



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	927 of 2023
Date of filing:	09.05.2023
First date of hearing:	27.07.2023
Date of decision:	08.11.2023

Preetam Kumar Chauhan S/o Sh. Subhash Chander

R/o Flat No. 203, Tower-7,

Tata New Heaven, Sector 37,

Bahadurgarh

...COMPLAINANT

VERSUS

H.L. Promoters Pvt. Ltd.

Flat No. 3,GF, Naurang House, Plot No.5,

Block No.134/21, KG Marg,

New Delhi- 110001

...RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Present: - Mr. Preetam Chauhan, Complainant

Mr. Sumesh Malhotra and Ms. Sudha Sandhaya, counsel for the respondent.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 09.05.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short RERD Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name and location of the project.	New Haven, Sector-37, Bahadurgarh, Jhajjar
2.	Nature of the project.	Group Housing Project
3.	RERA Registered	22 of 2017 dated 13.07.2017 valid till 31.03.2021



4.	Details of Flat	Tower-7/0203
5.	Date of apartment buyer agreement	23.12.2020(as per reply)
6.	Offer of possession	18.03.2021
7.	Conveyance deed	30.07.2021
8.	Occupation Certificate	08.01.2021
9.	Amount paid by complainant	₹ 32,43,223/-(as per receipts attached at page no. 22-34 of complaint book)

B. FACTS OF THE COMPLAINANT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a flat in the project of the respondent namely; "New Haven" situated at Sector-37, Bahadurgarh, Jhajjar in the year 2020. Complainant has stated that there are certain issues related to flat in question such as improper flooring, uneven walls plastering, seepage etc. Further, complainant has stated that on 12.07.2021, when flat was handed over to complainant, above stated problems were reported to builder and Mr. Lalit from CBRE (agency hired by builder for possession work) who assured that all these defects will be rectified at the earliest and requested the complainant to take possession. Believing on words of builder, complainant took the possession but till date nothing is rectified by

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the builder. As on date, the flat is not in proper habitable condition like a new flat should be. Complainant had communicated with the builder and senior representative of builder through various emails. They had given various false assurances and even given full waiver of the Common Area Maintenance (CAM) charges to complainant until May 2022. Thereafter, complainant stated the same issues to Mr. Rahul Dhadeech (another representative of builder) via email dated 16.08.2022 but respondent rather than rectifying the defects had issued second waiver for CAM charges until September 2022. Due to inappropriate and unprofessional behavior of builder, complainant denied to accept second waiver and asked the respondent to complete the work at the earliest. Instead of working on complainant request, another representative of builder, Ms. Neha sent baseless emails to complainant stating that builder had already done the work as per directions of complainant. Even after giving various reminders to respondent for rectification of defects, respondent did not adhere to any of the request of complainant, so having no option left, complainant himself got the work completed and asked builder to reimburse an amount of two lakhs for replacing the tiles and other pending civil works. Builder refused the same via email. Complainant has filed the present complaint seeking possession of habitable flat with all quality works at the earliest.

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C. RELIEF SOUGHT

4. That the complainant seeks following relief and directions to the respondent:-
- i. Request for reimbursement of house rent which complainant is paying even after purchasing new flat. Amount of ₹20,000/- per month and approximately ₹3,60,000/- till the present complaint is filed, i.e., 05.05.2023.
 - ii. Compensation for every delay as per RERA Act and compensation on amount which complainant had paid to the builder.
 - iii. Possession of the flat in question in habitable condition with all quality work at the earliest. Until that time there should be no CAM (common area maintenance) charges burden.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Learned counsel for the respondent filed reply on 31.10.2023 pleading therein that captioned complaint is not maintainable for following reasons:
- i. Complaint is devoid of merits.
 - ii. Relief's prayed by the complainant are in nature of compensation which is beyond the purview of the Authority.
 - iii. Complainant has approached the Authority with unclean hands and had tried to mislead the Authority by making incorrect averments.

