

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 16.08.2024

NAME OF THE BUILDER PROJECT NAME		M/S NOURISH DEVELOPER	S PVT. LTD.
		Smartworld One DXP	
S. No.	Case No.	Case title	Appearance
1	CR/5003/2023	Tarun Sachdeva and Leena Sachdeva V/S M/S Nourish Developers Pvt. Ltd.	Sh. Himanshu Gautam Sh. Shankar Wig
2	CR/5004/2023	Harsh Sachdeva and Shiwali Sachdeva V/S M/S Nourish Developers Pvt. Ltd.	Sh. Himanshu Gautam Sh. Shankar Wig

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

- 1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- 2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Smartworld One DXP situated at Sector-113, Gurugram being



developed by the same respondent/promoter i.e., M/s Nourish Developers Pvt. Ltd. The terms and conditions of the application form fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

2xC 2388887 X 2xC 22887 / 267	
" Smartworld One DXP " at se Haryana.	ctor 113, Gurgaon,
16.1125 acre 106 of 2022 dated 05.08.2022 v	
Registered vide no. 120 of 2022 dat 31.12.2027	
	Haryana. 16.1125 acre 106 of 2022 dated 05.08.2022 v Registered vide no. 120 of 2022 dat

Possession clause: 7. Possession of the said unit

i. The Promoter agrees and understands that timely delivery of the possession of the Said Unit along with right to use car parking space and the Common Area as provided under Rule 2(1) (f) of Rules, 2017 to the Association of Allottees or the Competent Authority, as the case may be, is the essence of the Agreement.

ii. The Promoter assures to offer possession of the Unit along with right to use car parking space as per agreed terms and conditions on or before 31.12.2027 unless there is delay due to force Majeure Event, Court orders, Government policy/guidelines, decisions affecting the regular development the Project.

Due date of possession: 31.12.2027 Occupation certificate: Not obtained Offer of possession: Not offered

No No. Titl Da fili	olaint Unit Case No. , and e of g of olaint	Unit admeasu ring	Date of apartme nt buyer agreeme nt	Due date of possession	Total Sale Consider ation / Total Amount paid by the	Relief Sought
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						complain ant	
1.	CR/5003/ 2023 Tarun Sachdeva and Leena Sachdeva V/S M/S Nourish Developer s Pvt. Ltd	2604, tower A, 26 th floor	2015 sq. ft.	18.05.20 23 Date of cancellat ion: 20.07.20 23	31.12.202 7	TSC: - 2,73,56, 511/- AP:- Rs. 27,35,72 4/-	Refund with interest
	DOF: 31.10.202 3 Reply status: 12.02.202 4	PLANA REALE	संस्थमेव	जयते	OFF AUTHON		
2.	CR/5004/ 2023 Harsh Sachdeva and Shiwali Sachdeva V/S M/S Nourish Developer s Pvt. Ltd.	1804, tower C, 18 th floor	1806 sq. ft.	18.05.20 23 Date of cancellat ion: 20.07.20 23	31.12.202 7	TSC: - 2,44,99, 363/- AP: - Rs. 24,49,93 7/-	Refund with interest
	DOF: 31.10.202 3						

Page 3 of 19

ARERA JRUGRAM			nt No. 5003 of 2023 & other
Reply status: 12.02.202 4			
ote: In the table referred above collows: bbreviation Full form C Total Sale consideration P Amount paid by the allottee(s)	rtain abbreviat	tions have been u	sed. They are elaborate

- 4. It has been decided to treat the said complaints as an application for noncompliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- 5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case CR/5003/2023 Tarun Sachdeva and Leena Sachdeva V/S M/S Nourish Developers Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Project and unit related details

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

CR/5003/2023 Tarun Sachdeva and Leena Sachdeva V/S M/S Nourish Developers Pvt. Ltd.

S. N.	Particulars	Details	



1.	Name and location of the project	"Smartworld One DXP" at village Chauma, Sector -113, Gurugram		
2.	Nature of the project	Mixed Use Colony		
3.	Project area	16.1125 acres		
4.	DTCP license no.	106 of 2022 dated 05.08.2022 vali upto 04.08.2027		
5.	Name of licensee	 M/s Aspis Buildcon Pvt. Ltd. M/s Starcity Realtech Pvt. Ltd. M/s Nourish Developers Pvt. Ltd. 		
6.	RERA Registered/ not registered			
7.	Unit no.	A-2604, tower A, 26 th floor (page no. 48 of complaint)		
8.	Unit area admeasuring (super area)	2015 sq. ft. (page no. 48 of complaint)		
9.	Welcome Letter	06.04.2023 (Page no. 24 of complaint)		
10.	Allotment letter	06.04.2023 (Page no. 26 of complaint)		
11.	Date of agreement for sale	18.05.2023 (registered) (page no. 45 of complaint)		
12.	Possession clause	 7.Possession of the said unit i. The Promoter agrees and understands that timely delivery of the possession of the Said Unit 		



