

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

Complaint no.:	1312 of 2023
First date of hearing:	29.08.2023
Order reserved on:	05.09.2024
Order pronounced on:	07.11.2024

Smt. Bharti

R/o: 520A/12, Front of the Gali No. 6,
Amargarh Gamri, Ashoka Colony, Kaithal,
Haryana-136027

Complainant

Versus

1. Royal Blue City Developers Pvt. Ltd.
Regd. Office at: Unit No. 314, 3rd floor, ILD
Trade Centre, Sohna Road, Sector-47,
Gurugram-122001

2. Royal Infra Buildtech Private Limited
Regd. Office at: Office No. 412, 4th floor, ILD
Trade Centre, Sohna Road, Sector-47,
Gurugram-122001

Respondents

CORAM:

Shri Vijay Kumar Goyal

APPEARANCE:

Ms. Daggar Malhotra (Advocate)

Sh. Chandra Prakash (Advocate)

Member

Complainant

Respondents

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

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promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

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 and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Royal Homes", Sector 39, Gurugram
2.	Nature of the project	Residential Unit
3.	RERA Registered/ not registered	Unregistered
4.	Unit no.	003, upper ground floor (As per page no. 14 of the complaint)
5.	Unit area admeasuring	850 sq. ft. (As per page no. 14 of the complaint) (Note: Inadvertently mentioned as 250 sq. ft. in proceedings dated 05.09.2024)
6.	Date of execution of agreement to sell b/w R1 and complainant	29.01.2020 (As per page no. 13 of the complaint)
7.	Possession clause	Clause 1 <i>The time of registry attentively by 15.08.2021 with a maximum extension of month from this date.</i>
8.	Due date of possession	15.08.2021 (As mentioned in the possession clause)
9.	Penalty to be paid as per agreement to sell in case of delay in handing over of	Clause 2 <i>That the work of building stops before the possession, then I will</i>

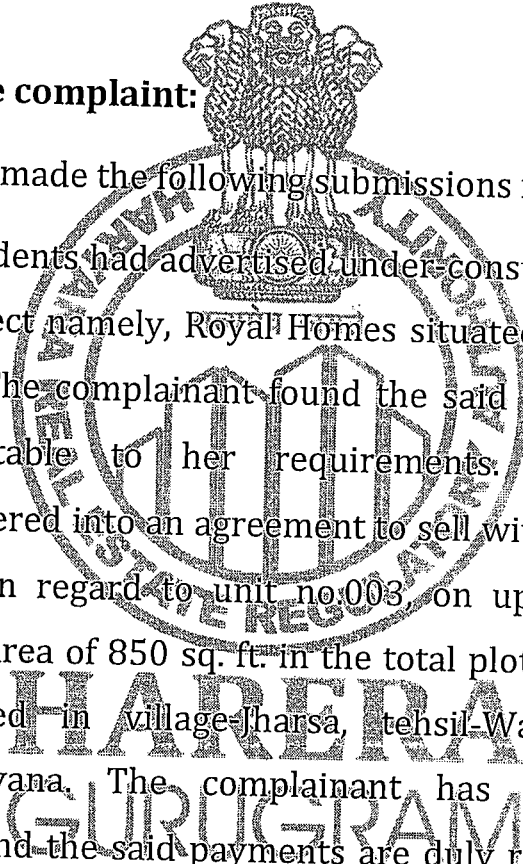
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	possession	<i>refund the money.</i>
10.	Total sale consideration	Rs.52,01,000/- (As per page no. 15 of the complaint)
11.	Amount paid by the complainant	Rs.13,01,000/- (As per page no. 16 of the complaint)
12.	Occupation Certificate/ Completion Certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the respondents had advertised under-construction residential units in its project namely, Royal Homes situated in Jharsa, Sector-39, Gurugram. The complainant found the said residential unit, as advertised, suitable to her requirements. Accordingly, the complainant entered into an agreement to sell with respondent no.1 on 22.01.2020 in regard to unit no.003, on upper ground floor, having covered area of 850 sq. ft. in the total plot admeasuring 325 sq. yds. situated in village Jharsa, tehsil Wazirabad, district Gurugram, Haryana. The complainant has paid a total of Rs.13,01,000/- and the said payments are duly recorded with date and amount in clause 1 of the agreement to sell. The payments were sought in the names of respondent no.1 and some payments were sought in the name of respondent no. 2 and thus the complainant had made the payments as sought.
- II. The total sales price of the same being Rs.52,01,000/-. The complainant has paid Rs.13,01,000/- to the respondents till date. That the pace of construction of the unit was very slow and the



