

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

Complaint no. : 677 of 2023
Date of complaint : 17.02.2023
Date of order : 26.07.2024

Nand Lal S/o Sh. Roop Chand
R/o: - Flat no. 927, Pocket- I, Radhika Apartment,
Sector-14, Dwarka, New Delhi.

Complainant

Versus

NBCC India Limited
(National Building Construction Corporation Limited)
Regd. Office at: NBCC Bhawan, Lodhi Road,
New Delhi-110003.

Respondent

CORAM:

Sh. Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Ray Vikram Nath(Advocate)

Complainant
Respondent

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 be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder 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. N.	Particulars	Details
1.	Name of the project	"NBCC Green View Apartments", Sector 37 D, Gurgaon
2.	Project area	18.031 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	11 of 2009 dated 20.05.2019
5.	Name of licensee	AS Realtech Pvt. Ltd. & 3 Ors.
6.	RERA Registered/ not registered	Not registered
7.	Allotment Letter	31.03.2018 (Page no. 46 of complaint)
8.	Date of execution of buyers agreement	Not executed
9.	Unit No.	Kiosk (commercial) Shop no. 5 (page no. 46 of complaint)
10.	Unit area admeasuring	166 sq. ft. (page no. 46 of complaint)
11.	Payment Plan	Instalment Plan (page no. 46 of complaint)
12.	Possession clause	Not on Record

13.	Due date of possession	Cannot be ascertained
14.	Total sale consideration	Rs. 19,46,901/- (page no. 46 of complaint)
15.	Amount paid by the complainants	Rs. 19,63,651/- (as alleged by complainant on page no. 14 of complaint)
16.	Occupation certificate /Completion certificate	Not on record
17.	Offer of Possession	11.10.2018 (Page no. 48 of complaint)
18.	Offer Letter for refund of money by respondent	07.09.2022 (page no. 68 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
4. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a shop/unit in the project by paying an amount of Rs.1,00,000/- towards the booking of the said shop/unit bearing no. Kiosk-5, having super area measuring 166 sq. ft. to the respondent dated 07.02.2018.
5. That the respondent sent allotment letter dated 31.03.2018 to the complainant providing the details of the project, confirming that the complainant has made the highest bid vide e-auction held on 13.03.2018, the booking of the unit dated 07.02.2018, allotting a shop/unit no. Kiosk-5, having super area measuring 166 sq. ft. (hereinafter referred to as 'unit') in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 19,46,901/-,



- other Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
6. That after many follow ups and repeated reminders respondent finally sent offer of possession letter dated 11.10.2018 to the complainant. Further, raising demand of Rs.1,01,811/- and the same was paid by the complainant in time bound manner and the possession was taken by the complainant after completing all the one-sided formalities as demanded by the respondent. Since, after handing over of the possession complainant is using the said shop for his own purpose and running business of Departmental Store under the name of Harshika Departmental Store.
 7. That on 13.10.2021, respondent arbitrarily without providing any kind of reasonable justification and time to the complainant sent notice to vacate the said shop on or before 10.11.2021. The respondent in the above said notice failed to mention the rate of compensation and other things payable to the complainant as the complainant is the one who has invested his life time earnings in the said project. Thereafter, respondent again sent vacation notice dated 18.11.2021 to the complainant to vacate the shop by 23.11.2021. The complainant wrote several emails but till date respondent failed to provide satisfactory response to the same and the complainant evicted from the premises on January, 2022 against their will and without provide any alternative remedy, shop or refund of the amount paid by the complainant.
 8. As per the demands raised by the respondent, based on the payment plan, the Complainant to buy the captioned unit timely paid a total sum of Rs. 19,63,651/- towards the said unit against total sale consideration of Rs. 19,46,901/-.

9. That respondent on 08.09.2022, after delay of almost 10 months sent offer letter for refund of money paid to the respondent in lieu of the cancellation of allotment of shop. The said letter mentioned that they have decided to refund only the amount paid without any interest or compensation to the complainant to which complainant raised objection to the aforesaid act of the respondent and wrote several emails but till date respondent failed to provide satisfactory response to the same.
10. That till date the goods/articles of the complainant are locked inside the shop, complainant requested for the withdrawal of the same. During the period the complainant went to the office of respondent several times and requested them to allow him to visit the shop get the goods withdrawal from the shop but it was never allowed saying that they do not permit any buyer to visit the site, once complainant visited the site but was not allowed to enter the site.
11. That complainant filed complaint dated 14.03.2022 to DTP, Gurugram in respect to above mentioned issues. Thereafter, on 13.02.2022, complainant also filed complaint before Deputy Commissioner, Gurugram.
12. That the respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
13. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

14. That the respondent has not received the completion certificate till date and has failed to get the said project registered with the Hon'ble Authority which again is the violation section 3 of the RERA Act. 2016.
15. That the complainants(s) being an aggrieved person filing the present complaint under section 31 with the Authority officer for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.
16. That as per section 18 of the RERA Act. 2016, the promoter is liable to refund the entire paid by the allottees of a unit along with prescribed rate of interest, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the entire amount of Rs. 19,63,651/- paid by the complainant to the respondent along with interest till the date of its realization.
18. 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.

19. The respondent vide reply contested the complaint on the following grounds: -
20. That the respondent had appointed IIT Delhi ("IITD") as a consultant in December 2020 for structural condition assessment of the project. Thereafter, IITD vide a report dated 02.02.2021 suggested that certain repairs were required to be made in the towers of the project. These



repairs were accordingly being conducted by the contractor engaged in the project namely M/s Rama Civil India Construction Pvt. Ltd.