	ALENDA	 along with right to use car parking space and the Common Area as provided under Rule 2(1) (f) of Rules, 2017 to the Association of Allottees or the Competent Authority, as the case may be, is the essence of the Agreement. ii. The Promoter assures to offer possession of the Unit along with right to use car parking space as per agreed terms and conditions on or before 31.12.2027 unless there is delay due to force Majeure Event, Court orders, Government policy/guidelines, affecting the regular development the Project.
13.	Due date of possession	31.12.2027 [as per possession clause]
14.	Total sale consideration	Rs. 2,73,56,511/- (as per the payment plan on page no. 30 of complaint)
15.	Amount paid by the complainants	Rs. 27,35,724/- (As per cancellation letter on page no. 74 of complaint)
16.	Demand letter and reminders	07.04.2023, 08.05.2023, 16.05.2023
17.	Pre cancellation letter	31.05.2023



		(page no. 73 of reply)
18.	Cancellation Letter	20.07.2023 (Page no. 74 of reply)
19.	Amount refunded by respondent after cancellation	Rs. 27,35,724/- (On 20.11.2023 vide RTGS) (Page no. 77 of reply)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not obtained

B. Facts of the complaint

The complainants has made the following submissions in the complaint: -

- 7. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company, the complainants booked a unit bearing no. A-2604 located on 26th floor in Tower-A, ad measuring carpet area of 1210.31 sq. ft. in the said project by paying an amount of Rs. 5,00,000/- followed by further payments thereby totaling to a payment of Rs. 27,35,724/- till 10.05.2023.
- 8. That thereafter, on 06.04.2023, a welcome letter and an allotment letter were issued by the respondent in favour of the complainants thereby allotting in their favour the unit in question.
- 9. That subsequently, the complainants made further payments as per payment plan in order to fulfill the initial 10% booking amount while simultaneously being introduced to ICICI Bank by the respondent as the



only panelist financial institution affiliated with them for the project in question.

- 10. That accordingly, an agreement for sale was executed between the respondent and the complainants on 18.05.2023 for the unit in question, followed by the execution of a tripartite agreement between the complainants, respondent and ICICI Bank for the home loan sanctioned in favour of the complainants. That while at the time of booking, the complainants were assured that the subvention scheme would extend till the date of offer of possession and the respondent was liable to pay the Pre-EMIs till the date of offer of possession after receipt of occupation certificate, on the contrary, at the time if execution of tripartite agreement, it was mentioned that the subvention scheme would be operational only till the date of application of occupation certificate. The complainants raised objection and sought a clarification and vide e-mail dated 06.06.2023, the respondent clarified that in case the application for occupation certificate would be made after 31.03.2026, i.e. the commitment period, in that scenario, the date would get extended in the tripartite agreement as well.
- 11. That meanwhile, upon further milestone for payment, the complainants requested icici bank to disburse the amount as per payment plan, only to be startled to know that they refused to disburse any further amount owing to the arrest of the respondent company's Director by Enforcement Directorate in a money laundering case.
- 12. That thereafter, the complainants kept pursuing ICICI Bank to disburse the loan amount, while requesting the respondent to not charge any delayed payment interest upon the complainants as they were not at fault, but all in vain. Later on 20.07.2023, the respondent asked the complainants to take



loan from Bank of Maharashtra under same terms and conditions in order to take their booking ahead.

- 13. That later, to the utter shock of the complainants, the respondents vide email dated 20.07.2023, i.e. of the same day when the complainants was told to approach the Bank of Maharashtra for Loan, the respondent intimated regarding the cancellation of unit to the complainants owing to default in payment. This left the complainants completely devastated as there was no default at the end of complainants and the entire chain of events mentioned above clearly highlight that the complainants were only subjected to sheer harassment by the respondent, ICICI Bank and Bank of Maharashtra. Moreover, the unit was cancelled abruptly and without giving a time to the complainants to sort out the loan matter and make further payments.
- 14. That the respondent has sent an email for further giving time up till 31.07.2023 to get the loan disbursed from Bank of Maharashtra, however, the complainants showed his inability to take loan from Bank of Maharashtra due to changed terms and conditions as agreed earlier. The terms and conditions regarding changed payment plan has been shared by Bank of Maharashtra to the complainants. It is further to note that the Bank of Maharashtra even refused to honour the liability qua the Pre-EMI in favour of the respondent and claimed the same from the complainants. the said issue was also raised before the respondent in which respondent had assured that they would issue a comfort letter regarding the Pre-EMI and the same would be paid by the complainants. However, earlier if has been assured by the respondent and ICICI Bank that the Pre Emi shall be borne by the respondent.
- 15. That subsequently, the complainants rushed to the respondent's office to



seek an explanation over the abrupt cancellation of booking and pointed out to the efforts being made by them for securing loan with Bank of Maharashtra and the change in payment terms and conditions thus leading to a dispute over the subvention scheme offered by the respondent, but to no avail. The complainants also requested the respondent to give some time to the complainants for loan disbursal post execution of fresh tripartite agreement but the respondent simply informed that the units were up for open sale and would be allotted to new buyers at a higher price thus defeating all chances of the complainants to get back their booked unit.

