

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

Complaint no. : 4643 of 2020
First date of hearing: 19.02.2021
Order reserved on : 02.04.2024
Order pronounced on: 20.08.2024

1. Mr. Govind Singh
2. Mrs Manju Kharayat

R/o: Flat No. A1-602, Puri Diplomatic Greens,
Dwarka Expressway, Sector-111, New Palam
Vihar, Gurugram

Complainants

Aaliyah Real Estate Private Limited
Registered address: 271, Phase-II, Udyog Vihar,
Gurugram-122016

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Jagdeep Kumar
Shri Somesh Arora and Ms. Manisha
Ranjan

Advocate for the complainants
Advocate for the respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 16.12.2020 has been filed by the complainants under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Baani City Centre", Sector-63, Village Maidawas Gurugram, Haryana
2.	Nature of the project	Commercial Colony
3.	DTCP license no. and validity status	80 of 2010 dated 15.10.2010 valid upto 14.10.2023
4.	Name of licensee	M/s Aaliya Real Estate Pvt. Ltd. BIP Holder vide order dated 04.01.2016
5.	HRERA registration details	Registration no. 66 of 2022 dated 18.07.2022 valid upto 17.02.2025
6.	Unit no.	a. BG-032, Ground Floor, 339 sq. ft. [As per allotment letter on page 14 of the reply] b. BG-030, Ground Floor, 339 sq. ft. [As per BBA on page 42 of the CRA]
7.	Provisional allotment letter dated	15.09.2011

		[As per annexure R1, page 14 of the reply]
8	Date of execution of buyer's agreement with complainant no. 1	06.06.2014
9	Endorsement of ½ ownership rights in favour of the complainant no. 2	06.07.2018
10	Possession clause	<p>2. Possession</p> <p><i>2.1 The intending seller, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the commercial space within a period of forty-two (42) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement, whichever is later ("commitment period"). Should the possession of the commercial unit not be given within the commitment period due to any reason (except delays mentioned in clause 9 below), the intending purchaser agrees to an extension of one hundred and eighty (180) days ("grace period") after expiry of the commitment period for handing over the possession of the commercial unit.</i></p> <p>[Annexure 01, page 46 of the CRA]</p>
11	Date of building plan	24.01.2013 [As per page 48 of reply]
12	Due date of possession	06.06.2018 [Calculated from date of buyer's agreement i.e. 06.06.2014, being later.]



		<i>Grace period of 180 days is allowed.</i>
13	Total sale consideration	Rs. 23,73,000/- [BSP] Rs. 33,46,087.95 [As per statement of account dated 20.06.2018 on page 63 CRA]
14	Amount paid	Rs. 33,76,757/- (including PLC of Rs. 2,37,300) [As per statement of account dated 20.06.2018 on page 63 CRA]
15	Occupation certificate	16.01.2018 [As per page 60 of the reply]
16	Final notice for possession	05.02.2018 [As per annexure 03, page 64-65 of the CRA]

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That the respondent published very attractive colourful brochure, highlighting the commercial complex 'Baani City Center' at Sector-63, Village Maidawas, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy retail shops in the project. There are fraudulent representations, incorrect and false statements in the brochure. The project was launched with the promise to deliver the timely possession having good construction quality and strictly according to the approved designs and layout plans, and thereby, huge funds were collected over the period by the respondent.

