , 4 th floor Tower D (Page no. 53 of the complaint)
6	Unit area admeasuring	1350 sq. ft.
7	Allotment letter	24.04.2015 (Page 53 of the complaint)



		(Page 53 of the complaint)
8	Date of execution of buyer's agreement	19.01.2016 (Page 56 of the complaint)
9	Date of consent to establish	12.11.2016 (Annexure 8 page 82 of reply)
10	Possession clause	14. DELIVERY OF POSSESSION 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 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as directed by the DGTCP The resultant period will be called as "Commitment Period". However, this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities (emphasis supplied)
11	Due date of delivery of possession	12.05.2021 (Calculated from date of consent to establish plus six months grace period)
12	Total sale consideration	Rs. 80,69,850/- (As per statement of account on page no. 93 of complaint)

13	Amount paid by the complainant	Rs. 20,24,947/- (As per statement of account on page no. 93 of complaint)
14	Occupation certificate /Completion certificate	Not yet obtained
15	Offer of possession	Not offered

B. Facts of the complaint bearing no. 5012-2020 titled as M/s Dss Buildtech Pvt. Ltd. V/s Mr. Nitin Kapoor :

4. That the complainant - promoter is a company incorporated under the Companies Act, 1956 having its registered office at 506, 5th Floor, Time Square Building B - Block, Sushant Lok-I, Gurugram, Haryana- 122002 and is developing a residential group housing complex approximately over 17.418754 Acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna Gurugram (Haryana), privately named as "The Melia" ("Project").
5. That, the respondent / allottee booked a 2 BHK unit, measuring 1350 sq. ft., in the project namely "The Melia' by way of Application Form, dated 15.11.2013 for a basic sale price (BSP) of Rs. 4850/- per sqr.ft. Plus other charges and taxes, as applicable. The respondent / allottee had opted for construction linked plan for making payments towards the flat sale consideration. Initially, the respondent / allottee paid a booking amount of Rs. 6,00,000/- vide cheque No. 935445 dated 01.08.2013 drawn on HDFC Bank and another two instalments of Rs.7,36,869/- (including Rs. 40,071/- towards Service Tax), vide cheque No. 935429 dated 13.12.2013 drawn on HDFC Bank and, another instalment of Rs. 6,68,435/- including Service Tax

of Rs. 20,036/- vide cheque No. 724066 dated 12.08.2014 drawn on HDFC Bank. A residential unit no. D-406 situated on 4th floor of Tower-D in the above said project, was allotted to respondent / allottee vide allotment letter dated 24.04.2015. A buyer's agreement was also executed between the parties on 19.01.2016.

6. That, on the date of filing the present complaint, the respondent/ allottee has paid only Rs. 20,24,947/- and a sum of Rs. 74,95,933/- is outstanding against the respondent / allottee. The complainant- promoter has obtained all the approvals required for the development of the project. The details of the approvals obtained are already on record. The development of the project is going on with full swing. The structural work of most of the Towers in the project, including Tower-D in which the respondent / allottee has booked the said unit, is completed.
7. That the respondent / allottee had agreed, under the payment plan signed by him to pay instalments on time and discharge his statutory obligations created under the said agreement dated 19.01.2016. However, the respondent / allottee has failed to make payments of his respective instalments as demanded by the complainant, from time to time. The details of demand letters and reminders are as under:

Sl No.	Demand Letter	Reminder	Amount Due
1	01.02.2016	-	Rs. 4,93,817/-
2	-	23.03.2016	Rs.5,00,516/- Incl. Interest
3	-	12.01.2017	Rs. 5,78,296/- Incl. Interest

4	-	22.02.2017	Rs. 5,86,676/- Incl. Interest
6	-	09.06.2017	Rs. 15,01,850/- Incl. Interest
7	-	07.11.2017	Rs. 20,04,621/- Incl Interest
8	12.02.2018	-	Rs. 34,45,545/- Incl. Interest
9	-	20.03.2018	Rs. 34,95,743/- Incl. Interest
11	-	08.06.2018	Rs. 45,68,476/- In cl. Interest
12	-	20.08.2018	Rs. 52,15,196/- Incl. Interest
14	-	19.11.2018	Rs. 58,54,656/- Incl. Interest
15	-	15.01.2019	Rs. 51,62,330/- Incl GST

