



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

Complaint no.	:	4895 of 2023
Date of complaint	:	03.11.2023
Date of order	:	19.03.2025

Rakesh Gupta, R/o: Flat no. G-202, Gurugram One, Alpha G-Corp, Sector-84, Gurugram, Haryana-122004.	Complainant
Versus	
1. M/s Landmark Apartments Private Limited Regd. Office at: Plot no. 65, Sector-44, Institutional Area, Gurugram-122003. Also at: 4, Vipul Square, Sushant Lok-1, Gurugram-122002 and Plot no. 85, Institutional Area, Gurugram-122003. 2. Ravi Dabbas, Customer Relationship Manager, Through M/s Landmark Apartments Private Limited Having Office at: Plot no. 85, Sector-44, Institutional Area, Gurugram-122003	Respondents

CORAM:	
Ashok Sangwan	Member
APPEARANCE:	
Kalyan Singh Bhati (Advocate)	Complainant
Amarjeet Kumar (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. N.	Particulars	Details
1.	Name of the project	Landmark – The Residency, sector – 103, Gurugram
2.	Project area	10.868 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	33 of 2011 dated 19.04.2011 valid up to 15.04.2021
5.	Name of licensee	Basic Developers Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Provisional allotment letter	09.06.2012 (Page no. 69 of complaint)
8.	Date of execution of apartment agreement	03.08.2013 (Page no. 75 of complaint)
9.	Unit no.	B-82, 8 th floor, Block-B (Page no. 77 of the complaint)
10.	Unit area admeasuring	1350 sq. ft. (Page no. 77 of the complaint)
11.	Possession clause	10.1 Possession The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of Four years (48 Months)



		<p>from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11:1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above. [emphasis supplied] (Page 92 of the complainant)</p>
12.	Due date of possession	03.08.2018 (grace period is allowed being unconditional)
13.	Total sale consideration	Rs. 57,17,750/- (Page no. 81 of complaint)
14.	Amount paid by the complainant	Rs. 52,05,526/- (Page no. 120 of complaint)
15.	Occupation certificate	25.09.2020 (as per page 13 of reply and as per CR/794/2021)
16.	Offer of possession	11.12.2018, 31.03.2021 (As per on page 118 of complaint and page 16 of reply)
17.	Date of surrender	28.03.2022 (as per page 17 of reply)
18.	Memorandum of settlement w.r.t refund	28.03.2022 (page 119 of complaint)

19.	Amount refunded	Rs.35,05,526/- (as per page 21 of reply)
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B. Facts of the complaint:

3. The complainant vide complaint has made the following submissions: -

- I. That the complainant was allotted a flat bearing no. B-82, 8th floor, Tower-B, admeasuring 1350 sq. ft. in the project of the respondent named "Landmark the Residency" Sector- 103, Gurugram vide apartment buyer's agreement dated 03.08.2013 for a total sale consideration of Rs.57,17,750/- against which the complainant has paid a sum of Rs.52,05,526/- in all from time to time as per the demand notice of the respondent.
- II. That as per para no.10.1 of the agreement, it was settled between the parties that the respondent will hand over the possession of the above said Apartment to the complainant within 04 years from the date of execution of that agreement and as per para no. 11.4 of the agreement, there was also condition that if the developer is not in a position to handover the said flat applied for within 04 years, the developer, at his sole discretion, may terminate this agreement and refund the amount deposited with simple interest @9% p.a. which the respondents have totally failed to comply with the terms and conditions enumerated therein. It is also mentioned in the same para no. 11.4 that the respondents will pay a compensation as per the terms and conditions enumerated in the said para of the agreement.
- III. That the respondents have deliberately and knowingly delayed the construction and on visit to the site, the complainant found that the project was not completed as per agreement.
- IV. That the respondents with malafide intention on one pretext or the

other, even without signing the apartment buyer's agreement has made the complainant to deposit an amount of Rs.24,10,769/- with the respondents from dated 16.12.2010 to 16.07.2013 and ABA was signed on 03.08.2013 which is totally wrong and incorrect as per law for which the respondents are liable to pay an interest.