- ii. The complainants were approached by the sales representatives of the respondent, who made all claims about the project 'describing it as the world class commercial project. The complainants were invited to the sale office and were lavishly entertained and promises were made to them that the project would be finished in time, complete with parking and other common area amenities and facilities. The complainants were impressed by their statements and oral representations and ultimately lured to pay Rs.2,37,300/- at the time of booking of the commercial corner shop in 2011.
- iii. The 'Commercial Space Buyer's Agreement' was executed on 6th June, 2014 between the parties for the above corner Shop bearing no. BG-030, Ground Floor, measuring 339 square feet super area in 'Baani City Center', situated at Sector-63, Village Maidawas, Gurugram, Haryana. As per statement of account as on 20th June, 2018, the complainants have paid a sum of Rs.33,76,757/- towards the allotted shop, including preferential location charges of rs.2,37,300/- for the corner shop. In this way, the complainants have already paid almost 100% of the total cost of the shop, as and when demanded by the respondent.
- iv. The respondent has violated section 13 of the act, 2016 by taking more than ten per cent (10%) cost of the shop from the complainants before the execution of the buyer's agreement. The total cost of the shop is Rs.34,46,258/- including EDC and IDC while the respondent had collected a total sum of rs.7,34,174/-, i.e. more than 20% of the total cost of the shop till 6th June, 2014 i.e. the date of execution of 'commercial space buyer's agreement'.

- v. The respondent issued the notice for possession dated 5th February, 2018 to the complainants. Further, it is submitted that when the complainants visited their above said shop before taking actual physical possession, they were shocked to find various defects and deficiencies in the said shop. The complainants noticed that the respondent had constructed five pillars inside the shop, fitted a fire hydrant and a drainage pipe in precincts of the Shop, passing through the roof and side walls, that too without the consent or prior knowledge of the complainants. Also, the shop of the complainants, being a corner Shop, should have been two side open but the respondent illegally constructed the full right-side wall of the Shop and left nothing open for the purposes of having a grandeur display, for which the complainants have paid a handsome huge amount of preferential location charges. In these circumstances, the respondent is not entitled to take or retain any amount towards preferential location charges.
- vi. The acts of the respondent are absolutely illegal, unlawful, arbitrary and against the commitments and promises made at the time of booking in 2011. Moreover, the respondent has detracted from the layout plans and building plans. The said pillars and adage of wall collectively reduced the area to the extent of 35.23 square feet. Further due to said pillars, 46.20 square feet of area became useless in the allotted shop. In this way, area of the shop came out to be 81.43 square feet less than the actual agreed and committed super area. Also, the fire hydrant and drainage pipes are part of common area and not of carpet area which is for the exclusive use of the allottee/occupant. In this way, area of the shop came out to

be 81.43 square feet less than the actual agreed super area. The installation of the fire hydrant and drainage pipe inside the shop of the complainants has not only reduced the height of the false ceiling by one foot but also has adversely impacted the installation of the high rise cup-boards, air conditioner, furniture, etc. Further the said fire hydrant and drainage pipe shall suffer leakage during their normal wear and tear causing damage to the interiors of the shop and loss of business for the period of repairs. The presence of unwanted pillars, shafts, fire hydrant and drainage pipe have rendered the shop of the complainants unusable & unsuitable and has defeated the intended purpose of buying the commercial Shop. Therefore the respondent is liable to refund the whole amount already taken by it from the complainants towards the preferential location charges and also to refund the amount pertaining to the above said reduced super area at Rs.7000/- per square feet along with interest.

- vii. The complainants have paid, as and when demanded by the respondent, a total sum of Rs.33,76,757/- for the said Shop out of the total sale consideration of Rs.34,46,258/-. After identifying the above-mentioned defects in construction of the shop, the complainants contacted the respondent on several occasions through personal meeting, emails, calls and so on, but to no avail, as the respondent has failed to submit any justified response and remove these defects and deficiencies. Moreover, the complainants requested the respondent to refund the preferential location charges, refund of amount pertaining to reduced area and to rectify

the defects but the respondent failed to address the issues of the complainants.