8. That since the starting of the development of the project, the complainant – promoter has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondent – allottee . The respondent / allottee voluntarily and knowingly, failed to pay instalments despite repeated demands and reminders etc. by the complainant – promoter. The complainant – promoter also informed the respondent / allottee, through various demand/payment request letters, that home loan facility was available by leading

banks/NBFCs such as HDFC, ICICI, SBI, Central Bank of India, Reliance Home Finance Limited, Tata Capital Home Loan at a good rate of interest. Further, as a goodwill gesture, the complainant – promoter offered the respondent/allottee one-time settlement to waive off all the interest charges on the condition of payment of the entire principal amount at the earliest but in vain. The details of goodwill gesture and one-time settlement to waive off all the interest charges are as under:-

Sl No	Letter dated	Description
1.	15.12.2017	Waiver of entire interest Rs. 2,65,465/-
2	01.05.2019	Waiver of entire interest Rs. 10,79,980/-

9. That the complainant – promoter had commenced the construction of the said Project on 01.12.2016 after receiving the approval of ‘Consent to Establish’ dated 12.11.2016 from the Haryana State Pollution Control Board. Copy of the Consent to Establish” dated 12.11.2016 received from the Haryana State Pollution Control Board is already on record. It is submitted that development of the project is directly related to the fund received from the allottees including respondent / allottee and relying on the assurance of the allottees including respondent / allottee that they will make the payments on time, the construction of the project was started.

10. That vide application dated 17.08.2023 before the DTCP the complainant - promoter has already applied for the occupation certificate for towers A, D, E and F of the project.
11. That the default by the respondent/allottee have forced the complainant-promoter to file the present complainant before this Hon'ble Authority and request for passing an order instructing the respondent/allottee to make payment of outstanding dues, interests, and make future payments in-time so that the development of the project not suffer owing to delay and the same is completed within the timeline given.
12. The complainant - promoter has filed written submission and the same have been taken on record.

C. Relief Sought by the complainant-promoter:

- a) Direct the respondent-allottee to make payment of their future instalments with outstanding interest on time as agreed under buyer's agreement.
- b) The entitlement of respondent to the compensation in event of delay in handing over the possession of unit may kindly be struck off if he makes any delay in payment of instalments and interest as per the buyer's agreement.

D. Reply by the respondent-allottee:

13. That being interested in having his own residential unit, the respondent - allottee - allottee made a payment of Rs.6,00,000/- to the complainant - promoter - promoter vide cheque no. 935445 dated. 01.08.2013 as booking amount to book a 2 BHK unit in the project "Melia" of the complainant-promoter at Sector-35, Sohna, Gurgaon, Haryana, on the assurance and

representation of the complainant -promoter- that it had acquired all requisite approvals and sanctions for the said project. Against the said payment, after repeated requests and reminders made by the respondent - allottee - allottee , an acknowledgment/Receipt No. 00313 dated. 24.10.13 was issued by the complainant -promoter.

14. That the complainant -promoter- further stated to the respondent - allottee - allottee that the complainant -promoter- promoter has started taking Registration amount for booking of residential flats in the said project and the project will be completed and possession of the flats shall be handed over to the allottees within 48 months, which period can be extended by maximum 6 months more (grace period) i.e. in maximum 54 months, respondent - allottee - allottee together with other allottees shall get possession of his booked unit, details of which were to be shared by the complainant -promoter- soon.
15. That again after repeated requests of the respondent - allottee to give atleast some details of the project including facilities and amenities in the project, quality of construction etc., the complainant -promoter issued and got signed an application form dated. 15.11.2013 from the respondent - allottee , which was silent about the other details, however, payment plan was shared by the complainant- promoter , according to which the respondent - allottee was required to make payment in installments to the complainant -promoter as the respondent - allottee had agreed for construction linked payment plan.
16. That though the requisite details of the project were not divulged and shared by the complainant - promoter , however, believing the assurances and representations made by the complainant -promoter and in terms of

the payment plan, the respondent - allottee made payment of second installment of Rs.7,36,869/- in favour of the complainant -promoter vide cheque no. 935459 dated. 13.12.2013 drawn on HDFC Bank and against the same receipt dated. 20.01.2014 was issued by the complainant -promoter after various requests made by the respondent - allottee for the same.