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complainant brought that up before the respondent several times but to no avail. As per clause 2 of the agreement to sell, the respondent undertook to refund the entire amount so paid by the complainant in case the work of the building stopped before possession. The status of construction was nearly at a halt since several months and seeing the same, the complainant sought for refund of his hard-earned money from the respondent. The respondents initially undertook to complete the construction and get the registry of the unit executed by 15.08.2020 and later the respondent changed the said date to 15.05.2021 and stamped /signed the said change of date in agreement to sell. The construction of the said unit is far from complete even till date. The complainant even filed a complaint in an effort to get a refund of her hard-earned money.

III. That the complainant stumbled upon a piece of information regarding the project and was shocked to learn that the Authority vide order dated 10.11.2020 in complaint bearing no. RERA-GRG-2553-2020 ordered sealing of the said project premises on account of non-registration of the project with the Authority. The complainant along with her husband, Mr. Ashish Kumar had even taken a home loan of Rs.30,00,000/- for the purchase of said unit but owing to such severely slow pace of construction, the complainant and her husband pre-paid the entire loan amount and the same is evidenced vide certificate/letter dated 07.04.2022.

IV. That on account of all of the above-mentioned reasons, the complainant seeks refund of the entire amount paid by the complainant to the respondents with interest.

C. Relief sought by the complainant:

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4. The complainant has sought following relief(s):
- Direct the respondents to refund the entire amount of Rs.13,01,000/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - Direct the respondents to pay the litigation cost of Rs.1,00,000/-.
5. The authority issued a notice dated 29.03.2023 to the respondents by speed post and also on the given email address at advocatedaggarmalhotra@gmail.com, info@rbcdevelopers.co.in and ramkumar1752@gmail.com. The delivery reports have been placed in the file. But only respondent no. 1 has filed the reply and put in appearance during the proceedings. The respondent no. 2 has failed to file reply and put in appearance within the stipulated period despite ample opportunities vide hearing dated 29.08.2023, 23.11.2023, 20.02.2024, 07.03.2024, 11.07.2024, 05.09.2024 and 07.11.2024. Accordingly, the authority is left with no other option but to struck off the defence of the respondent no. 2 and proceed ex-parte against the respondent no. 2 and decide the complaint on the basis of documents and pleadings filed by the complainant and respondent no. 1.

D. Reply by the respondent no. 1:

6. The respondent no. 1 has contested the complaint on the following grounds:
- The present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The complainant has no locus-standi and cause of action to file the present complaint. Even otherwise, the present complaint is liable to be dismissed under Section 3 of the Act of 2016 which inter-alia provides that no

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promoter or builder or contractor, as the case may be, shall fall in the ambit of this Act, where area, to be developed is less than 500 sq. mts. or the apartments are not more than eight, therefore, the present complaint itself become infructuous, as in para no. 4 of brief facts of the complaint, the complainant herself admitted categorically that the plot measuring an area of 325 sq. yds. which consists of upper and ground floor, therefore, the present complaint is liable to be dismissed on this score alone.

- ii. That as far as agreement to sell dated 22.01.2020 is concerned, it is submitted that as the provisions of the Act of 2016 and Rules, 2017, framed thereunder, provides that every agreement to sell must be registered with the concerned sub-registrar, but in the instant case, neither the so called agreement to sell is registered with any authority nor the same was ever executed by the answering respondent no.1 at any point of time.
- iii. That the complainant has alleged that she has paid an amount of Rs.13,01,000/- to the respondents, and in reply to this context, it is submitted that out of the so called amount, only an amount of Rs.5,00,000/- only has been received by the respondent no. 1.
- iv. That despite there being a number of defaulters in the project, the respondent no. 1 itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode.
- v. That without prejudice to the aforesaid and rights of the respondent no. 1, it is submitted that the respondent no. 1 would have handed over the possession of the property to the buyer within time had there been no force majeure circumstances beyond the control of respondent no. 1, there had been several circumstances which were



absolutely beyond and out of control of the respondent no. 1 such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the extraction of water was banned which is the backbone of construction process; simultaneously, orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these, the demonetisation is also one of the main factors to delay in giving possession to the home buyers as demonetisation caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent no. 1 unable to cope with the labour pressure. However, the respondent no. 1 is carrying its business in letter and spirit and in compliance of other local bodies and autonomous bodies of Haryana Government.