- V. That the complainant many times requested the respondents to handover the possession as per terms and conditions of the above said apartment, but the respondents always delayed the matter on one pretext or the other and did not handover the possession of the above said apartment to the complainant and has sent a false and fabricated letter for possession. Thereafter, the complainant visited the site along with notice no.4 and found that the site was not completed as per terms and conditions of the ABA then the complainant moved an application to the respondents for cancellation of the booking and refund of Rs.52,05,526/- with interest.
- VI. That seeing the situation of the flats and having discussion with the notice no.4 (Customer Relationship Manager) of the respondent no.1, the complainant on 28.03.2022 moved an application and cancelled the booking and demanded the refund of Rs.52,05,526/- with interest as the flats at the sight were still in doldrums condition and not completed and there were no chances for the completion and the respondents have also failed to update about the completion of the said flats.
- VII. That the complainant and respondents have signed a memorandum of settlement dated 28.03.2022 and the respondents promised to refund the full amount of Rs. 52,05,526/- with interest within 08 months but the respondents have returned only Rs.35,05,526/- and

is liable to refund a balance amount of Rs.17,00,000/- with interest @24% p.a. till its realisation as there is breach of agreement dated 28.03.2022 which was to be paid by 27.11.2022 as per terms and conditions of the said agreement.

VIII. That during the visit of the complainant at the respondents no. 1 to 4 and meeting with noticee no.4 who has flatly refused to refund the balance of Rs.17,00,000/- with interest and thereby violated the terms and conditions of the said agreement and knowingly and deliberately cheated the complainant and has done cheating and played a fraud with the complainant by not paying the balance of Rs.17,00,000/- which shows the malafide intention of the respondents.

IX. That the complainant has suffered irreparable mental tension, agony and harassment as well as financial and social loss from the conduct of the respondents. Therefore, the complainant is legally entitled to get separate compensation from the respondents .

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the balance amount of Rs.17,00,000/- alongwith interest @24% from 27.11.2022 till its realization.
 - Direct the respondent to pay amount @Rs.5/- per sq.ft. per month as per para 11.4 of BBA.
 - Direct the respondent to pay an interest on amount deposited before signing of apartment buyer's agreement with respondents.
 - Direct the respondents to pay litigation cost and compensation.
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 respondent:

6. The respondent vide its reply dated 03.07.2024 has contested the complaint on the following grounds:
- i. That the complainant in the instant complaint is praying for refund of balance amount along with interest and compensation along with legal fee. It is an admitted fact, that the complainant has cancelled the unit allotted to him and has signed a memorandum of settlement dated 28.03.2022 against which the complainant has already received a sum of Rs.35,05,526/- out of Rs. 52,05,526/-.
 - ii. That the complainant cannot approach this Authority as he is seeking a prayer which is of the nature of recovery and this authority does not provide recovery mechanism.
 - iii. That the complaint is barred by the principle of estoppel, since the complainant has already received the amount under settlement and now cannot wriggle out of the settlement. In addition, it is further submitted that the alleged unit in question has already been cancelled upon the request of the complainant and thus the complainant ceases to be an allottee within the definition of RERA and thus not entitled to institute the present complaint.
 - iv. That it is further asserted that in order to execute a memorandum of settlement the remedy available with the complainant is a suit for recovery which is can only entertained by the hon'ble civil court and not a complaint before this authority.
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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's 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 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.

F. Findings on the relief sought by the complainant.

F.I Direct the respondents to refund the balance amount of Rs.17,00,000/- alongwith interest @24% from 27.11.2022 till its realization.

12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest @24% p.a under section 18(1) of the Act. 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)

13. **Due date of handing over of possession:** Clause 10.1 of the apartment buyer's agreement dated 03.08.2013 provides for handing over of possession and is reproduced below:

10.1 SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of Four years (48 Months) from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in

accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. The Intending Allottee(s) agrees and undertakes that the company shall be entitled for a period of six months for the purpose of fit outs and a further period of six months on account of grace over and above the period more particularly specified here-in-above.