- viii. The officials of the respondent made promises to the complainants that they would remove the fire hydrant and drainage pipe from their shop and would also pay compensation to the complainants for the harassment and mental agony faced by the complainants but instead of taking any such remedial steps, the respondent sent an e-mail on 15th April, 2019 to the complainants stating that they will not charge any maintenance charges till complainants' issues get resolved. This mail is sufficient to establish that there were some violations on the part of the respondent in complying with the terms of the 'commercial space buyer's agreement'. Further the respondent was well aware of these violations and tried to circumvent its liabilities, duties and functions towards the complainants.
- ix. It is submitted that as per clause 2.1 of the 'commercial space buyer's agreement', the offer of possession was to be made by the respondent within 42 months plus 180 days of grace period from the date of execution of 'commercial space buyer's agreement'. Therefore, the respondent was legally bound to give possession of the shop to the complainants till 6th June, 2018. It is further submitted that although the respondent offered the possession of the shop on 5th February, 2018 but the offer of possession given by the respondent was not a valid and legal 'offer of possession' because a shop constructed with several defects by neglecting to follow the approved designs and layout plans, cannot be legally offered for actual physical possession. Hence, in these

circumstances, the respondent has failed to give the possession of the shop to the complainants within the stipulated time and hence the respondent is also liable to pay delay possession charges to the complainants from 6th june, 2018 till actual and legally valid and rightful possession of the shop is given to the complainants.

- x. That in order to circumvent the legitimate demands of the complainants, the respondent revised the preferential location charges from 15% to 12.5%, i.e. From Rs. 3,55,950/- To Rs. 2,37,300/- as per the statement of account in this way, the respondent illegally retained rs.2,37,300/- although the respondent was not entitled to take/retain any amount towards preferential location charges, because of the reasons described in preceding paras.
- xi. In order to console the complainants regarding their grievance of not getting a two-side open shop despite being a corner shop, the respondent made a two feet wide slit/window in the side wall of the Shop. The complainants objected to the said acts of the respondent because these remedial measures taken by the respondent were quite insufficient and insignificant to enable the respondent to become entitled to retain the total cost of the shop and the balance preferential location charges retained by the respondent. Besides this, the respondent cannot escape from its liabilities to pay compensation to the complainants for all their sufferings due to illegal, unlawful and arbitrary acts of the respondent.
- xii. The respondent failed to construct the project as per the commitments and promises made at the time of booking of the

- shop in 2011, though the respondent has already taken almost 100% payable amount from the complainants against the shop bought by them.
- xiii. The respondent kept the complainants in dark about the actual and true status of the construction of their shop. The respondent kept telling the complainants that their shop would be ready as per the commitments and the promises made to them. The complainants had reposed faith in the representations made by the respondent about the development of the project. The respondent kept raising demands but the construction activities were undertaken by the respondent as per its sweet will and not as per the approved designs and layout plans of the project. In this way, the Respondent has intentionally and wilfully violated the provisions of Section 7(1)(b) & Section 14(1) of 'The Real Estate (Regulation and Development) Act, 2016.
- xiv. The complainants sent a Legal Notice dated 9th August, 2019 to the respondent, describing all the difficulties faced by the complainants and requested the respondent to refund the amount pertaining to reduced area and also to refund the preferential location charges of Rs.2,37,300/- collected by the respondent and remove the defects, but the respondent failed to submit any justified response. The complainants sent another legal notice dated 21st June, 2020 raising their grievances but Respondent instead of addressing them the Respondent through its reply dated 23rd July, 2020 denied the same on bogus and worthless grounds, having no legal sanctity at all.

- xv. The complainants have lost confidence and in fact have got no trust left in the respondent as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainants besides being guilty of indulging in unfair trade practices and deficiency in services in not abiding the terms of the agreement and then remaining non-responsive to the requisitions of the complainants.
- xvi. In the given premise and circumstances, it is submitted that the respondent/seller/builder/promoter/company is habitual of making false promises and has deceptive behaviour. The respondent has earned handsome money by duping the innocent complainants and other buyers through company's unfair trade practices and deficiencies in services and has caused the complainants immense pain, mental torture, agony, harassment, stress, anxiety and financial loss.
- xvii. The complainants hereby seek to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent/seller/builder/promoter/company, which amount to unfair trade practices, breach of contract and are actionable under the Real Estate (Regulation and Development) Act, 2016.
- xviii. That, there are various defects in construction of the Shop. The complainants contacted the respondent on several occasions through personal meeting, emails, calls and so on but to no avail as the respondent has failed to submit any justified response and remove these defects and deficiencies in the construction of the Shop. Moreover, the complainants requested the respondent to refund the preferential location charges, refund of amount

