

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

**Complaint no. :** 2570 of 2023  
**Complaint filed on:** 22.06.2023  
**Order pronounced on:** 16.01.2025

**Dishant Tyagi**  
R/o: 76, Shanti Vihar, Delhi-110092

**Complainant**

**Versus**

**M/s Forever Buildtech Private Limited**  
Regd. office: 12<sup>th</sup> Floor, Gopal Das Bhawan,  
18<sup>th</sup> Barakhamba Road, New Delhi-110011

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Avnish Kumar Tyagi (Advocate)  
Shri Mintu Kumar (AR of Company)

**Complainant**  
**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 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 provisions of the Act or the rules and regulations made there under or 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 details of sale consideration, the amount paid by the complainant(s), date of proposed handing over of the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"The Roselia-2", Sector-95-A, Gurugram, Haryana.
2.	Project type	Affordable Group Housing
3.	Area of project	10.56525 acres
4.	RERA registered	Registered 05 of 2017 dated- 20.06.2017
5.	DTCP license	13 of 2016 dated 26.09.2016 63 of 2017 dated 03.08.2017
6.	Date of booking	14.11.2018 [Page 13 of complaint]
6.	Date of allotment	14.02.2019 [Page 13 of complaint]
7.	Date of execution of BBA	Not on record
8.	Unit no.	T-J 1603, 6 <sup>th</sup> floor [Page 16 of the complainant]
9.	Unit area admeasuring	514.272 sq. mt. buildup area [Page 16 of complainant]
10.	Possession clause as per BBA	N/A
11.	EC dated	28.01.2019 [As per website]
11.	Due date of possession	27.04.2023 [4 years from date of EC as per Affordable Housing Policy]
12.	Total sale consideration	Rs. 20,97,050/- [Page 16 of the complainant]
13.	Amount paid by the complainants	Rs. 2,29,852/- [Page 16 of the complainant]
14.	Cancellation request made by complainant	01.04.2019 vide email. (Page 17 of complaint)
15.	Cancellation letter dated	17.04.2019 (Placed on record vide proceedings dated 10.04.2024)

14.	Occupation certificate	Not on record
15.	Offer of possession	Not offered

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

3. The complainant has made the following submissions in the complaint: -
- a. That the complainant came across to respondent's representations/endorsements with respect to the project The Roselia-2 situated at sector 95-A, Gurugram, Haryana and believing respondent's said representations and respondent name in the real estate industry, the complainant made an application for the draw of lots for purchasing one independent floor/residential apartment in the said project on 14.11.2018. Upon application, the complainant made an initial payment of Rs. 104,852. This payment was recorded under receipt no. AMRC/0201/18-19.
  - b. In addition to the initial payment, the complainant was required to pay an additional Rs. 125,000 to top up the 10% of the estimated cost of the flat. This payment was made via cheque no. 403017, drawn on Punjab National Bank. This top-up amount was part of the financial commitment required for the flat.
  - c. That complainant's name was selected in the draw of lots and and the complainant was offered to purchase a residential apartment having approximately admeasuring 514.272 sq. mt. (build-up Area) in the said project at 6<sup>th</sup> floor on the residential apartment situated within the said project.
  - d. As agreed between the respondent and the complainant the total sale consideration for the said residential apartment was Rs. 20,97,050/-. On 14.02.2019 vide allotment letter, respondent had allotted residential

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apartment no. J- 1603, located on 6th flooring in Tower J in the said project.

- e. On two occasions, 01/04/2019 and 20/05/2019, the complainant sent emails to the Respondent to inquire about the status of the execution of the Builder-Buyer Agreement. The complainant was concerned as no agreement had been signed yet, which is a crucial step in confirming the terms and conditions of the sale of the flat.
- f. Despite the complainant's inquiry, the Respondent did not execute the Builder-Buyer Agreement. Instead, on 10/06/2019 and again on 09/08/2019, the respondent sent demand letters requesting further payments. The demand letters were issued without considering the complainant's earlier request for cancellation due to the non-execution of the Builder-Buyer Agreement.
- g. On 23/08/2019, the complainant responded to the demand notice by pointing out several provisions of 'THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.' The complainant referenced these provisions to highlight the respondent's failure to comply with the legal requirements related to the sale agreement and the lack of execution of the Builder-Buyer Agreement.
- h. On 29/08/2019, the Respondent replied to the complainant, acknowledging the concerns raised. In their response, the Respondent clarified that Roselia-2 is an extension of Roselia-1 and that Tower-1 is a separate structure within the Roselia-2 project. This clarification seemed to address some of the complainant's queries about the nature and specifics of the project.
- i. In response to the clarification from the respondent, on 06/09/2019, the complainant sent a further letter expressing their concerns. This letter



likely referred to the continued issues regarding the non-execution of the Builder-Buyer Agreement and the lack of transparency from the Respondent.

