

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

Complaint no.: 956 of 2023
Order pronounced on: 21.08.2024

1. Mr. Kartik Chandrashekar
2. Mrs. Purobi Kapoor
Both R/o: - 106, Cannon Lane Pinner,
Pinner-HA51HR, Middlesex U.K.

Complainants

Versus

M/s Bright Buildtech Pvt. Ltd. .
Registered Office at: - 1st Floor, Vatika Triangle,
Sushant Lok-I, Phase-I, Block-A, M.G Road,
Gurugram-122002, Haryana.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Suresh Dutt Kaushik (Advocate)

Sh. Dhruv Gupta (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act

or the Rules and regulations made there under or to the 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:

S.no.	Particulars	Details
1.	Name of the project	"Woodview Residences", Sector-89, Gurugram, Haryana.
2.	Nature of project	Group Housing
3.	Project area	114.506 acres
4.	RERA registered/not registered	Registered vide registration no.-34 of 2020. Dated -06.10.2020
5.	DTPC License no.	59 of 2013 and 115 Of 2019
6.	Allotment letter	11.02.2015 (As on page no. 30 of reply)
7.	Unit no.	B-87-UGF, Upper ground (As on page no. 30 of reply)
8.	Unit area admeasuring	1090sq.ft. [Super-area] (as on page no. 30 of reply)
9.	Date of apartment buyer agreement	Not executed
10.	Possession clause	<i>Not available</i>
11.	Due date of possession	11.02.2018

		[Calculated 36 months from the date of allotment letter]
12.	Total sale consideration	Rs.87,37,074/- (As on page no. 31 of reply)
13.	Amount paid by the complainant	Rs.58,38,525/- (As admitted by the respondent)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have pleaded the following facts:
- I. That the respondent no. 1 is a company which is duly incorporated under the provisions of the Companies Act, 1956 and respondent no. 2 is the director of respondent no. 1 and is fully liable and responsible for the day to day affairs, act, conduct, behaviour and work of the respondent no. 1 as the whole business of the respondent no. 1 has been managed and carried out by the respondent no. 2.
 - II. That respondent no. 1 is engaged in the business of real estate and is a land developer company. The respondents has launched a Group Housing project namely "Woodview Residences" at Sector-89, Gurugram, Haryana.
 - III. That in 2014, the complainants contacted the respondents to purchase flat in the project and the complainants have booked a flat bearing no. B-87-UGF, on upper ground floor, having an approximate super area admeasuring 1090sq. ft. for a basis sale price of Rs.78,48,000/- and total sale consideration of Rs.87,37,074/- and paid an amount of Rs.8,00,000/- on 31.01.2014.

- IV. That as per the payment plan, on 13.04.2015 the complainants also made a payment of Rs.5,54,067/- vide RTGS, Rs.8,57,040/- on 15.07.2015, Rs.10,00,000 on 20.06.2016 , Rs.5,00,000 on 14.07.2016, Rs.5,82,332 26.07.2016, Rs.8,58,793 on 15.09.2016, Rs.6,86,293 on 18.04.2017 and paid Rs.58,38,525/- vide RTGS to the respondents and the same was acknowledged by the respondents.
- V. That on 27.05.2016, the complainants sent an e-mail to the respondents and requested to send a builder buyer agreement but the same was not received by the complainants even after requesting repeatedly. Hence, no builder buyer agreement has been executed between the complainants and respondents.
- VI. That at the time of booking, it was assured by the respondents that the possession of the apartment would be handed over within a period of 36 months from the date of booking. The representative of the complainants visited the project site and were shocked to see that the construction work was not going on and thus would not be able to deliver possession of the apartment/ flat on time.
- VII. That the complainants made payment as per the payment plan and the demands raised by the respondents. A total sum of Rs.58,38,525/- (Rupees Fifty Eight Lacs Thirty Eight Thousand Five Hundred Twenty Five only) was paid by the complainants in respect of the unit.
- VIII. That the period of 36 months expired in the month of January, 2017 but till date the physical possession of the flat/unit is not handed over to the complainants. As per the assurance given by the respondents, if the developer/respondents are not able to handover possession of the unit within 36 months + 180 days, in that case, the allottee/complainant

shall be entitled to receive compensation for delay at the rate of Rs.5/- per sq. ft. per month of the super area from the developer.

- IX. That on the date agreed for the delivery of possession, the complainants approached the respondents and its officers inquiring the status of delivery of possession but none bothered to provide any satisfactory answer about the completion and delivery of the flat. The complainants thereafter kept running from pillar to post asking for the delivery of their home but could not succeed as the construction of the project was nowhere near completion and still has not been completed.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:
- Direct the respondent to refund the entire amount paid by the complainants along with interest.
 - Direct the respondent to pay Rs.10,00,000/- on account of damages, hardships, mental agony pain, suffering and harassment experienced by the complainants.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention 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. The respondents have contested the complaint on the following grounds:
- That the respondent no. 1 is developing the project namely 'Woodview Residences' (now known as "**ACE Palm Floors**") on its share in the project land measuring 101.081 acres situated at revenue estate of

village Hayatpur, Sector-89 and 90, Gurugram. It is pertinent to mention that respondent no.1 has appointed M/s. Ace Mega Structures Private Limited ("Ace") as 'Development Manager' for the development, construction, sales, and marketing of the project vide 'Development Management Agreement' dated 23.05.2019 only with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction.