pertaining to reduced area and to rectify the defects but the respondent failed to address the issues of the complainants. These constitute deficiencies of servicers by the respondent. The cause of action is recurring in nature and subsisting and has accrued finally when the respondent has not submitted any justified response to the complainants. Thus, the complaint has been filed within time with effect from accrual of the cause of action.

C. The complainants are seeking the following relief:

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

- i. Direct the respondent to refund with interest as per the act, from the date of receipts, the amount of Rs.5,70,000/- towards the decreased area of 81.430 square feet at Rs.7,000/- per square feet, charged and taken from the complainants.
- ii. Direct the respondent to refund with interest as per the act, from the date of receipts, the amount of Rs.2,37,300/- charged and retained by respondent towards the preferential location charges from the complainants.
- iii. Direct the respondent to rectify/uninstall the installed fire hydrant as well as the drainage pipe passing through the roof and the side wall of the allotted shop and thereafter give legal and rightful possession of the shop to the complainants or compensate in lieu of the same by paying Rs.10,00,000/- to the complainants.
- iv. Direct the respondent to pay delay possession charges to the complainants from 6th June, 2018, on the amount taken by the respondent, till legal and rightful offer of possession is given to the complainants by the respondent.

- v. Direct the respondent to compensate the complainants to the tune of Rs.5,00,000/- for the mental agony and harassment suffered by the complainant.
5. 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 filed by the respondent.

6. The respondent have contested the complaint on the following grounds:
- i. That the contents of the complaint filed by the complainants, averments made, facts stated and allegations levelled against the respondent are wrong, false, frivolous and denied being factual incorrect.
 - ii. That the present complaint is a sheer abuse of the provision of the RERA Act and Rules and also a waste of time of this Authority and the present complaint filed by the complainant is not maintainable in law and in facts and lacks merit to be adjudged by this Authority.
 - iii. That the complainant has failed to place material facts on record and has filed the present complaint with the sole intention to cause legal injury to the respondents. All allegations made in this complaint are a figment of the complainant's imagination and do not hold true.
 - iv. That the reputation and trustworthiness of the respondents is extraordinary as all its projects were completed timely and quality construction is unmatched. That it is pertinent to note that the unit was sold as Shop no. BG-030 on ground floor having super area of

339 sq. ft and the ratio of covered area to super area was 50:100 meaning thereby an area of 169.5 sq. ft. was allotted as covered area. There is no change in the Super area offered i.e. 339 sq. ft. Both covered and Super area is as per contract and industry norms.

- V. The allegation of raising 5 pillars without the permission of the complainants is bereft of any reasoning as the entire structure is constructed as per approved building plans and pillars too are part of covered area. The width of side wall of corner property, not being a common wall, is for usage of corner property owner so the allegation of 50% additional dimension of right corner wall is fallacious. All calculations of pillars and right-side wall area as well as assertion of uselessness and reduced super area are unjustified and illogical.
- vi. That further, the allegations regarding installation of fire hydrant and drainage pipe passing through the roof and entire building is constructed accordingly and unit of the complainants is no exception. Nothing has been constructed/installed in violation of builder agreement and prevalent market trends of construction of these kinds of properties.
- vii. That it is pertinent to note that the allegations regarding reduction of PLC charges towards admission of its fault is categorically denied as the respondent has reputation of providing best possible services to , its clients and ensuring retention of clients for future projects also thus the respondent agreed to give some leeway for cordial relationship however the complainants refused to avail any such benefit thus there is no reason for any relaxation now. The

complainants have to strictly adhere to terms of builder buyer agreement.