17. That till date no details neither of the project nor even of the unit booked by the respondent - allottee in the proposed and upcoming project of the complainant -promoter were disclosed. However, demands for timely payment of installments in terms of the payment plan were being made and issued by the complainant - promoter , which were being complied with by the respondent - allottee . Hence, another installment of Rs.6,68,435/- was paid by the respondent - allottee to the complainant -promoter vide cheque no. 724066 dated. 12.08.2014 drawn on HDFC Bank and against the same a receipt/acknowledgment dated. 19.08.2014

18. That by now the respondent - allottee had made almost made 30 % payment of the agreed price of the unit, however, neither the details of the project were shared nor the allotment letter was issued in favour of the respondent - allottee to give details of the unit booked by him in the project of the complainant - promoter. After repeated requests, an allotment letter dated. 24.04.2015, which was nothing but an eyewash was issued by the complainant -promoter in favour of the respondent - allottee , whereby again no details of the project were shared but only tentative "unit no. D-406 on Fourth Floor" was given by the complainant -promoter and again execution of apartment buyer agreement containing detailed terms and conditions was assured within the stipulated time.

19. That, again after repeated requests made by the respondent - allottee , an

apartment buyer agreement dated. 19.01.2016, containing the details of the project was issued and signed by the complainant - promoter. Apart from other details, the respondent - allottee was shocked to see that in terms of clause 14.1 of the said Agreement, project was to be completed within 48 months + 6 months from the date of receiving the last of approvals required for commencement of the construction of the project and/or the date of signing the agreement, whichever is later. However, the complainant - promoter assured that the same was only for the buyers/allottees who had booked their flats on subsequent dates and/or on the date of signing the apartment buyer agreement but the project will be completed within the stipulated time as was agreed for at the time of accepting the booking from the respondent - allottee i.e. 01.08.2013 and the period of 48/54 months shall be counted and calculated only from the date of booking made by the respondent - allottee.

20. That in terms of the assurances advanced by the complainant - promoter at the time of accepting booking and receiving the booking amount from the respondent - allottee , project was to be completed in 48 months, which period was to expire on 01.08.2017 as the first payment was made by the respondent - allottee on 01.08.2013, however, till 19.01.2016, when the apartment buyer agreement was executed by complainant - promoter construction work had not even started in the project. Thereafter, another demand letter dated. 01.02.2106 and revised demand letter dated. 11.02.16 were received by the respondent - allottee from the complainant- promoter, whereby Fourth installment which was supposed to be raised at the time of starting of excavation work was demanded. However, the said demand was resisted by the respondent - allottee being in derogation of the Registration Certificate of Project dated.10.10.2017 issued by the Haryana Real Estate

Regulatory Authority as well as of the provisions of the Apartment Buyer Agreement. It is stated that in terms of clause (viii) of the Registration Certificate of Project dated.10.10.2017, Complainant -promoter could only have accepted maximum of 10 percent of the cost of the apartment/flat as an advance payment from the respondent - allottee without first entering into written agreement for sale and registration of the said agreement for sale, while the complainant -promoter had already taken and accepted almost 30 percent of the total cost of the unit from the respondent - allottee and that too without registration of the agreement.

21. That, however, in february 2020, the respondent - allottee approached the complainant -promoter and finding no real development in the construction of the project asked for refund of his money along with interest as considerable period had already expired but no substantial construction had taken place in the project. The respondent - allottee was repeatedly assured of return of his money along with interest by the complainant -promoter and therefore he chose not to escalate the matter and take any action against the complainant -promoter for return of his money. However, the respondent - allottee was shocked to receive the notice of the present complaint filed by the complaint.

22. That the complainant -promoter has failed to develop the project and is harassing the respondent - allottee . Therefore, the respondent - allottee is entitled to the refund of the amount deposited till date at the same rate of interest as is charged by the complainant -promoter i.e. 15% per annum, for any late payment and for the same along with seeking other reliefs, the respondent - allottee has filed the complaint before this Hon'ble Authority.