14. As per clause 10.1 of the buyer's agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months plus 12 months of grace period, in case the construction is not complete within the time frame specified. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by August 2017. Accordingly, in the present case the grace period of 12 months is allowed. Therefore, the due date of possession comes out to be 03.08.2018.
15. **Admissibility of refund along with prescribed rate of interest:** The complainant/allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at 24% p.a. However, the legislature in its wisdom in the subordinate legislation, under the provision of rule 15 of the rules vide notification dated 12.09.2019, has determined that for the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. the prescribed rate of interest. Therefore, in case the complainant/allottee intends to withdraw from the project after commencement of the Act, 2016, the amount paid by him shall be refunded alongwith interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The complainant has submitted that as per clause 10.1 of the buyer's agreement dated 03.08.2013, the respondents were liable to hand over possession of the flat within a period of 48 months from the date of execution of agreement, but the respondents have totally failed to comply with the terms and conditions enumerated therein. Further, when the complainant visited the site, he observed that the flats at the sight were still in doldrums condition and not completed and there were no chances for the completion. Therefore, the complainant on 28.03.2022 moved and application and cancelled the booking and demanded the refund of Rs.52,05,526/- with interest. Thereafter, the complainant and respondents signed a memorandum of settlement dated 28.03.2022, vide which the respondents promised to refund the full amount of Rs.52,05,526/- with interest within 08 months, but the respondents have returned only

Rs.35,05,526/- till date and is liable to refund the balance amount of Rs.17,00,000/- with interest @24% p.a.

19. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per clause 10.1 of the agreement dated 03.08.2013, the possession of the apartment was to be delivered by 03.08.2018. The respondent/promoter completed the construction and development of the project and got the occupation certificate on 25.09.2020 and also offered possession of the unit to the complainant on 31.03.2021. However, the complainant vide letter dated 28.03.2022, surrendered the allotted apartment and sought refund of the entire paid-up amount. Thereafter, an MoU was executed between the complainant and respondent/promoter on 28.03.2022, vide which it was mutually agreed between the parties that the respondent will refund the paid-up amount within 8 months from the date of its execution i.e. by 28.11.2022. However, the respondent/promoter has refunded an amount of Rs.35,05,526/- to the complainant by 26.09.2022 and the balance amount has not been refunded till date.
20. The Authority observes that 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 already offered possession of the unit after obtaining occupation certificate. 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 and demand for due payment was raised, then only, he has filed a complaint before the authority.
21. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance

with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it can be inferred that the allottee has tacitly consented to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Now, when unit is ready for possession, such withdrawal on considerations other than delay 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 allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.

22. In the instant case, the due date for handing over for possession was 03.08.2018. The OC was received on 25.09.2020 whereas, possession was offered to the complainant on 31.03.2021. However, the complainant surrendered the unit in question and sought refund of the paid-up amount alongwith interest vide letter dated 28.03.2022. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under.

"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."

23. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter was obligated to refund the paid-up amount of Rs.52,05,526/- after deducting 10% of the sale consideration of Rs.57,17,750/- being earnest money along with an interest at prescribed under as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 28.03.2022 till actual refund of the amount.
24. The authority observes that the respondent/promoter has already refunded an amount of Rs.35,05,526/- to the complainant by 26.09.2022, but the balance amount alongwith interest after permissible deduction as discussed above is yet to be refunded to the complainant.
25. In view of the above, the respondents/promoter is directed to refund the balance amount of Rs.17,00,000/- paid by the complainant after deducting 10% of the sale consideration of Rs.57,17,750/- being earnest money along with an interest @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 on the refundable amount, from the date the amount was supposed to be paid i.e., 28.11.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to pay amount @Rs.5/- per sq.ft. per month as per para 11.4 of BBA.

F.III Direct the respondent to pay an interest on amount deposited before signing of apartment buyer's agreement with respondents.

26. In view of the findings detailed above, the above said relief become redundant as the complainant in the present complaint is seeking refund of the balance paid-up amount and the unit stands surrendered.

F.IV Direct the respondent to pay cost of litigation and compensation.

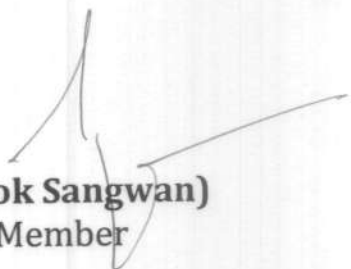
27. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation 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 and 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 and legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses. जयते

G. Directions of the Authority:

28. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the balance amount of Rs.17,00,000/- paid by the complainant after deducting 10% of the sale consideration of Rs.57,17,750/- being earnest money along with an interest @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 on the refundable amount, from the date the amount was supposed to be paid i.e., 28.11.2022 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.
29. Complaint stands disposed of.
30. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.03.2025



HARERA
GURUGRAM