- 16. That the complainants kept painstakingly pursuing the respondent by way of calls, personal visits as well as e-mails to either resume their booking or to refund back their hard earned money as the entire chain of events clearly portray that they were not at fault, but to no avail.
- 17. That the respondent simply duped the complainants of their hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainants.
- 18. That the present complaint has been filed under Section 31 read with Section 12 of RERA Act in order to seek refund of the principal amount paid by the complainants along with interest at the prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.

C. Relief sought by the complainants: -

19. The complainants have sought following relief(s):



- I. Direct the respondent to refund the entire amount paid by the complainants along with the interest at the rate prescribed under the Real Estate (Regulation and Development) Act, 2016.
- 20. 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.

- 21. That the complainants in furtherance of signing of the application form were tendered with a welcome and allotment letter dated 06.04.2023 by way of which a unit bearing no. A-2604 (Residential 3BHK + Study+ Utility type unit) admeasuring 1210.31 sq. ft. carpet area was allotted to the complainants. The cost of the apartment was Rs. 2,73,56,511/- plus other charges. An amount of Rs. 5,00,000/- was received as part booking amount in respect of the allotted unit. Thereafter, an amount of Rs. 5,00,000/- on 28.03.2023 was also received towards the booking of the allotted unit. The payment plan opted by the complainants was under a specific payment plan wherein the payments were to be disbursed in the ratio of 10:75:15. It is submitted that as far as the component of 75% is concerned, the complainants herein opted for construction linked PEMI plan.
- 22. That the complainants on the very same day i.e., 06.04.2023 vide cover letter dispatched three copies of the buyer's agreement along with other documents for execution at the complainant's end and requested the complainants to come forward for getting the same registered.
- 23. Thereafter the respondent company raised a demand vide demand letter dated 07.04.2023 in respect of the allotted unit for an amount of



Rs. 1,09,42,606/- which was in accordance with the opted payment plan out of which only an amount of Rs. 10,00,000/- was paid by the complainants. That Rs. 17,35,652/- was overdue out of the outstanding amount and was to be paid immediately before 06.05.2023.

- 24. That the respondent company thereafter after showing a stoical composure until the due date as per demand letter 07.04.2023, issued a reminder vide reminder letter dated 08.05.2023 in favour of the complainants requesting the complainants to make good the balance payments but the same was paid no heed to.
- 25. That in lieu of the said reminder letter, the complainants paid an amount of Rs. 8,67,862/- vide cheque bearing no. 000055 and Rs. 8,67,862/- vide cheque bearing no. 000054 on 10.05.2023.
- 26. That in the contemplation of the complainants making good the balance outstanding payment, the respondent company again issued a reminder vide reminder letter 2 dated 16.05.2023 requesting the complainants to pay the outstanding dues, but to no avail.
- 27. Thereafter the buyer's agreement was executed between the parties on 18.05.2023.
- 28. Since the complainants failed to clear their outstanding dues despite issuance of repeated reminders, the respondent company having no remedy was forced to issue pre-cancellation letter dated 31.05.2023 tendering one final opportunity to clear the balance payment accruing upon the complainants within a period of 7 days, failing which the respondent company would be left with no option but to cancel the allotment of the unit.
- 29. That all the requests of the respondent company were brushed aside by the

Page 12 of 19



complainants and the complainants to failed to make the payment of outstanding amount even after issuance of multiple reminders, as a consequence of which the respondent company was constrained to cancel the allotment of the complainants vide cancellation letter dated 20.07.2023 and forfeit the amount deposited being 10% of the sale consideration value as per the provisions of the buyer's agreement duly executed between the parties. it is pertinent to mention here that the amount received by the respondent company from the complainants till 20.07.2023 totaled to Rs. 27,35,724/-, thereby leaving an outstanding amount of Rs. 82,06,882/-. Therefore, as a result of multiple pay out defaults as per the demand letter dated 07.04.2023, the allotment of the unit of the Complainants was cancelled.

