

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

Complaint no. : 2079 of 2022
Complaint filed on : 25.05.2022
Date of decision: 08.10.2024

Shri Anuj Kumar

R/o: H.no. 156, Sector 4, Rohtak, Haryana- 124001.

Complainant

Versus

1. M/s Reliable Realtech Pvt. Ltd.
Regd. Office: 34/C-8, Sector 8, Rohini,
New Delhi-110085.

2. M/s Decent Realtech Pvt. Ltd.
Corporate Office: N.K. Jai Advocate,
Naya Bazar, Bhiwani, Haryana-127021.

Respondents

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Shri Raghavendra Singh

Shri Shankar Wig

Counsel for the complainant

Counsel for the respondent no.1

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

| S.N. | Particulars | Details |
|------|--------------------------------|---|
| 1. | Project name and location | "Antriksh Heights", Sector 84, Gurugram |
| 2. | Project area | 23.10 acres |
| 3. | Nature of project | Residential group housing colony |
| 4. | RERA registered/not registered | Not registered |
| 5. | DTPC License no. | 123 of 2008 dated 14.06.2008 |
| | Validity status | 13.06.2018 |
| | Name of licensee | Reliable Realtech Pvt. Ltd. |
| 6. | Occupation details | Certificate OC received dated 19.05.2016 for tower/block- <ul style="list-style-type: none"> ➤ AF (ground floor to 17th floor) ➤ AG (ground floor to 9th floor) ➤ AH (ground floor to 7th floor) ➤ AI (ground floor to 9th floor) |

| | | | |
|----|--|-------------|---|
| | | | <ul style="list-style-type: none"> ➤ AJ (ground floor to 9th floor) ➤ AL (ground floor to 18th floor) ➤ EWS (ground floor to 10th floor) <p>OC received dated 14.10.2016 for tower/block-</p> <ul style="list-style-type: none"> ➤ AE (ground + 1st floor to 19th floor) ➤ AG (10th floor to 19th floor) ➤ AH (8th floor to 19th floor) ➤ AI (10th floor to 19th floor) ➤ AJ (10th floor to 19th floor) <p>OC received dated 07.02.2020 for -</p> <p>Primary School (Ground floor to 3rd floor)</p> |
| 7. | Respondent claiming deemed occupation certificate in respect of following towers | | <ul style="list-style-type: none"> ➤ Tower AA - 80 Units, ➤ Tower AB - 80 Units, ➤ Tower AC - 74 Units, ➤ Tower AD - 80 Units, ➤ Tower AE - 40 Units Balance, ➤ Tower AK - 71 Units ➤ Tower AM - 160 Units ➤ EWS - 107 Units ➤ Convenient shopping, Community center, balance part of the basement |
| 8. | Occupation details | Certificate | <p>OC received dated 21.09.2020 for tower/block-</p> <ul style="list-style-type: none"> ➤ AA (ground floor to 19th floor) ➤ AB (ground floor to 19th floor) ➤ AC (ground floor to 18th floor) ➤ AD (ground floor to 19th floor) ➤ AE (ground floor to 19th floor) ➤ AK (ground floor to 18th floor) ➤ AM (ground floor to 19th floor) ➤ EWS block (ground floor to 10th floor) ➤ 2 no's Convenient Shopping Type- 1 (ground only) |

| | | |
|-----|--------------------------------|---|
| | | ➤ Community Building (ground floor to 1 st floor) |
| 9. | Unit no. | 1202, 14 th floor, Tower/block- AM measuring 1350 sq. ft. (Page 23 of the complaint) |
| 10. | Date of allotment letter | 13.04.2012 (Page 40 of the complaint) |
| 11. | Date of execution of agreement | 09.08.2012 (Page 21 of the complaint) |
| 12. | Possession clause | <p>12. POSSESSION, RIGHTS AND INTERESTS</p> <p><i>The Owner and Allottee(s) shall be bound by the rules and regulations of Haryana Apartments Ownership Act 1983.</i></p> <p><i>The Owner shall construct the Apartment as early as possible and within 3 years, from the start of construction work unless due to unavoidable circumstances, it is not possible to do so, however, time is not the essence of this Agreement to Sell in this regard. If the construction is completed earlier, the possession thereof can be delivered even earlier. The objections of the Allottee(s) in this regard are not tenable/ entertain able.</i></p> <p>(Page 28 of the complaint).</p> |
| 13. | Due date of possession | 09.08.2015 |