- vi. That the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint.
- vii. The respondent no. 1 reserves all its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage. In view of the above submissions on facts and law, the present complaint may be dismissed.

7. The complainant has filed the complaint against R1 to R2 i.e., Royal Blue City Private Limited and Royal Infra Buildtech Private Limited. The agreement to sell was executed with R1 but the payments were made to



R1 and R2 both. The reply has been filed by R1 along with an affidavit filed by Sh. Kuldeep Kumar, Authorized Representative of R1 and no reply has been filed by R2 despite multiple opportunities being given as mentioned above. Therefore, both the respondents are jointly and severally responsible to the complainant-allottee in terms of provisions under section 2(z)(k)(i) & 2(z)(k)(ii).

8. The counsel for the complainant has filed a replication on behalf of the complainant on 14.08.2024 to place on record additional documents in which it was stated that the present complaint is well within the purview of the Authority as the project of the respondent consists two towers containing 16 apartments each i.e., 32 apartments in total being developed by the respondents on a total area much larger than 1000 sq. yds. and thus, the present complaint is admissible and maintainable.
9. The counsel for the complainant vide proceedings of the day dated 05.09.2024 that the respondent has sold more than 8 units without registration and requests for initiation of penal proceedings against the respondent/promoter. On the request of the complainant, the Authority has directed the registry to forward a copy of the penal proceedings of the day dated 05.09.2024 for initiation of penal action against the respondent/promoter. As per the information provided by the planning branch, the authority has taken suo-moto action against the respondents/promoter in complaint no. 2553-2020 and imposed a penalty of Rs.50,00,000/- vide order dated 10.11.2020 as the respondents/promoter have never applied for registration in the Authority and directed the promoter to apply for registration within a period of one month from the date of that order and ordered sealing of the said project premises on account of non-registration of the project with the Authority.

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E. Jurisdiction of the authority:

10. 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

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 complainant 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.* SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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 the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

F. Findings on objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab &

Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the extraction of water was banned which is the backbone of construction process, passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, non-availability of construction material and labour and demonetisation of currency. But all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by **15.08.2021** with a maximum extension of month from this date. The events taking place such as restriction on construction due to extraction of water and weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

- G.I Direct the respondent to refund the entire amount i.e., Rs.13,01,000/- to the complainant at the prescribed rate of interest from the date of respective payments till its complete realization
15. The complainant was allotted a unit in the project of respondent "Royal Homes", in Sector 39, Gurugram for a total sum of Rs.52,01,000/-. An agreement to sell dated 29.01.2020 was executed between the respondent no. 1 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.13,01,000/.
16. The due date of possession is 15.08.2021 as clearly specified in the possession clause of the agreement to sell. The occupation certificate of the project where the unit is situated has still not been obtained by the respondents/promoter.

17. That it is evident from the above mentioned facts that respondents will refund the amount paid if the work of the construction stops before the possession.

18. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:*

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project."

19. Further in the judgement of 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.

20. 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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to

23. 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.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below.

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

25. 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., 07.11.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., **11.10%**.

26. The counsel for the respondent in its reply and vide proceedings of the day dated 07.11.2024 stated that an amount of Rs.5,00,000/- has been received by respondent no. 1 but as per the bank statement placed on record by the complainant at page no. 18-19 of the complaint, it is evident that an amount of Rs.5,00,000/- was received by respondent no. 2 and rest of the amount is respondent no. 1 i.e., Royal Blue City Private Limited. The counsel for the respondent no. 1 also confirmed that the unit of the complainant is incomplete and respondents/promoter had not

applied for registration till date and the occupation certificate of the project is not obtained till date and no offer has been made. Thus, authority after considering the facts stated by the complainant and the counsel for the respondent no. 1 and also the documents placed on record is of the view that the complainant is well within her right for seeking refund under section 18(1)(a) of the Act, 2016.

27. The authority hereby directs the respondents/promoter to return the amount i.e., Rs.13,01,000/- received by them respectively with interest at the rate of 11.10% (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*.

G.II Direct the respondent to pay an amount of Rs.1,00,000/- to the complainant as cost of present litigation.

28. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation 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 shall be adjudged by the 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.

H. Directions of the Authority:

29. 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 respondents /promoters are directed to refund the amount i.e., Rs.13,01,000/- received by them respectively from the complainant along with interest at the rate of 11.10% 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 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 paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
30. Complaint stands disposed of.
31. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.11.2024