

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

<b>Complaint no. :</b>	<b>1591 of 2022</b>
<b>Date of filing complaint:</b>	<b>12.04.2022</b>
<b>Date of decision:</b>	<b>18.10.2024</b>

Kamlesh Jain Manish Jain R/O: F-92 , Ground Floor , Green Park Main , New Delhi -110016	<b>Complainants</b>
Versus	
Classic Infrasoftware Pvt. Ltd Regd.Office: Room no. 205 , Welcome Plaza , S- 551,School Block II ,Shakarapur , New Delhi 110092	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Pawas Agarwal (Advocate)	Complainants
Sh. Priyanka Agarwal (Advocate)	Respondent

**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 29 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 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.	Heads	Information
1.	Name and location of the project	"Paras Irene", Sector-70A, Gurugram, Haryana
2.	Nature of the project	Commercial Project
3.	DTCP license no. and validity status	16 of 2009 dated 01.06.2009 valid up to 28.05.2024
4.	RERA registered/ not registered and validity status	Not registered
5.	Unit no.	01, 12 <sup>th</sup> A floor, N-03 - Tower (Page no. 26 of the complaint)
6.	Unit admeasuring	2150 sq. ft. (Page no. 26 of the complaint)
7.	Date of booking	09.05.2012 (As per page 17 of complaint)
8.	Date of allotment	09.05.2012 (As per page 17 of complaint)
9.	Date of flat buyer's agreement	11.01.2013 (Page 22 of complaint)
10.	Possession clause	<b>3.</b> <i>The seller proposes to handover the possession of the apartment to the purchaser within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or approval for commencement of</i>



		<i>construction whichever is later subject to force majeure.</i> <i>(Emphasis supplied)</i>
11.	Due date of delivery of possession	11.01.2017 (Calculated from the date of agreement as the date of approval of construction is not available in file )
12.	Total consideration	Rs. 1,38,12,379/- (As per demand letter dated 19.02.2016 on page 68 of complaint)
13.	Total amount paid by the complainants	Rs. 63,22,909/- (As per page 68 of complaint and also as per page 6 of complaint )
14.	Occupation Certificate	23.06.2017 (As per page 110 of reply)
15.	Demand letters	21.05.2012,08.08.2013,15.12.2013, 03.03.2014,28.05.2014, 29.11.2014, 01.12.2015, 19.02.2016, 08.04.2016, 20.05.2016, (As per page70-79 of reply)
16.	Pre cancellation letter	31.08.2015 (Page 105 of reply)
17.	Cancellation Letter	03.08.2016 (Page 75 of complaint) - on account of non-payment

### **B. Facts of the complaint**

3. That the complainant no.1 is a senior citizen and is an elderly widow aged about 74 years old and has no source of income. The complainants have invested huge sum of money in the project, "Paras Irene", located at Sector - 70A, Gurugram, Haryana .

4. That the complainants submitted application form dated 09.05.2012 for allotment of a residential unit in the said project. The complainants made a payment of Rs.7,50,000 towards the booking amount for the allotment of the said unit. The respondent company duly acknowledged the receipt of Rs.7,50,000 paid by the complainants and issued an allotment letter dated 09.05.2012 in favor of the complaints, confirming the allotment of the said unit.

5. That thereafter the complainants executed a builder buyer agreement dated 11.01.2013 with the respondent for allotment of a residential unit bearing unit no.01, floor 12 A, Tower N-03 .The respondent raised tall claims about the project and had also assured that the possession would be handed over within a period of 42 months from the date execution of the apartment buyer agreement.

6. That as per the terms of the builder buyer agreement the complainants were supposed to make further payments as per the construction linked payment plan to the respondent on the demand raised by the respondent. As per the terms of the agreement, the complainants had already made a payment of Rs. 22,57,500/- as on 16.10.2012 towards part payment of the said unit and the same was duly acknowledged by the respondent.

7. That the respondent raised demands time and again and the complainants made timely payments against all such demands as per the payment plan. Till date the complainants have paid an aggregate amount of Rs.63,22,909/- There has been no wilful default whatsoever, on part of the complainants in making payments of any of the aforesaid demands, as raised by the respondent. All the payments made by the complainants to the respondent were duly acknowledged by the respondent.

8. That at the time of making the above mentioned payments, the complainants time and again requested the respondent to provide the



details of the actual development of the project and the actual photographs of the project in support of the completion of construction or the development of project. The respondent did not adhere to the request of the complainants and kept on demanding the sale consideration without any actual basis of construction.

9. That after patiently waiting for the completion of the said unit, the complainants kept on making enquiries for the details of the construction and possession of the project from the respondent and it came as a shock to the complainants when they came to know that the construction has not been raised as claimed by the respondent in terms of the builder buyer agreement and as per the payment demanded by the respondent.

10. That the complainants were not satisfied with the speed / progress of the said project and the project was not likely to be completed in the near future, thereafter the complainants immediately requested the respondent thereby asking for the refund of the entire amount paid by the complainant with the serious apprehension that since nothing has been done on the part of the respondent for the completion of the said project, it seemed that the respondent has no intentions to construct, develop, and complete the said project.