23. All other averments were denied in total.

24. Copies of all the relevant documents have been filed and placed on 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. Facts of the complaint bearing no.2039 of 2021 titled as Nitin Kapoor V/s M/s Dss Buildtech Pvt. Ltd.

25. That being interested in having his own residential unit, the complainant made payment of Rs.6,00,000/- to the respondent vide cheque no. 935445 dated. 01.08.2013 as booking amount to book a 2 BHK unit in the project "Melia" of the respondent at Sector-35, Sohna, Gurgaon, Haryana, on the assurance and representation of the respondent that it had acquired all requisite approvals and sanctions for the said project. Against the said payment, after repeated requests and reminders made by the complainant, an acknowledgment/receipt No. 00313 dated. 24.10.13 was issued by the respondent.

26. That again after repeated requests of the complainant to give at least some details of the project including facilities and amenities in the project, quality of construction etc., the respondent issued and got signed an application form dated. 15.11.2013 from the complainant, which was silent about the other details, however, payment plan was shared by the respondent, according to which the complainant was required to make payment in installments to the respondent as the complainant had agreed for construction linked payment plan

27. That the complainant made payment of second installment of Rs.7,36,869/- in favour of the respondent vide cheque no. 935459 dated 13.12.2013 drawn on HDFC Bank and against the same receipt dated.

- 20.01.2014 was issued by the respondent after various requests made by the complainant for the same. Another installment of Rs.6,68,435/- was paid by the complainant to the respondent vide cheque no. 724066 dated. 12.08.2014 drawn on HDFC Bank and against the same a receipt/acknowledgment dated. 19.08.2014 was issued by the respondent.
28. That by now the complainant had made almost made 30% payment of the agreed price of the unit, however, neither the details of the project were shared nor the allotment letter was issued in favour of the complainant to give details of the unit booked by him in the project of the respondent. After repeated requests, an allotment letter dated 24.04.2015, was issued by the respondent in favour of the complainant, whereby again no details of the project were shared but only tentative "unit no. D-406 on Fourth Floor" was given by the respondent.
29. That, again after repeated requests made by the complainant, an apartment buyer agreement dated 19.01.2016, containing the details of the project was issued and signed by the respondent. Apart from other details, the complainant was shocked to see that in terms of clause 14.1 of the said agreement, project was to be completed within 48 months + 6 months from the date of receiving the last of approvals required for commencement of the construction of the project and/or the date of signing the agreement, whichever is later.
30. That thereafter, another demand letter dated. 01.02.2106 and revised demand letter dated. 11.02.16 were received by the complainant from the respondent, whereby Fourth installment which was supposed to be raised at the time of starting of excavation work was demanded. It is stated that in terms of clause (viii) of the registration certificate of project

dated.10.10.2017, respondent could only accept maximum of 10% of the cost of the unit as an advance payment from the complainant without first entering into written agreement for sale and registration of the said agreement for sale, while the respondent had already taken and accepted almost 30 percent of the total cost of the Flat from the Complainant that too without registration of the Agreement.

31. That, however, in February 2020, the complainant approached the respondent and finding no real development in the construction of the project asked for refund of his money along with interest as considerable period had already expired but no substantial construction had taken place in the project. However, the complainant was shocked to receive a notice from this Hon'ble Authority in the month of February 2021, pertaining to an altogether false and frivolous complaint filed by the respondent against the complainant for payment of installments alleged to be due on the part of the complainant.

32. That the respondent has failed to abide by their terms and condition as was promised by them at the time of booking of the flat and it has committed a breach as even as per own admission of the respondent. The cause of action to file the complaint is continuing, since the respondent has neither allotted the unit for want of completion of the project on time nor refunded the amount to the complainant.

33. No written submissions are filed by the complainant.

F. Relief sought by the complainant:

34. The complainant has sought the following relief:

- a) Direct the respondent to refund the entire amount paid by the

complainant along with prescribed rate of interest.

- b) Direct the respondent to place on record all statutory approvals and sanctions of the project.
- c) Direct the respondent to provide complete details of EDC / IDC and statutory dues paid to the competent Authority and pending demand if any.