- II. That the complainants on their own free will and volition had approached respondent no. 1 for allotment of 'unit' t and initially submitted an application form for booking the dwelling unit in the project.
- III. That respondent no. 1 vide letter of allotment dated 11.02.2015 had allotted a flat bearing no. B-87 on upper ground floor at the basic sale price plus EDC, IDC charges plus club membership fees plus interest free maintenance security totalling to Rs.87,37,074/-.
- IV. That as per the payment plan opted, the complainants had paid an amount of Rs.58,38,525/- and accordingly payment acknowledgment receipts were issued by respondent no. 1. Further vide letter dated 28.07.2015, respondent no. 1 shared two draft sets of the Builder Buyer Agreement to the complainants. It is pertinent to mention that the complainants were required to submit the signed copies of the said Agreement to respondent no. 1. However, despite repeated requests the agreement was not submitted by the complainants.
- V. Since there is no Builder Buyer Agreement in the present case, the complaint in itself is not maintainable and is liable to be dismissed. There are no reciprocal obligations governing the rights of the parties, as such there can be no default, as alleged in the captioned Complaint.

VI. The following various problems which were beyond the control of respondent no.1 and seriously affected the construction:-

- Lack of adequate sources of finance.
- Shortage of labour.
- Rising manpower and material costs.
- Approvals and procedural difficulties.

VII. In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- There was extreme shortage of water in the region which affected the construction works.
- There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.
- Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months.
- Non-availability of cash-in-hand affected the availability of labours;
- Recession in economy also resulted in availability of labour and raw materials becoming scarce;
- There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
- Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction

activities for some time on regular intervals to reduce air pollution in NCR region.

VIII. The table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik vs Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA- Environment and Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/ Bhure Lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	37 eeks (approximately)	

IX. In view of the above facts and circumstances the demands of the complainants for a refund of the amount along with exorbitant

compensation is baseless and the same cannot be allowed under any situation as it will jeopardise the situation of the whole project.

- X. That the construction at site was never stopped and whenever the construction activity has stopped, it was due to the above-said reasons of 'force-majeure' which were beyond the control of respondent no. 1, therefore, the demands of the complainants shall not be entertained.
- XI. The demand of the complainants to demand exorbitant amount in the form of compensation is baseless and jeopardise the whole project. It is submitted that if there is any delay in handing over the possession, the delay compensation shall be given to the Complainant in the manner provided in the Buyer Agreement under Clause 5.10 of the Buyer Agreement. It is reiterated herein that there is no *intentional* delay at present and hence, the concern of the complainant is unwarranted and premature at this stage.
- XII. It is pertinent to mention that the complainants have not made the complete payments and still some payment is due towards the allotted unit. It is submitted that the instant complaint is not maintainable keeping in view the facts, circumstances and law relating thereto. Therefore, the instant complaint is liable to be dismissed at the threshold.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. The Authority observed that it has territorial as well as 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

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;

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 complainants 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. (Supra) and**

reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

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 objections raised by the respondent:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

14. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit. As no buyer's agreement has been executed, the due date of handing over of possession is calculated as per *Fortune Infrastructure and Ors. Vs.*

Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018 and it comes out to be 11.02.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no further grace period can be allowed to the respondent/builder on account of force-majeure. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020*** dated 29.05.2020 has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 11.02.2018 and the respondent is claiming benefit of lockdown which

came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to refund the entire amount along with interest.

17. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. 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)

18. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with

interest prescribed rate of interest 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.

19. 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.
20. 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., 21.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. In the present case, the complainants booked a unit with the respondent in its project "Woodview Residences" now know as "ACE Palm Floors" situated in Sector-89 and 90, Gurugram, Haryana. The complainants were allotted a unit bearing no. B-87, Upper ground floor, pocket-1 admeasuring 1090 sq.ft. of super-area vide allotment letter dated 11.02.2015. No builder buyer agreement has been executed between the parties till date. The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are

entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. The allotment in favour of the complainants was made vide allotment letter dated 11.02.2015. The period of three years from the date of allotment expired on 11.02.2018. Therefore, the due date of handing over possession is 11.02.2018.

22. It is pertinent to mention over here that even after a passage of more than 5 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
23. Further, 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. observed as under: -

"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."

24. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is 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 pay the allottees, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
25. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% 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.*

F.II. Direct the respondent to pay Rs.10,00,000/- on account of damages, hardships, mental agony pain, suffering and harassment experienced by the complainants.

26. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra')* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

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

- i. The respondent/promoter is directed to refund the amount of Rs.58,38,525/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules

- the date of each payment till the date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.
28. Complaint stands disposed of.
29. File be consigned to registry.

Date:21.08.2024



(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM