

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

Complaint no. : 2744 of 2023  
Date of complaint : 22.06.2023  
Date of order : 11.09.2024

Neha Singh and Prasun Singh,  
**Both R/o:** - Flat no. 1203A, Tower J,  
SS COrealwood, Sector 84, Gurugram-122004.

**Complainants**

Versus

KPDK Buildtech Private Limited.  
**Registered Office at:** - Paryavaran Complex,  
2<sup>nd</sup> Floor, IGNOU Road, New Delhi-110030.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Sanjeev Kumar Sharma (Advocate)  
Himanshu Singh (Advocate)

Complainants  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/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 under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Newtown Square" at Sector 95-A Gurugram
2.	Nature of the project	Commercial Complex
3.	Project area	3.075 acres
4.	DTCP license no.	98 of 2013 dated 09.11.2013 valid upto 08.11.2019
5.	Name of licensee	Mahender Kumar Gupta
6.	RERA Registered/ not registered	192 of 2017 dated 14.09.2017 valid upto 30.11.2018
7.	Unit no.	FF/089, First floor (page 12 of complaint)
8.	Unit area admeasuring (super area)	375 sq. ft. (page 12 of complaint)
9.	Date of agreement for sale	23.10.2019 (page 10 of complaint)
10.	Possession clause	<b>10.1 Schedule for possession of the said commercial unit</b> <i>"The Seller agrees and understands that timely delivery of possession of the commercial Unit to the Allottee and the Common Areas to the association of allottees or the competent authority, as the case may be, provided under Rule 2(1)(f) of the Rules, is the essence of the Agreement. The Seller assures to handover possession of the Commercial Unit by <b>November 2019</b> unless there is delay or failure due to 'force majeure', court orders, government policy/guidelines, decisions affecting the</i>

		<i>regular development of the real estate project..."</i> (page 8 of reply)
11.	Due date of possession	30.11.2019 (As per possession clause 10.1 of the agreement on page 7 of reply)
12.	Total sale consideration	Rs. 32,53,125/- [as per BBA on page 14 of complaint]
13.	Amount paid by the complainant	Rs.36,09,752/- [as per cancellation letter on page 51 of reply]
14.	Occupation certificate	04.08.2020 (page 5 of reply)
15.	Offer of possession	Not offered
16.	Cancellation letter	01.03.2023 (page 49 of reply)

### B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a commercial unit bearing no. FF/089, having super area of 375 sq. ft., First Floor in the project of the respondent named 'New Town Square' at Sector 95A, Gurugram vide agreement for sale dated 23.10.2019 for a total sale consideration of Rs.32,53,125/-.
- II. That post execution of the agreement, the complainants have encountered numerous issues related to the delivery of shop allotted. The complainants have attempted to address these concerns directly with the builder, but its response was inadequate and unsatisfactory.
- III. That the complainants were shocked to see that the builder vide letter dated 10.12.2021, without taking any consent from them engaged in a lease agreement with M/S Reliance Trends and asked them to pay Rs.3,05,325/- over and above the amount fully paid by them to it.

- IV. That upon enquiring about this illegal lease agreement, the respondent has given false commitments of providing suitable alternate shops in the same project, but whatever shops it has offered does not have the same value as their allotted property.
- V. The complainants were surprised to see that the builder has issued a letter of cancellation dated 01.03.2023 to the complainants and suggested for a refund of paid amount of Rs.36,09,799/- with nominal interest charge which was not acceptable to them. The builder had asked for a response within 15 days from the issuance of the cancellation letter to which the complainants have replied through a legal notice dated 15.03.2023 to the builder raising their concerns to which the respondent did not reply.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- i. Direct the respondent to handover the possession of the unit and rent from October 2020 till date @100/sq. ft./month.
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 by the respondent.**

6. The respondent has contested the complaint on the following grounds.
- i. That the respondent had completed the construction of the said project in all aspect in June 2019 and thereafter, the company had applied for the occupancy certificate for the said project on 27.09.2019 with the DTCP, Haryana which was conditionally approved on 27.05.2020. It is submitted that the final occupancy

certificate for the said project was received on 04.08.2020. The respondent has further submitted that the occupation certificate was also delayed due to national lockdown announced by the Government of India due to Covid-19 pandemic. It is submitted that this delay of the competent authorities in the granting of OC cannot be attributed in considering the delay in delivering the possession of the allotted unit, since on the day the answering respondent applied for OC, the unit was complete in all respects.