G. Reply by respondent:

35. That the respondent no. 1 is a company incorporated under the Companies Act, 1956 having its registered office at 506, 5th Floor, Time Square Building B - Block, Sushant Lok - I, Gurugram, Haryana- 122002 and is developing a residential group housing complex approximately over 17.418754 Acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia"
36. That the complainant booked a unit vide an application dated 15.11.2013 for booking of a 2 BHK flat admeasuring 1350 Sq. Ft.. at the basic sale price of Rs. 4850/- per sq. ft. and paid a sum of Rs. 6,00,000/- as booking amount. The complainant had agreed and signed the payment plan for payment of instalments dues as per construction linked payment plan.
37. That pursuant to the application form dated 15.11.2013, the respondent allotted the complainant a unit bearing no. D-406 on 4TH Floor having approx. area of 1350 Sq. Ft. @ Rs. 4850 per Sq. Ft in the said project, vide allotment letter dated 24.04.2015. The parties executed the apartment buyer's agreement on 19.01.2016 for the said unit. The respondent has obtained various approvals required for development of the project.
38. That in terms agreed payment and the buyer agreement, the complainant

is responsible, to pay the instalments due on time, however the complainant herein has miserably failed to make payments of the respective instalments as demanded by the respondent as per agreed payment plan.

39. That it is pertinent to note that in terms of Clause 13.3 of ABA the respondents have no right to withhold the due payments for any reason whatsoever. Further as per clause 14.1 of ABA, subject to other conditions thereof the tentative timeline given was 48 months with grace period of 180 days for the date of receiving the last approvals required for commencement of construction.
40. That the respondent had commenced the construction of the said project on 01.12.2016 after receiving the approval of "Consent to Establish" dated 12.11.2016 from the Haryana State Pollution Control Board. The respondent is fully committed to hand over the possession of apartments/flats to the buyers well within the promised time period including the said flat of the complainant.
41. That in spite of non-payment of dues by the complainant & others allottees like the complainant, the construction of the said project is complete and the internal development work of the project is going on in full swing. The complainant has not made timely payment of due instalments in spite of demands raised by the Respondent from time to time and thus the Complainant has failed to comply with the payment terms subject to which the said flat was agreed to be sold to the complainant.
42. That the respondent has duly complied with all applicable provisions of the Real Estate (Regulation And Development) Act, 2016 and rules made thereunder ("The Act" hereafter) and also that of Agreement for sale qua the complainant and other allottees. Since the commencement of the

development of the project, the respondent has been sending regular updates regarding the progress of the project to all the buyers including the complainant and also the customer care department of the respondent is in regular touch with the buyers for providing them assistance and updates on the progress of the project

43. That in view of the express terms of the agreement commitment period commence only on 12.11.2016 and expire on 20.05.2021. The Force Majeure period of 248 days, during which the construction activities are stopped, after including in above said date would come to 28.01.2022. This period shall also further extend on account of default by buyer, as per the agreement. Therefore, the respondent pray to dismiss this complaint on this ground alone with exemplary costs to the complainant.
44. That the Fire Clearance / NOC was on dated 06.06.2015 same was obtained by Company vide Memo No. DFS/FA/2016/380/10184 on dated 09.02.2016. The Environment Clearance was obtained on 20.09.2016 .The Consent to establish was obtained on 12.11.016.
45. That the parties to the agreement were well aware, conscious of and, anticipated that the reasonable delay in handing over may be caused. The terms of Agreement stipulate that the date of possession shall get further extended if the completion of the project is delayed by any reason of Force Majeure. The buyer agrees to the same and confirms not to claim any compensation of any nature whatsoever. It is submitted that company did not agree to perform the impossible. The construction of the project was intermittently stopped many times for almost 03 months by orders/directions of the National Green Tribunal, EPCA and Supreme Court, etc, which was neither anticipated at the time of execution of agreement nor

is within the control of the respondent. Pertinent to say that following period are excluded from construction period as "Force Majeure" events wherein the company was estopped by statutory authority to continue construction on public safety, help and environment protection.

Dated	Authority	Order	Days
04.11.2019 To 16.12.2019	Supreme Court in CWP no. 13029/1985	All the construction activity in the entire NCR to remain closed	42 days
01.11.2018 To 10.11.2018	EPCA	All the construction activity in the entire NCR to remain closed	10 days
24.12.2018 To 26-12-2018	Environment Pollution Control Authority	Construction activities in Delhi, Gurugram, Ghaziabad and Noida to remain closed till 26.12.2018	03 days
09.11.2017 To 17.11.2017	OA 21/2014 National Green Tribunal	All the construction (structural) activity in the entire NCR is hereby prohibited till the next date of hearing	09 days
08.11.2016	Newspaper Report	Ban on construction in NCR	07 days
16.12.2015	CWP 817/2015	To enforce CPCB norms at the construction site.	20 days
26.05.2020	HRERA Gurugram order	Force Majeure 6 months	180 days
30.04.2021	Lockdown Order	Govt of Haryana 0.04.21 to 03.05.2021	07 days
Total no's of days			248 days

46. In view of the above, the 48+6 (54) months' time ("Commitment Period") would commence only on 12.11.2016 and expire on 20.05.2021. The Force Majeure period of 248 days, during which the construction activities are

stopped, after including in above said date would come to 28.01.2022. This period shall also further extend on account of default by buyer, as per the Agreement

47. No written submission is filed by respondent.

48. All other averments were denied in total.

49. Copies of all the relevant documents have been filed and placed on 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.

H. Jurisdiction of the authority:

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

H. I Territorial jurisdiction

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

H. II Subject matter jurisdiction

52. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

53. 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.

54. 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. 2020-2021 (1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."

55. 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.

I. Objection regarding force majeure

56. The respondent is claiming that there was delay in constructing the project due to construction bans, due to various order of the Authorities and covid.

57. All the pleas advanced in this regard are devoid of merit. First of all, the unit in question was allotted in the year 2015. As per the clause 14 of the buyer's agreement dated 19.01.2016 , the due date was 12.11.2020 .After granting the benefit of extension of 6 months due to covid period the due date comes out to be 12.05.2021. Further, the orders of stay of construction by the National Green Tribunal at several instances, were passed after the due date was over. Hence the promoter respondent cannot be shown any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong and the plea raised in this regard is devoid of merit.

58. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal , covid , ban on construction but all the pleas advanced in this regard are devoid of merit. The events such as orders by the NGT to protect the environment, ban on construction

were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances no grace period can be allowed to the respondent-builder. Thus, the promoter-respondent cannot be given any leniency on bases of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

J. Entitlement of the complainant-allottee for refund in Cr No.2039 of 2021:

J.I To direct the respondent to refund the amount paid by the complainant-allottee along with prescribed rate of interest.

59. The present complaint bearing no. 2039 of 2021 filed by the complainant seeking refund and the complaint filed by the respondent in year 2020 bearing no. 5012 of 2020 being taken together as both the cases are interconnected.

60. The complainant was allotted unit no 406 D-4th floor, in the project "The Melia" by the respondent builder for a total consideration of Rs.80,69,850/- against which the complainant has paid a sum of Rs.20,24,947/-.

61. It is pertinent to mention here that prior to this present complaint, the respondent builder on 27.01.2021 filed a complaint bearing no. 5012 of 2020 titled *M/s Dss Buildtech Pvt. Ltd. Vs. Nitin Kapoor* for seeking direction upon the complainant to clear the outstanding dues. The authority vide its order date 05.10.2021 disposed of the said complaint with a direction that the respondent - allottee to make the requisite payments and the respondent - allottee who shall be charged interest at the prescribed rate.

62. However, the complainant filed an appeal bearing no. 232/2022 challenging the order dated 05.10.2021 before the Appellate Authority. The Hon'ble Tribunal vide its order dated 16.03.2023 set aside the order dated 05.10.2021 passed by the authority and remanded back the case to the Authority for fresh decision , which is reproduced as below:

1. During the course of arguments, this Tribunal has been apprised by learned counsel for the appellant that a complaint bearing no.2039 of 2021 was also preferred by the allottee (appellant herein) before the learned Authority subsequent to the instant complaint (no.5012 of 2020). In the said complaint, the allottee has prayed for refund of the amount i.e. Rs.20,24,947/- remitted by him to the promoter. Both the complaints, i.e. one preferred by the promoter and the other by the allottee were pending before the Authority at the same time. It, however, proceeded to take Complaint No. no.5012 of 2020 in the first instance and decided the same, wherein it directed the allottee to make the requisite payments as per the provisions of Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016. It was also directed that the allottee shall be charged interest @ 9.3% per annum on the payments made by him.