30. Thereafter, at the request of the complainants, the respondent company halted the operation of the cancellation letter subject to receipt of the outstanding dues and the respondent company being a customer-oriented company extended the timeline. Further the respondent company had also suggested the complainants that they could get the loan disbursed through Bank of Maharashtra as a number of other allottees had got their loans sanctioned and disbursed through the said bank. It is submitted that as per the terms of the buyer's agreement duly executed between the parties, the respondent company is not under any obligation whatsoever to make any financial arrangements for the complainants which includes but is not limited to securing a banking partner offering sanction of home loan in consonance with the construction linked PEMI scheme opted by the complainants. The respondent company being a customer-oriented company provided all due assistance to the complainants in facilitating



their loan sanction and the failure to procure loan is solely attributable to the complainant's credentials.

- 31. Since the complainants failed to clear their dues therefore the cancellation letter dated 20.07.2023 stand in its operation and the unit in question stands cancelled. The respondent company vide email dated 22.09.2023 clarified that the cancellation stands valid.
- 32. The respondent company in good faith to close the matter has already refunded the entire amount paid by the complainants towards the unit i.e. Rs. 27,35,724/- (Rs. 13,67,862/- + Rs. 13,67,862/-) vide RTGS on 20.11.2023, though as per terms of the agreement for sale, the respondent company was entitled to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated in terms of the buyer's agreement.
- 33. That the respondent company was constrained to cancel/terminate the unit as per the allotment/buyer's agreement on account of non-payment/failure of pending amounts as per the payment plan opted by the complainants. The respondent company is incurring losses/damages on account of the breach of the terms of the allotment/buyer's agreement by the complainants, which the complainants are liable to pay to the respondent company as per the terms of the buyer's agreement. The losses suffered by the respondent company are as follows:
 - I. Earnest Money –Rs. 27,35,651/- The complainants herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the allotment/buyer's Agreement and perform their obligations.
 - II. Interest Sum of Rs. 1,20,294/- was the interest payable by the



complainants for the delayed payments.

- 34. Thus, the total loss calculated comes to Rs. 28,55,945/- (approx.) which includes, earnest money deduction @10% to the tune of Rs. 27,35,651/- and further sum of Rs. 1,20,294/- was the interest payable by the complainants for the delayed payments.
- 35. 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

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

E.I Territorial jurisdiction

37. 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

38. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:



.....

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

39. 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.

40. 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

Page 16 of 19



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."

- 41. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- F. Findings on the relief sought by the complainants.
- F. I Direct the respondent to refund the entire amount paid by the complainants along with the interest at the rate prescribed under the Real Estate (Regulation and Development) Act, 2016.
 - 42. In the present complaint the complaints booked a unit in the project of the respondent company namely, Smartworld One DXP situated a sector-113, Gurugram. The allotment for the said unit was made on 06.04.2023 and further the agreement to sale was executed interse parties on 18.05.2023. The total sale consideration of the unit was Rs. 2,73,56,511/- out of which the complainants have paid an amount of Rs. 27,35,724/-.
 - 43. The plea of the complainants-allottees is that the respondent company has illegally cancelled their unit and hereby they are seeking refund of the said unit.
 - 44. The plea of the respondent-builder is otherwise and submitted that the complainants are a defaulter and has failed to make payment as per the agreed payment plan. Various reminders and final opportunities were

Page 17 of 19



given to the complainants on 07.04.2023, 08.05.2023, 16.05.2023 and pre cancellation letter was also issued on 31.05.2023 and thereafter the unit was finally cancelled vide letter dated 20.07.2023 and refunded the full amount deposited by them through RTGS on 20.11.2023.

45. The authority has observes that the complainants expressed interest in the respondent company's project, "Smartworld One DXP" situated a sector-113, Gurugram, and made a payment of ₹ 27,35,724/-. The allotment for the said unit was made on 06.04.2023 and further the agreement to sale was executed interse parties on 18.05.2023. As per the payment plan the complainants have to make first instalment i.e., 10% of the total consideration value (TCV) on booking, second instalment i.e., 10 % of TCV has to be paid within 30 days of booking. The complainants have paid an amout of ₹27,35,724/- i.e., first instalment. Thereafter, the respondent started raising payments from the complainants however, the complainants defaulted in making payments and the respondent was to issue reminder letters dated 07.04.2023, 08.05.2023, 16.05.2023. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter dated 31.05.2023 the complainants failed to act further and comply with their contractual obligations and therefore the allotment of the complainants were finally terminated vide letter dated 20.07.2023. Accordingly, the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. Consequently, the respondent refunded the total amount paid by the complainants through RTGS on 20.11.2023. The



complainant's request for a refund is therefore moot, as the respondent has already effectuated the refund in full.

- 46. Hence no case for refund is made out.
- 47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
- 48. The complaints stand disposed of.
- 49. Files be consigned to registry.

(Sanjeev Kumar Arora) Member Haryana Real Estate Regulatory Authority, Gurugram

> HARERA GURUGRAM

Dated: 16.08.2024

Page 19 of 19