

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

Complaint no. : 5262 of 2023
Date of complaint : 17.11.2023
Date of order : 22.01.2025

Anuradha Gupta and Namrata Gupta,
Both R/o: - H. No. 10/437, Khalasi Lines,
Kanpur, Uttar Pradesh-208001.

Complainants

Versus

KPDK Buildtech Private Limited.
Registered Office at: - A-8, Paryavaran Complex,
2nd Floor, IGNOU Road, New Delhi-110030.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Harshit Goyal (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.	SA/638, 6 th floor (page 31 of complaint)
8.	Unit area admeasuring (super area)	475 sq. ft. (page 31 of complaint)
9.	Date of space buyer's agreement	14.01.2016 (page 30 of complaint)
10.	MoU	05.11.2015 (page 18 of reply)
11.	Possession clause	2.1 Possession <i>Subject to force majeure circumstances..... the Seller proposes to offer possession of the said premises to the purchaser within a period of 36 months from the date of execution of the agreement (Commitment Period) subject to an extension of 6 months grace period.</i> (page 37 of reply)
12.	Due date of possession	14.07.2019 (grace period of 6 months is allowed being unqualified)

13.	Total sale consideration	Rs. 41,32,500/- [as per payment plan at page 49 of complaint]
14.	Amount paid by the complainant	Rs.40,15,418/- [as per SOA on page 25 of reply]
15.	Occupation certificate	Not on record
16.	Offer of permissive possession for fit-outs	21.10.2019 (page 52 of complaint)
17.	Surrender request in view of letter dated 21.03.2023	05.10.2023 (page 55 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a commercial apartment bearing no. SA/638, on Sixth Floor, in the project of the respondent named Newtown Square, Sector-95A, Gurugram vide MoU dated 05.11.2015. Thereafter, a space buyer' agreement dated 14.01.2016 was executed between the parties against the said allotment.
- II. That in the said MoU, the respondent categorically admitted that the total sale consideration of the said unit shall be of Rs.38,23,750/-. The complainants have paid an amount of Rs.40,15,418/- against booking of the said unit till date.
- III. That as per the MoU dated 05.11.2015, the respondent has further assured the complainants that the respondent shall pay to them Rs.28,041/- per month as assured return and the assured return shall be subject to the tax deduction at source, which shall be payable on or before 7th day of every English calendar month on due basis and this assured return shall be paid to the complainants through post-



- dated cheques, till such time the possession is handed over to the designated operator and not thereafter.
- IV. That as per clause 7 of the MoU, the respondent contemplates to execute the project within a period of 36 months or an extended period of 6 months from the date of this agreement. However, the respondent has also violated the terms of that clause and the complainants are suffering from such fake promises of the respondent.
- V. That the respondent has issued 12 post-dated cheques bearing nos. 127163 to 127174 in favour of the complainants assuring that these cheques have been issued by the respondent in discharge of their enforceable legal debt of paying the assured return to the complainants, further requesting them not to present the cheques unless complainants is asked for the same by the respondent.
- VI. That the respondent sent a letter dated 07.10.2017 to the complainants informing them that their project has been registered with the HRERA vide registration no.192 of 2017 dated 14.09.2017. The respondent further informed the complainants that the construction progress of the project is happening as per expected schedule and the construction of 7th Floor and 8th Floor slab level is under progress and the respondent anticipate the completion of the civil structure of their project in the month of October 2017.
- VII. That vide letter dated 29.10.2017, the respondent has informed the complainants that revised building plan has been approved and received from the Director, Town and Country Planning, Haryana, Chandigarh vide Memo No. ZP-944/SD (BS)/2017/26161 dated 17.10.2017. Thereafter, on 21.10.2019, the respondent issued a

letter/notice of permissive possession of unit in question to the complainants informing that the unit is ready for permissive possession for fit outs along with the statement of accounts.

- VIII. That on 21.03.2023, the respondent issued a letter to the complainants requesting/notifying them to give the respondent the additional government approval for pre-operation clearance from local authorities to start commercial apartment units operations after completion of fit-out work. Through this letter, the respondent offered to the complainants to refund the amount received on account of allotment along with applicable interest in accordance with the RERA guidelines, memorandum of understanding and terms and conditions of the builder buyer's agreement, signed and executed by complainants.
- IX. That in receipt of the letter dated 21.03.2023, the complainants have given their consent to get the refund of the amount, paid by them on several accounts and in this regard, they have confirmed the refund of their amount through email dated 01.05.2023. In continuation of the same and in response of the email dated 01.05.2023, the respondent wrote a letter dated 11.05.2023 to the complainants confirming that they have received the acceptance of the complainants for the refund of the money already paid by them. The respondent has also demanded original documents including allotment letter, builder buyer agreement, MoU and receipts to enable the respondent to proceed for refund in due course.
- X. That the respondent demanded all the original documents concerned with the said unit from the complainants and they have sent all the



original documents concerned to the respondent through a letter dated 18.05.2023, duly acknowledged by the respondent.

- XI. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainants towards the sale consideration of the said unit and they have duly paid and satisfied all those demands without any default or delay on their part and also fulfilled otherwise also their part of obligations.
- XII. That the respondent works against natural principle by not refunding the amount of Rs.40,15,418/- alongwith interest to the complainants, reasons best known to the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the paid-up amount alongwith interest.
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.
- 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.