- ii. That in 2019, the complainants applied for booking a commercial unit in the said project which was subsequently approved by the respondent and a commercial shop bearing no. FF/089, having tentative super area 375 sq. ft on the First Floor of the project was allotted to the complainants.
- iii. That after mutually constant made by both the parties, an agreement to sell dated 23.10.2019 was executed between the parties with respect to the impugned shop which was part of a similarly placed cluster of shops at the first floor. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties. It is submitted that the cost of the commercial unit as per the buyer's agreement was Rs.32,53,125/- plus taxes and other charges.
- iv. That the present complaint is not maintainable since possession had to be handed over to the complainants in terms of clauses 10.1 and 10.2 of the builder buyer agreement dated 23.10.2019 which clearly provides that the seller assures to hand over possession of the commercial unit by November 2019 unless there is delay or failure due to 'force majeure', court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project.

Further, it is submitted that the force majeure conditions are beyond the control of the respondent. However, the respondent has already obtained the occupation certificate for the said project on 04.08.2020.

- v. That the present complainants which have filed this complaint has no locus standi as the unit allotted them stands cancelled on 21.09.2020, before issuing a reminder letters as per agreed payment plan for clearing the outstanding dues on 17.06.2020, 29.07.2020 etc. Thereafter, the complainants have paid an amount of Rs.9,47,501/- through cheque dated 01.10.2020. It is further brought to the notice of the Authority that making the said payment, an outstanding amount of Rs.9,97,006/-, is still pending. Therefore, due to non-payment, the respondent cancelled the unit on 01.03.2023.
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**

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**

8. 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**

9. 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.

10. 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.

**F. Findings on the relief sought by the complainants.**

**F. I Direct the respondent to handover the possession of the unit and rent from October 2020 till date @100/sq. ft./month.**

11. The complainants were allotted a commercial unit bearing no. FF/089, having super area of 375 sq. ft., First Floor in the project of the respondent named "New Town Square" at Sector 95A, Gurugram vide agreement for sale dated 23.10.2019 for a total sale consideration of Rs.32,53,125/- against which they have paid a sum of Rs.36,09,752/- in all.
12. The complainants have submitted that the respondent vide letter dated 10.12.2021, illegally and arbitrarily without taking consent from them



engaged in a lease agreement with M/S Reliance Trends and asked them to pay Rs.3,05,325/- over and above the amount fully paid by them. Thereafter, on non-acceptance of said leasing arrangement, the unit of the complainants was cancelled by the respondent vide cancellation letter dated 01.03.2023 and a refund of paid amount of Rs.36,09,799/- with nominal interest charge was suggested to them. The respondent has submitted that the unit of the complainants was cancelled due to non-payment of outstanding dues as the complainants were liable to pay an amount of Rs.9,97,006/- on account of fit-out and maintenance charges. However, after careful perusal of the letter dated 01.03.2023, it is determined that the complainants wanted to keep the unit for self-use and were not willing to lease the space to Reliance Trends as suggested by the respondent. Therefore, on failure of the complainants to reach a consensus with the respondent to resolve the issue and in the best interest of the project and several other allottees, the respondent showed its inability to offer the allotted space to the complainants and cancelled the allotment in terms of clause 10.1 of the buyer's agreement and also suggested to refund the entire paid-up amount of Rs.36,09,752/- alongwith compensatory interest @6% in terms of clause 10.6 of the agreement. In view of the above, the arguments advanced by the respondent w.r.t cancellation of the unit on account of non-payment of outstanding dues falls on the face of it.

13. On consideration of the documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10.1 of the agreement executed between the parties, the





possession of the subject unit was to be delivered by 30.11.2019. However, vide cancellation letter dated 01.03.2023, the respondent showed its inability to offer possession of the unit to the complainants in terms of the agreement dated 23.10.2019 and proceeded for full refund of the amount paid.

14. Further, vide proceedings dated 11.09.2024, the counsel for the complainant Sh. Himanshu filed power of attorney and stated that now the complainants wish to obtain full refund of the amount paid alongwith interest to which the counsel for the respondent stated that the respondent has no objection to the demand of complainants for full refund with interest.
15. Keeping in view the fact that the complainant/allottees wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016. 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)*

16. 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."*

17. 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 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 the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.

18. 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*.

**G. Directions of the authority**

19. 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 respondent/promoter is directed to refund the amount i.e. Rs.36,09,752/- received by it from the complainants 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 deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is 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 complainant-allottees.

20. Complaint stands disposed of.
21. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2024



**HARERA**  
**GURUGRAM**