2. Learned counsel for the respondent submits that it is inexplicable why complaint no.2039 of 2021 was not taken up by the Authority so that same could be decided alongwith the instant case when the issue involved in both the complaints is substantially the same.

3. Keeping in view the facts and circumstances of the case, learned counsel for the appellant has prayed that the matter may be remanded to the same authority for the decision afresh as the complaint of the allottee has not been decided so far.

63. Therefore by the order of Hon'ble Appellate Tribunal in Appeal no. 232 of 2022, both the above complaints are taken up together.

64. The complainant in the present case is admittedly the allottee of respondent - builder of a residential unit on the basis of letter of allotment letter dated 24.04.2015 for the unit no. D-406 Forth Floor in the project of the respondent known as The Melia.

65. Due date of possession:- Clause 14 of the buyer's agreement provides for time period for handing over of possession and is reproduced as below:-

14. Delivery of possession

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 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as directed by the DGTCP The resultant period will be called as "Commitment Period". However, this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities (emphasis supplied)

66. The due date for completion of the project and handing over possession of the allotted unit is being taken from the date of consent to establish being later plus six months grace period as per the possession clause 14 from the buyer's agreement and the same comes out to be 12.05.2021.

67. The right under section 18(1)/19(4) accrues to the allottees on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant in the present case has sought refund before the due date i.e., 12.04.2021 by filing the complaint no. 2039 of 2021.

68. The authority is of the view that in the present complaint, the complainant has made his intention clear to withdraw from the project by filing the present complaint seeking refund before the due date. No one can be forced to purchase a house. This has also been observed by the appellate tribunal

in appeal no. 255 of 2019 case titled as Ravidenr Pal Singh V/s Emaar MGF Ltd. & anr. Wherein it is stated as follows:-

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government"

69. The Hon'ble Apex court of the land in cases of **Maula Bux Vs, Union of India (1973) 1 SCR 928** and **Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136**, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as **Jayant Singhal and Anr. Vs. M/s M3M India Ltd.** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 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"

70. Further, Clause 8 of the buyer's agreement also talks about the deduction of 10% of the total sale consideration of the dwelling unit in case of withdrawal of the allotment. Clause 8 of the said buyer's agreement reiterated as under: -

The buyer agrees that 10% of the total sale consideration shall be treated as earnest money which shall be liable to be forfeited in the event of cancellation of this agreement due to any breach of the provisions of this agreement by the buyer or due to surrender of the apartment at the option of the buyer.

71. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 20,24,947/- against sale consideration of Rs. 80,69,850/- of the unit allotted on 24.04.2015. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.

72. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the sale consideration of the said unit and shall return the balance amount along with interest at the rate of 10.85% (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 surrender i.e., 12.04.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

J.II Direct the respondent to place on record all statutory approvals and sanctions of the project.

J.III Direct the respondent to provide complete details of EDC / IDC and statutory dues paid to the competent Authority and pending demand if any.

73. The above said reliefs became redundant as the complainant has sought the relief of refund and does not wish to continue in the project.

K. Directions of the Authority:

74. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

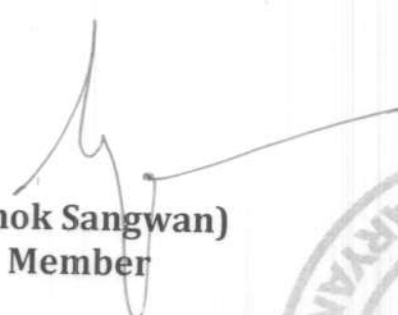
- i. The respondent-promoter is directed to refund the paid-up amount of Rs. 20, 24,947/- in terms of Cr. No. 2039 of 2021 after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.85% p.a. on the refundable amount, from the date of surrender i.e 12.04.2021 till the actual date of refund of the amount.


Complaint No. 5012 of
2020 clubbed with
complaint no. 2039 of 2021

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

75. Complaint stands disposed of.

76. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.03.2024

HARERA
GURUGRAM