| | | |
|-----|--------------------------------------|--|
| | | Note: Date of commencement of construction is not given by either of the parties. Thus, the due date of handing over the possession is calculated from the date of execution of the said agreement i.e., 09.08.2012 |
| 14. | Total sale consideration | Rs.56,84,000/- (As stated by the complainant, page 18 of complaint) |
| 15. | Total amount paid by the complainant | Rs.54,46,569/- (As stated by the complainant, page 18 of complaint) |
| 16 | Occupation certificate | 21.09.2020 |
| 17 | Offer of possession | 27.12.2019 |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That the complainant was on the lookout to purchase a flat in the year 2012. For this purpose, the complainant were approached by the broker of respondent who showed the brochures of the upcoming project '**Antriksh Heights**, Sector 84, Gurugram Haryana falling in the revenue estate of Village Sihi, Tehsil & District Gurugram to the complainant and enticed him to book a flat in their project.
 - ii. That the complainant booked a flat bearing no. 1202, block 'AM' on 12th floor with a super area of 1350 sq. ft. with an exclusive right to use '1' car parking space in the abovementioned project of the respondent. The total sale consideration was Rs. 56,84,000/- which

included the basic sales price, preferential location charges, parking charges and other charges exclusive of service tax. Complainant was issued an allotment letter dated 13.04.2012 by the respondent no.1.

- iii. That the complainant and respondents entered into a builder buyer agreement for the same on 09.08.2012. The arbitrariness of the respondents herein is evident from the fact that according to clause 13(b), the respondent has the sole and exclusive right to charge 18% simple interest in case of delay of payment by the allottee and shall also hold the right to cancel the booking and forfeit the earnest money paid by the allottee. According to clause 13 of the said agreement, timely payment of all dues and charges is a condition prerequisite, implying that time becomes essence of the contract only in as much as it is applicable to the payment by the allottees/complainants and does not bind the respondents in any manner whatsoever as evident by the clauses and time provided to both the parties in case of breach of any condition.
- iv. That the complainant demanded timely payment of the money which they paid on time and has paid an amount of Rs.54,46,569/- in total.
- v. That the complainant was making timely payments to the respondents as and when demanded but the respondent dishonestly obscured the status of the project which is evident from the fact that complainant many times made calls seeking status of the construction status of the project but to no avail. According to the schedule of payment, the payments were based on a

construction linked plan and the respondent has to hand over the possession of the flat in three years from booking the flat but till date no possession was given of the flat to the complainant. The complainant has paid 95 % of the total amount agreed at time of booking of flat.

- vi. That according to the builder buyer's agreement signed on 09.08.2012, the scheduled date for possession was 09.08.2015 as explicitly mentioned in clause 12 of the builder buyers agreement. But no construction work was done till date on the tower where the complainant booked his said unit. Despite adhering to the payment plan and its timeline for clearing the payments of the respondent, the possession of the unit has not yet been given to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the amount paid by the complainant along with the prescribed rate of interest payable from the date of payment made by the complainant to the respondent till the date of realization as per the provisions of section 19 of the Act read with rule 15 of the Rules.
 - ii. Direct the respondent to compensate the complainant by paying an interest @ 24% per annum on the amount already paid i.e. Rs. 54,46,569/- from the time it was paid till date.
 - iii. Grant any other relief in favour of the complainant as the hon'ble authority may deem fit and proper in the fact and circumstances of the case.