11. That instead of providing the details of the development of the project, the respondent vide its letters dated 21.11.2015 and 08.04.2016 threatened that non-payment of instalments on the part of the complainants would amount to cancellation of the unit and forfeiture of the earnest money. The respondent further threatened the complainants that the complainants would lose considerable amount if the complainants opts for the refund and further restricted the complainant's right to cancel and ask for the refund of the booking of the said unit although the delay and default has been totally attributed to the respondent.



12. That the attitude of the respondent further developed serious apprehension regarding the conduct of the respondent as all the representations made by the complainant to the respondent turned out to be in vain. Thereafter, the complainants were again shocked to receive a cancellation letter dated 03.08.2016 thereby, cancelling the allotment of the said unit in the name of the complainants due to non payment, despite the fact that the respondent was unable to complete the construction of the unit in the prescribed time phase in terms of the builder buyer agreement.

13. That the respondent even after sending the cancellation letter to the complainants kept on demanding the balance amounts towards the sale consideration of the said unit. The complainants visited the office of the respondent and requested the respondent to refund his money, however, the respondent refused to refund the money of the complainants. Instead of refunding the amounts paid by the complainants, the respondent informed the complainants that the said unit has already been allotted to another person without any consent from the complainants and respondent offered an alternate unit to the complainants.

14. That till date the amount has not been given to the complainants and the above facts clearly show that the intention of the respondent were malafide since the very first day and the intention was only to extract monies from the complainants without any intent to abide by the terms of the builder buyer agreement executed between the parties. It is further submitted that the respondent has out rightly cheated the complainants and used the hard-earned money of the complainants for their personal gains, thereby causing huge loss to the complainants.

15. Thus, the complainants are entitled to the amounts paid to the respondent along with interest p.a. till actual date of realization.

16. The complainants have filed a rejoinder to the complaint where they are stating that the complainants were continuing default for non payment towards demand of builder and in 2018 still they wish to continue with the project and made the payment of an amount of Rs. 40,00,000/- but cheque was bounced. After the cancellation of the unit by the respondent, the complainants time and again requested the respondent to refund the amount as the said unit was already allotted by the respondent to another person. In the year, 2018 the respondent informed the complainants that the respondent company is facing cash crunch and would not be able to refund the amount paid by the Complainant and offered the complainant an alternate unit in other project of the respondent for a total consideration of more than Rs. 1 crore. The respondent further assured that the payment made by the complainants alongwith its interest will be adjusted in that alternate unit. Thereafter, adhering to the request of the respondent, the complainants to show its bonafide has given the cheque of Rs.40,00,000/- towards balance consideration of the alternate unit on the condition that the said cheque will be presented by the respondent only after the transfer/ adjustment of the amount already paid by the complainants and execution of the fresh agreement for such alternate unit. However, the respondents after taking the cheque from the complainants have slept over it and failed to share any document with respect to the transfer of the amount or execution of the any fresh agreement and failing which the complainants stopped the payment of the said cheque.

17. That no amount can be allowed to be deducted by the respondent from the refund as the respondent immediately after cancellation of the unit allotted the said unit to some other person and no loss has been caused to the respondent. The respondent has deliberately not disclosed or replied to the said fact that the said unit was already allotted to some other person by

the respondent. The amount if any is sought to be deducted by the respondent would be penal in nature and great prejudice will be caused to the complainants.

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

18. The complainant has sought following relief(s):

- i. Direct the respondent to refund the amount paid by the complainant along with interest.
- ii. Direct the respondent to pay compensation of Rs. 1,00,000/- for litigation expenses.

**D. Reply by respondent:**

The respondent by way of written reply made the following submissions

19. That the complainants, Mrs Kamlash Jain and Manish Jain approached the respondent for the booking of the unit in the respondent's project coming up at sector-70 A, Gurugram in the year 2012. the request of the original allottee was accepted and vide allotment letter dated 09.05.2012 was allotted a residential unit in the project developed by the respondent namely 'Paras Irene' situated at Sector-70A , Gurugram (tentatively admeasuring about 2150 sq.ft.). After being fully acquainted about the project, the flat buyer agreement was executed between the respondent and the complainants on 11.01.2013 The respondent was in the process of development of the project in accordance with tentative and consolidated layout plan, The Respondent proposed to handover the physical possession of the allotted unit within a period of 42 months from the date of execution of the fba or start from construction whichever is later , along with a further grace period of 6 months , subject to the flat buyer is not in default of



payment of instalments, and subject to other force majeure circumstances and timely payment of instalments.

20. That the respondent has raised each and every demand strictly in consonance with the payment plan opted and agreed at the stage of booking as well as within ambit of the clauses discretionally agreed and accepted by the complainant on execution of fba. That the complainants opted a construction-link payment plan and was supposed to make payments as and when demands were raised by the respondent. It is pertinent to mention here that as per the records maintained by the respondent, the complainants have not fulfilled his obligation and has not paid the installments from 2014 to till date. The respondents several times send reminders to clear outstanding which was due. Out of 11 Installments only 5 installments were paid by buyer. The allottee is on time that had fallen due, despite receipt of repeated Demand Letters and reminder letters. The Allottee started the default from 2014. The respondent has timely completed the construction and already obtained the occupation certificate on dated 23.06.2017 of the said tower in which the unit allotted to the complainants is located.

21. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented flat buyer agreement dated 11.01.2013 executed by the parties. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act.

22. That the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The relief(s) sought by the complainants travel way beyond the four walls of the agreement duly executed between the parties. The complainants while entering into the

agreement has accepted and is bound by each and every clause of the said agreement. The detailed relief claimed by the complainants goes beyond the jurisdiction of Hon'ble Authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainants. Therefore, in light of the settled law, the reliefs sought by the complainant in the complaint under reply cannot be granted by Hon'ble Authority.

23. That vide present complaint under reply the complainants sought the possession of the unit in question along with the compensation and interest thereon on the pretext that the respondent failed to complete construction.

24. That the complainants were habitual defaulter after reminders they were execute the builder buyer agreement. They were continuing default for non-payment towards demand of builder and In 2018 still they wish to continue with project and made the payment of Amount of Rs 40,00,000/- but cheque was bounced.

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

#### **E. Jurisdiction of the authority:**

26. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

27. 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.*

28. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

29. 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 judgements passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (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** 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."*

30. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Entitlement of the complainants for refund:**

**F.1 Direct the respondent to refund the amount paid by the complainant along with interest.**

31. In the present matter, the complainants were allotted a unit vide allotment letter dated 09.05.2012 and paid a sum of Rs. 63,22,909/- against total sale consideration of Rs. 1,38,12,379/-. The complainants approached the authority seeking relief of refund of the paid-up amount on the ground that the respondent has failed to construct the project as per the agreement and has not offered the possession.

32. The buyer's agreement was executed between the parties on 11.01.2013. As per clause 3 the respondent proposes to handover possession within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or approval for commencement of construction whichever is later. The date of builder buyer agreement is therefore to be taken as the date for calculating the due date of possession as the date of approval of construction is not available on record. Therefore, the due date of handing over of the possession of the unit comes out to be 11.01.2017. The occupation certificate has been received by the respondent on 23.06.2017. However no possession was offered by the respondent till date.

33. The respondent raised various demands on 21.05.2012, 08.08.2013, 15.12.2013, 03.03.2014, 28.05.2014, 29.11.2014, 01.12.2015, 19.02.2016, 08.04.2016, 20.05.2016, against the complainants for the amount due which were not cleared by them. So, the respondent sent pre termination letter on 31.08.2015 following which the respondent cancelled the unit of the complainants on 03.08.2016.

34. The due date of completion of project expired on 11.01.2017. The complainants, in their submissions, have stated that they wish to withdraw from the project and have requested a refund of the amount paid. However, no documentary evidence has been provided to indicate the date or specifics of when the complainants formally made this request for a refund.

35. In the proceedings dated 15.03.2024, and in the respondent's reply, it was stated that although the unit was cancelled on 03.08.2016, the complainants made an additional payment of Rs. 40,00,000/- on 31.10.2018. However, the cheque for this payment got bounced on 03.01.2019. The respondent further indicated that they would submit the

proof of bounced cheque. As of the date of this submission, no documentary evidence, including the bounced cheque, has been provided.

36. In the present case, the complainants have paid an amount of Rs. 63,22,909/- against a total consideration of Rs. 1,38,12,379/-. The respondent has cancelled the unit after numerous reminders and the cancellation cannot be faulted.

37. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."*

38. After cancellation of an allotted unit, the promoter is required to forfeit the earnest money and the same should be either as per the provisions of allotment / buyer's agreement entered into between the parties or as per the law of the land. But in the case in hand, after cancellation of the unit, the respondent after forfeiture of the earnest money did not return any amount to the allottee and illegally retained the same and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India*, AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors*, Civil

**Appeal No. 7266 of 2009** decided on 01.12.2015 , followed in **Jayant Singhal v/s M3M India ltd.** Consumer case no. 27669 2017 decided on 26.07.2022 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Even keeping in view the principle laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainants, the respondent did not return any amount and retained the total amount paid to it. Thus, the respondent is directed to refund the paid up amount of Rs. 63,22,909/- after deducting the earnest money which shall not exceed the 10% amount of the sale consideration along with interest at the prescribed rate of interest @ 11.10% p.a. on the refundable amount, from the date of cancellation i.e. 03.08.2016 till its realization within a period of 90 days.

**G.II Direct the respondent to pay compensation of Rs. 1,00,000/- for litigation expenses.**

39. The the complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357**, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal

expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the Authority:**

40. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the paid up amount of Rs. 63,22,909/- after deducting the earnest money which shall not exceed the 10% amount of the sale consideration along with interest at the prescribed rate of interest @ 11.10% p.a. on the refundable amount, from the date of cancellation i.e. 03.08.2016 till its realization.
- 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.

41. Complaint stands disposed of.

42. File be consigned to the registry.

Dated: 18.10.2024



**Ashok Sangwan**  
**(Member)**

Haryana Real Estate  
Regulatory Authority,  
Gurugram