21. That vide its follow up report dated 06.10.2021, IITD advised to vacate the flats within a period of two months in the interest of the safety of the residents.
22. That in view of the same, the respondent vacated the said complex in order to prevent any risk to occupants and put up a notice at site on 13.10.2021 requesting occupants to vacate the complex by 10.11.2021 and to contact NBCC helpdesk at site for further information.
23. That subsequently another report on suggested repair after follow up of IIT Delhi dated 17.11.2021 was received by the respondent, which stated that a visual inspection of the buildings in the project indicated continued cracks in the structures at an accelerated pace.
24. That in view of the same, the respondent put up another notice dated 18.11.2021 at site requesting occupants to vacate the complex by 23.11.2021 and to contact its help desk at site for further information.
25. That further the District Magistrate cum Chairperson of District Disaster Management Authority, Gurugram ("DDMA") vide order dated 17.02.2022 also directed the residents to evacuate the premises for safety considerations. As on date, the respondent has complied with the aforesaid directions of DDMA and all residents have vacated their dwelling units.
26. That, in view of the IITD report, the respondent in the meantime also appointed an external committee of experts from IIT Roorkee and Central Building Research Institute, Roorkee in order to conduct an in-depth examination of the issues in the project and to review the report submitted by IITD for more clarity on the issue. The report of the external committee of experts has been received in April 2022.

27. That the respondent vide offer letter dated 08.09.2022 has offered the complainant amongst others to re-purchase the property in question and also agreed to refund the cost of shop alongwith other incidental expenses subject to terms and conditions contained therein.
28. That the complainant is fully aware of the fact that the respondent has been taking reasonable steps to resolve the grievances of all the allottees of the project.
29. That despite respondent offering to cancel the allotment of complainant's shop, the complainant has filed the present complaint before the learned Authority in pursuant to the same demand.
30. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

32. 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



33. Proviso to Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Proviso to 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;

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

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.

34. 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.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to refund the entire amount of Rs. 19,63,651/- paid by the complainant to the respondent along with interest till the date of its realization.

35. The complainant was allotted a shop bearing no. 5, Kiosk Commercial admeasuring 166 sq. ft. in the project NBCC Greens View Apartments, Sector-37D, Gurugram being developed by the respondent-builder for a total sale consideration of ₹ 19,46,901/- vide allotment letter dated 31.03.2018. The builder agreement was not executed in this particular case and the possession clause is also not on record. The complainant-

- allottee has fully paid an amount of ₹ 19,63,651/-. The respondent builder offered the possession of the unit on 11.10.2018 without obtaining occupation certificate which is an invalid offer of possession.
36. Thereafter, the respondent had appointed IIT Delhi as a consultant in December 2020 for the structural condition assessment of the project. IIT Delhi vide a report dated 02.02.2021 suggested that certain repairs were required to be made in the towers of the project and vide its follow up report dated 06.10.2021, IITD advised to vacate the units within a period of two months in the interest of the safety of the residents/occupants. Further, the District Magistrate cum Chairperson of District Disaster Management Authority, Gurugram vide order dated 17.02.2022 also directed the occupants to evacuate the premises for safety considerations and directed the respondent to provide alternative/suitable premises for accommodation to the willing residents within 48 hours of the passing of the said order or to provide rent for similar accommodation along with shifting charges of the entire households of the residents. Accordingly, all occupants have vacated their dwelling units. Thereafter, the respondent vide offer letter dated 07.09.2022 offered the refund to the complainant.
37. The respondent has agreed to refund the actual principal amount along with interest @ 6% p.a. Since, the respondent has already committed to refund the amount of consideration to the complainants on its accord, the only issue left to be adjudicated by the authority pertains to the interest to be paid on the above amount. The Authority is of the view that it would be fair and reasonable that the rate of interest already prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 of the Act shall be paid on the refund amount.



38. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund 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.

39. 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.
40. 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., 26.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
41. 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 an amount of ₹ 19,63,651/- paid by him at the prescribed rate of interest i.e., @ 11% 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*.

42. The complainant is at liberty to approach the Adjudicating Officer for claiming the relief of compensation, if any.
43. The authority observes that the respondent promoter has taken a sum more than 10% of the cost of apartment without first entering into builder buyer agreement for sale hence, vide proceeding dated 12.04.2024 it was directed to file reply as to why penalty under section 61 of the Act should not be imposed for violation of section 13 of the Act, 2016. The respondent has not filed any reply till now. The authority is of the view that the promoter has violated the section 13(1) of the Act, for which liability flows from section 61 which read as follows: -

“Section 61. Penalty for contravention of other provisions of this Act.

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.”

44. Accordingly, the authority vide proceeding dated 31.05.2024 establishes the violation on part of the respondent and imposed a token penalty under section 61 of ₹1,00,000/- in complaint within 30 days from this order.

G. Directions of the authority

45. 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 amount i.e., ₹ 19,63,651/- received by it from the complainant along with interest at the rate of 11% p.a. as prescribed under rule 15 of the

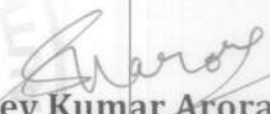


Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The authority establishes the violation on part of the respondent for section 13(1) and hereby imposes a token penalty under section 61 of ₹1,00,000/- in complaint within 30 days from this order.

46. Complaint stands disposed of.

47. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024

HARERA
GURUGRAM