5. On the date of hearing, the authority explained to the respondent/promoters 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. Application for dismissal of complaint by the respondent no.1

6. The respondent no.1 has made the following submissions:

- i. That the complaint filed by the complainant before the hon'ble Authority besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Hon'ble Authority and is trying to take benefit of his own misconduct on the premise that the Act being a home buyer friendly and centric law can be misused to his advantage according to his own whims and fancies.
- ii. That the complainant has concocted stories and needless to mention the entire complaint is nothing but a bundle of white lies worn on affidavit filed by the complainant which is explanatory of the fact that the complainant for the process of law has stopped him so low that he has gone to the extent of committing the offence of perjury i.e. swearing a false affidavit before the Oath Commissioner/Notary Public and submitting the same in this Hon'ble Authority it is not out of place to mention that the suo-moto action under section 182 IPC, should be taken against the complainant.
- iii. That the respondent is a reputed builder of high reputation and integrity and had complied with all the norms prescribed by Act and other government bodies and has constructed the project fully

in all respects and needless to mention the respondent has been able to live upto the stringent tests of the Government Agencies in the matter of obtaining occupancy certificate and deemed OC as per the provision of Haryana Building Plan Code, 2016 u/s 23(6) which states as below:

"If no communication is received from the Competent Authority within 60 days of submitting the application for "Occupation Certificate", the owner is permitted to occupy building, considering deemed issuance of "Occupation certificate" and the application Form BR-VII shall act as "Occupation Certificate" However, the competent authority may check the violations made by the owner and take suitable action".

- iv. That the complainant has wrongly invoked the jurisdiction of this Hon'ble Authority without even having regard to the provisions of the Act which came into force on 01.05.2017 and needless to mention the said provisions of the Act are prospective in nature and cannot be applied retrospectively. It is the settled provision of law that whenever a new law comes into force, its provisions would be prospective in nature unless the legislature in its own wisdom decided to make it retrospective in nature.
- v. That vide interim order of the Hon'ble High Court of Punjab and Haryana whereby it was pleased to grant interim stay on the subject matter. Further, it was also observed by the Hon'ble High Court of Punjab and Haryana that there was a lapse on the part of the Competent Authority as the same was also clearly mentioned in the RTI vide it memo number RTI-3311/ATP (J)/2020/18670 which clearly mention in the Serial Number 31 of the said reply given by the competent authority.

- vi. That the complaint filed by the complainant is baseless and needs to be dismissed at the threshold level because the complaint was filed by the complainant on 05.05.2022, which is quite late then the grant of occupancy certificate to the respondent from the competent authority.
- vii. That here, it is equally important to mention that Hon'ble Court of Punjab and Haryana vide its CWP-16873-2020 has already given the clarification that the deemed occupancy certificate has already been issued to the respondent company dated 19.12.2016 wherein it was also been clarified by the Hon'ble Punjab and Haryana High Court that there was a complete lapse on the part of the concerned authority for issuance of the concerned occupancy certificate to the respondent company notwithstanding the same. The same has already been clarified by the Hon'ble Punjab and Haryana High Court stating that the deemed OC of the respondent company should be considered as 19.12.2016 so it is equally important to mention here that the current case needs to be dismissed at threshold as the same is filed after the grant of occupancy certificate from the Competent Authority.
7. The present complaint was filed on 25.05.2022 in the authority. On several occasions, the counsel for the respondent no. 1 put in appearance and was directed to file the reply within 2 weeks in the registry of the Authority. Instead of filing reply, the respondent no.1 has filed an application for dismissal of the complaint along with additional documents. Further, respondent no. 2 has failed to put in appearance

before the authority and has also failed to file a reply. In view of the same, the matter is proceeded ex-parte against respondent no. 2.

8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

9. 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

10. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

11. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief 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. 2021-2022(1) RCR(C), 357* 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* and 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.”