- viii. That in view of the above stated facts in "preliminary facts and objections to the maintainability of the suit" it is humbly submitted that the complaint of the complainant be dismissed, and relief as prayed by the respondents may be granted.
- ix. That the complainant has placed false facts with regard to the construction status of the project. The complainant has failed to put on record that the respondent's construction completed the entire of the project for which part OC was received on 16.01.2018. That it is therefore pertinent to note that this Tribunal has no jurisdiction to entertain and adjudicate the present complaint and therefore the same should be dismissed in limine.
7. 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

8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. 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, Haryana 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 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.

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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay delay possession charges to the complainants from 6th June 2018, on the amount taken by the respondent, till legal and rightful offer of possession is given to the complainants by the respondent.

12. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges. The buyer's agreement was executed between the parties on 06.06.2014. According to clause 2.1 of the agreement, the promoter assured to handover possession of the said unit within a period of forty-two (42) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement, whichever is later with an extension of other 180 days and the due date comes out to be 06.06.2018. Occupation certificate was granted by the concerned authority on 16.01.2018 and thereafter, the possession of the subject flat was offered to the complainants on 05.02.2018. Copies of the same have been placed on record. The authority is of the considered view that there is no delay on the part of the respondent to offer physical possession of the subject flat. Hence, no case of delay possession charges is made out under proviso to section 18(1) of the Act.

F.II Direct the respondent to refund with interest as per the act, from the date of receipts, the amount of Rs.2,37,300/- charged and retained by respondent towards the preferential location charges from the complainants.

13. Adjudicating the above relief, the authority shall first go by the relevant clause of the BBA. Since there is no clause in BBA which specifically talks about PLC instead payment plan annexed with BBA clearly mentions ₹ 3,55,950/- to be paid by the complainants in lieu of PLC. As per statement of account dated 20.06.2018 the complainants have already paid an amount of ₹ 2,37,300/- towards PLC. The authority has heard the arguments by both the parties at length. Needless to say, that the agreement for sale/the builder buyer's agreement executed between the parties i.e. the promoter and the allottee is binding on them and they are not entitled to avoid any terms or conditions contained herein except those terms or conditions which are against the public policy or where there are reasons to believe that the same were incorporated in the agreement by the promoter by taking benefit of his being in dominant position and the allottee had no option but to sign on the dotted lines. Since there is no mention of the fact in BBA as to why the complainants are entitled to pay for PLC except for the payment plan annexed with BBA therefore the authority by not going in technicalities and literally interpreting the same hereby, holds the opinion that respondent- promoter is well within the limits of BBA to charge PLC.

F.III Direct the respondent to refund with interest as per the act, from the date of receipts, the amount of Rs.5,70,000/- towards the decreased area of 81.430 square feet at Rs.7,000/- per square feet, charged and taken from the complainants.

14. The counsel for the complainants submitted that there are five pillars inside the shop apart from fire hydrant opening, drainage pipe etc. Certainly, the utility of the shop is reduced and there was no such prior intimation to the allottee about at the time of booking and at the time of BBA. In view of the above said relief the Authority observed that the relief is relates to compensation. The complainants may approach the adjudicating officer for seeking the said relief.

G.III Direct the respondent to compensate the complainants to the tune of Rs. 5,00,000/- for the mental agony and harassment suffered by the complainant.

15. The complainants in the aforesaid reliefs are seeking relief w.r.t compensation. 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. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)**, has 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. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

16. In the light of the facts mentioned above, the complainants have not suffered any delay in the handing over of possession. Hence, the claim of the complainants w.r.t. delay possession charges is rejected being devoid of merits.

17. Hence, no case for DPC is made out.
18. Complaint as well as applications, if any, stands dismissed being not maintainable. The case stands disposed off accordingly.
19. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.08.2024

HARERA
GURUGRAM