- ii. That in 2015, 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. SA/638, admeasuring 475 sq.ft. on the Sixth Floor of the project was allotted to the complainants on 13.01.2016. Thereafter, an agreement to sell as well as MoU dated 05.11.2015 was executed between the parties with respect to the impugned shop.
- iii. That the respondent offered permissive possession of the impugned shop to the complainant after making application of occupation certificate vide letter dated 21.10.2019 and thereafter affidavit cum undertaking for permissive possession was submitted by the complainant.
- iv. That the respondent issued a letter dated 21.03.2023 to the complainants requesting/notifying them to give the respondent the additional government approval for pre-operation clearance from local authorities to start commercial apartment units operations after completion of fit - out work. Though this letter, the respondent offered to the complainants to refund the amount received on account of allotment along with applicable interest in accordance with the RERA guidelines, memorandum of understanding and terms and conditions of the builder buyer's agreement, signed and executed by complainants.
- v. That by way of the above MoU, it was mutually decided by both parties that after offer of possession by the respondent, the complainant would be eligible to receive a sum of Rs.28,041/- per month as return on investment. According to the memorandum of understanding entered into by the involved parties, the respondent



company disbursed an assured return totalling Rs.5,44,882/-. Additionally, the complainant was guaranteed a minimum return of Rs.10,87,367/- per year. However, upon the complainant's decision to seek a refund, the disbursement of the assured return ceased in accordance with the terms outlined in the MoU. However, owing to the worldwide pandemic situation due to the outbreak of novel Covid - 19 virus, the respondent was forced to apply moratorium on the return of investment and accordingly two options were provided to Ms. Anuradha Gupta and other similarly placed purchasers on the sixth floor and the complainant vide letter dated 03.04.2023 opted for the first Option i.e. refund the amount received on account of allotment along with applicable interest in accordance with the RERA guidelines, memorandum of understanding and terms and conditions of the builder buyer's agreement, signed and executed by her.

- vi. That the respondent raised a demand for all the requisite/original documents concerned with the said unit from the complainants to further process with the refund procedure as discussed with the complainants. However, no person came forward or approached the respondent for execution of the refund process. That after some period of time, when nobody approached the respondent, then the respondent in conception of complainants not willing to go further with refund process raised demands for the payment of installments on complainants towards the sale consideration of the said unit. It is pertinent to mention that when the complainants started complying with demands, it became utmost clear to the respondent that the complainants are not willing



to take refund and want to continue with the investment in the subject unit in question.

vii. That it is mere negligence on the part of the complainants that when they have opted for refund and due communication has been completed between the parties, still they did not approach the respondent to further execute with refund process and respondent under the garb of complainant's unwillingness to go with their opted choice of refund and complying with the demand shared by the respondent.

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 refund the paid-up amount along with interest.

11. The complainants were allotted a commercial unit bearing no. SA/638, admeasuring 475 sq.ft. on the Sixth Floor in the project of the respondent named "New Town Square" at Sector 95A, Gurugram vide space buyer's agreement dated 14.01.2016 for a total sale consideration of Rs. 41,32,500/- against which they have paid a sum of Rs. 40,15,418/- in all.
12. The counsel for the complainants vide proceedings dated 04.12.2024 has submitted that vide communication dated 21.03.2023, the respondent has given 2 options to the complainants i.e.

A. To refund the amount received on account of your allotment along with applicable interest in accordance with the RERA guidelines, Memorandum

of Understanding and terms and conditions of the Builder Buyer's Agreement, signed and executed by you.

B. If you desire to continue with our project, we will propose to sign a fresh addendum to the Memorandum of Understanding /Builder Buyer's Agreement or any such existing document, indicating the revised date of possession, operator details along with future returns/rent. Details will be shared on availing your desired option.

13. Subsequently, vide email dated 28.03.2023, the complainant conveyed to the respondent that they would choose option A for refund of the amount in accordance with the Rules and Regulations alongwith interest as applicable. Further, vide letter dated 11.05.2023, the respondent confirmed the acceptance for the request for surrender. He further submitted that the occupation certificate for the unit allotted to the complainant is yet to be received. Thus, the complainant is seeking refund of the full amount with interest without any deductions. On the other hand, the counsel for the respondent has stated that the unit of the complainants is complete and OC has been applied. So far as deductions are concerned, the statement of account dated 21.10.2019 at page 25 of the reply clearly mentions the amount paid to the complainant in terms of discount/assured return. The total assured return paid to the complainant is Rs.5,44,882/- and the same is liable to be deducted from the refund amount.

14. 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 provisions of the Act. By virtue of clause 2.1 of the buyer's agreement executed between the parties on 14.01.2016, the possession of the subject unit was to be delivered by 14.07.2019. However, the occupation certificate for the unit in question has not been received by the respondent till date. Further, the respondent vide letter dated 21.03.2023 has itself admitted that despite

their best efforts, more time is required to meet the operator's final schedule for completion of all commercial apartment units and commencement of operation of the commercial apartments. Thus, keeping in mind the above situation regarding delay in the operation of commercial apartment unit, the respondent vide above said letter offered two options to the complainants i.e. to either withdraw from the project and receive full refund of the amount paid along with interest or to continue with the project and receive future returns/rent. The complainants after receiving the same, vide email dated 28.03.2023 conveyed to the respondent that they are willing to accept the first option and are seeking refund of the amount alongwith interest as applicable, but the same has not been refunded to the complainants till date.

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. Moreover, the occupation certificate/completion certificate of the project where the subject unit is situated has still not been obtained by the respondent/promoter till date. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** 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*** it was observed that:

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."

18. 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.
19. 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

20. 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.40,15,418/- 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. Out of total amount so assessed, the amount paid by the respondent on account of assured return, if any shall be deducted from the refundable amount.
 - iii. 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.
 - iv. 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.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.01.2025