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- iv. Complaint is bad for non-joinder of necessary party as present complainant is not the sole and absolute owner of the apartment in question. Present complainant along with Mrs. Annu Panchal d/o Mr. Rajpal Panchal residing at Gurugram has jointly booked the apartment in question. However, in the present complaint, complainant has not made a co-allote party to the complaint.
6. Further, complainant had booked the apartment when the construction of the tower was already complete and respondent had also applied for the occupation certificate vide application dated 03.10.2019. Thereafter, on 08.01.2021, respondent had received the occupation certificate from the competent authority. After receiving the same, possession of the flat in question was offered to the both co-allotees and they had already taken over the same vide possession letter dated 12.07.2021. Complainant had also got the conveyance deed registered on 30.07.2021 without specifying any defects.
7. Lastly, respondent stated that complainant has filed the captioned complaint to refuse to pay the outstanding dues of electricity and common area maintenance charges under the grab of purported allegations. This clearly highlights the malafide intention of the complainant. Further, complainant vide his emails dated 24.11.2022, 28.11.2022 and 14.02.2023 had stated that CAM Charges will not be paid by complainant until alleged defects at his

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apartment are not rectified. The outstanding due against the complainant is ₹6,279.54/-.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY:

8. Factual matrix of the case is that complainant had booked an apartment in the project namely; “New Haven, Bahadurgarh, Jhajjar” of the respondent in the year 2020 and had also got the offer of possession for the same on 12.07.2021. It is pertinent to mention that said offer of possession was duly accompanied with the occupation certificate received by respondent on 08.01.2021 from the competent Authority. However, complainant in the captioned complaint has raised certain issues with regard to defects persisting in the booked unit which were not rectified by the respondent till date even after receiving various emails/communications from the complainant.
9. Respondent on the other hand has stated that project in question was complete in all respects way back in the year 2019 when he applied for the grant of occupation certificate on 03.10.2019 and the same was obtained by respondent on 08.01.2021 from competent Authority. Thereafter, respondent offered possession to complainant on 12.07.2021 which was taken by complainant without stating any defects at that time. Even, conveyance deed had been executed between parties on 30.07.2021.


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10. In view of above facts and circumstances, Authority observes that the complainant Mr. Preetam Chauhan and Ms. Annu Panchal were jointly allotted unit no. Tower-7/0203 in project namely; “New Haven, Bahadurgarh, Jhajjar” in the year 2020. It is an admitted fact by both the parties that respondent after receiving occupation certificate on 08.01.2021 had offered the possession to complainant on 12.07.2021 i.e., 6 months after obtaining the occupation certificate from the competent authority, meaning thereby, that a legally valid offer of possession was offered to complainant on 12.07.2021. Thereafter, conveyance deed was also executed on 30.07.2021, which shows that respondent had discharged all his obligations towards complainant way back in year 2021. It is also not the case of the complainant that there was any delay in handing over of possession. Furthermore, complainant has nowhere in his pleadings has denied the receiving of occupation certificate by the respondent and execution of conveyance deed between the parties. The main grouse of the complainant is that when the possession of the unit was handed over, there were few structural and workmanship defects like improper flooring, uneven walls plastering, seepage etc. and thus complainant is seeking relief of compensation as the builder/ promoter had failed in its obligation to rectify the defects, u/s 14(3) of the RERA, Act 2016. Relevant provision is reproduced hereunder:



“14(3)- In case any structural defect or any other defect in workmanship. Quality, provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be duty of the promoter to rectify such defects without further charge, within thirty days and in event of promoter’s failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation the manner as provided under this Act.”

11. Therefore, with regard to all the three reliefs sought by the complainant in his pleading, mentioned as clauses a, b, c of the relief sought on page no.18 of the complaint wherein, complainant has sought reimbursement of house rent paid by the complainant and compensation on paid amount by complainant under Section 12 of RERA Act, 2016 and compensation as the builder/ promoter had failed in its obligation to rectify the structural and workmanships defects, Authority has referred to the judgment of Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2027 titled as *“M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.”* (supra,), wherein Hon’ble Apex Court 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the



learned 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. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court, complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

12. Lastly, on a technical ground also present complaint is not maintainable as apartment in question was purchased by two allottees i.e. Sh. Preetam Chauhan (present complainant) and Mrs. Annu Panchal but complainant had not made co-allottee Mrs. Annu Panchal, party to the present complaint which makes it bad for misjoinder for necessary party. Thus, Authority dismisses the captioned complaint on account of misjoinder of necessary party as well.
13. In view of above, Authority concludes that present complaint is not maintainable for the reasons stated in para 8-12 of this order and decides to dispose of the captioned **complaint as dismissed**, with liberty to complainant to file fresh complaint before proper forum and in proper form and manner.
14. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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DR. GEETA RATHEE SINGH
[MEMBER]