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case 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 amount paid by the complainant to it along with the prescribed rate of interest payable from the date of payment made by the complainant to the respondent till the date of realization as per the provisions of section 19 of the Act read with rule 15 of the Rules.**
- F.II Direct the respondent to compensate the complainant by paying an interest @ 24% per annum on the amount already paid i.e. Rs. 54,46,569/- from the time it was paid till date.**
15. The complainant was allotted unit bearing no. 1202, ground floor in tower A vide allotment letter dated 13.04.2012 for a total sale consideration of Rs.56,84,000/- and the complainant has paid a sum of Rs. 54,46,569/-.
16. During the course of proceeding dated 10.10.2023, the respondent stated at bar that part occupation certificate in respect of the above project was initially received on 19.05.2016, next OC on 14.10.2016 and for remaining

towers, the OC was applied but has been granted by the authority only on 21.09.2020, although the application for OC was made on 18.10.2016 and no order in respect of said application was passed by DTCP within the limitation period and hence, it is considered as deemed OC w.e.f. 19.12.2016 in terms of Section 23 (5) of Haryana Building Code, 2016. A CWP No.16873 of 2020 is also preferred before the Hon'ble High Court for declaring the above deemed occupation certificate w.e.f. 19.12.2016 but without prejudice to the same, the Department has finally granted occupation certificate only on 21.09.2020 wherein the unit of the complainant-allottee is situated. The complaint for seeking refund has been filed only on 25.05.2022 after grant of OC and offer of possession and hence, if refund is to be allowed, the same may be granted only after deduction of 10% earnest money alongwith other statutory taxes.

17. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is a case where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand refund of the amount received by the promoter in respect of the unit with interest at the prescribed rate.

18. The due date of possession as per buyer's agreement as mentioned in the table above is 09.08.2015. The complaint for seeking refund has been filed only on 25.05.2022 after grant of occupation certificate and offer of possession. The complainant has pleaded that the possession is delayed, and the construction is still incomplete. The plea of the complainant, however, is devoid of merit. At the cost of repetition, it is highlighted that the occupation certificate has already been granted by the concerned authority and thus, it is unfair to say that the project is still incomplete.
19. The allottee in this case has filed present complaint on 25.05.2022 which is after possession of the subject unit was offered to him after obtaining occupation certificate by the promoter. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made to him and demand for due payment was raised then only he has filed present complaint before the authority.
20. The allottee has not exercised the right to withdraw from the project after the due date of possession was over, till the offer of possession was made to them. This implies means that the allottee tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Had the complainant wished to continue in the project, the consequences for delay provided in proviso to section 18(1) would come in force and the promoter

would be liable to pay interest at the prescribed rate of every month of delay till the handing over of possession. However, in the present matter, this is not the case.

21. 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. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. But the complainant-allottee failed to exercise his right at the appropriate stage. When unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.
22. In case allottee wishes to withdraw from the project, the promoter is liable on demand to the allottee to return the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the

agreement for sale. The words 'liable on demand' need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest. If he has not made any such demand prior to receiving occupation certificate and unit is ready, then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and the proviso to section 18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay by the promoter. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. Versus Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)** and also in consonance with the judgement of Hon'ble Supreme Court of India in case of **M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P. and Ors. (supra)**.

23. The complainant has approached the authority for the refund of his deposited amount at a belated stage. The authority is thus of the view that forfeiture of earnest money is necessary to make good to the losses of the respondent who has completed the project and even offered possession of the unit. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY


Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

24. Hence, the authority hereby directs the promoter to refund the paid-up amount of Rs. 54,46,569/- to the complainant after deduction of 10% of the sale consideration. The respondent is further directed to pay an interest on the balance amount 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 filing of complaint i.e., 25.05.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.

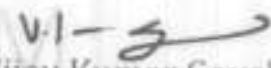
G. Directions of the authority

25. 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 is directed to return the paid-up amount of Rs. 54,46,569/- to the complainant after deduction of 10% of the sale consideration alongwith an interest on the balance amount 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 filing of complaint i.e., 25.05.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules.
 - ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
26. The complaint stands disposed of.
27. Files be consigned to registry.



Ashok Sangwan
Member



Vijay Kumar Goyal
Member



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 08.10.2024