- j. On 09/09/2019, the respondent sent a final reply to the complainant, requesting them to visit the respondent's office for further clarification on the matter concerning the Roselia-2 project. This suggests that the respondent wanted to provide more detailed information or resolve the issues raised through an in-person discussion.
- k. Seeing the behavior of the respondent, the complainant wished to withdraw from the project and requested to terminate the unit vide email dated 20.05.2019.
- l. That the complainant is entitled to get refund of the paid amount along with interest from the date of booking/payment to till the date of refund/realization of money.

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

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

- a. Direct the respondent to refund the total amount paid by the complainant to the respondent as instalments towards the purchase of residential apartment along with prescribed interest per annum compounded from the date of deposit under section 18 & 19 (4) of RERA.
  - b. Grant any other relief in favour of the complainants 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 / 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 guilty.

**D. Reply by the Respondent**

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6. The respondent has contested the complaint on the following grounds:
- a. The complainant failed to inform this Hon'ble Authority about its previous complaint bearing No. RERA-GRG-4709-2019 which was dismissed by the Ld. Adjudicating Officer vide judgment dated 07-05-2023. Thereafter complainant filed present complaint stating similar facts/allegations and relying same annexure seeking similar reliefs.
  - b. After allotment, complainant was requested to get BBA registered. Since Affordable Housing Policy 2013 was implemented to avoid speculation and to provide housing to the genuine persons, respondent tried to convince the complainant, after request for cancellation email dated 01.04.2019 and 20.05.19, to execute the BBA and pay the instalment as per Affordable Housing Policy 2013 with no interest falling due before the due date for payment.
  - c. Since the complainant was rigid for cancellation, he was advised at [tyagi.dishant1986@gmail.com](mailto:tyagi.dishant1986@gmail.com) on July 10, 2019 to complete formalities for surrender to process to refund the deposited amount after deduction of applicable charges.
  - d. Instead of submitting signed copy of documents suggested in email dated July 10, 2019 to refund the deposited amount after deduction of applicable charges, complainant sent to respondent. Hence due to want of execution of necessary documents by the complainant for refund, the deposited amount after deduction of applicable charges could not be refunded to the complainant.
  - e. Complainant with other allottee was repeatedly requested to execute BBA vide email dated 11-07-19, 17-08-19 and 13-09-2019.
  - f. The respondent never denied the surrendered request made by the complainant and even today itself complainant can take refund the

deposited amount after deduction of applicable charges after providing the signed copy of necessary documents mentioned in email dated July 10, 2019.

- g. The complainant neither has executed the surrender documents to get refund nor has executed BBA but filed the previous and present complaint requesting refund. The complainant is filed present complaint without enclosing complete chain of conversation and thus concealed the facts material for adjudication of the present complaint.
- h. In the light of aforesaid facts and circumstances, it is categorically emerging that complainant is not an aggrieved person and present complaint emerges to be filed with malafide intention just to abuse the process of the law, waste the precious time of this Hon'ble Authority and to harass the Respondent. Hence, present complaint needs to be dismissed with cost.
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 based on these undisputed documents and submission made by the parties as well as the written submission of the complainant.

**E. Jurisdiction of the authority**

8. 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 as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

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(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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. 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 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 (Civil), 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."*

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

**F. I Direct the respondent to refund the total amount paid by the complainant to the respondent as instalments towards the purchase of residential apartment along with prescribed interest per annum compounded from the date of deposit under section 18 & 19 (4) of RERA**

14. The complainant was allotted a unit no. J-1603 on 6<sup>th</sup> floor, in tower/block-J, in the project "The Roselia-2" by the respondent/builder for a total consideration of Rs. 20,97,050/- under the Affordable Group Housing Policy 2013. No buyer's agreement was executed between the parties. According to Affordable Housing Policy, the possession of the unit is to be offered with 4 years from approval of building plans or from the date of environment clearance (28.01.2019 as per website) whichever is later. The due date of

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possession was calculated from date of approval of environment clearance i.e., 28.01.2019, as per policy, of 2013. The complainant paid a sum of Rs.2,29,852/- out of the total sale. Further, the complainant has placed an email dated 01.04.2019 on page no. 17 of the complaint which is reproduced as under for a ready reference:

*Even after multiple requests to get my BBA done, I never heard from you or your team on the status. Eventually I have been getting calls from my bank as well as signature to make the payment, but it feels like signature is not interested.*

*Hence, I am putting forward my application to cancel the apartment. Please let me know cancellation procedure ASAP.*

15. The respondent, on several occasions, sent emails to the complainant, specifically dated 11.07.2019, 17.08.2019, and 19.09.2019, requesting the execution of the Builder-Buyer Agreement (BBA). However, the said agreement was not executed between the parties, and as a result, the allottee has now formally requested a refund.
16. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.04.2019, the relevant provision is reproduced as under:

**Clause 5(iii) (h) of the Affordable Housing Policy**

*"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil

(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

*Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots”.*

17. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance is 28.01.2019 and hence, the same would be considered as date of commencement of project.
18. Accordingly, the respondent is entitled to forfeit 1% of the consideration money in addition to Rs.25,000/- as mandated by the clause 4(a) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019 as the request for surrender is within 1 years from the date of commencement of project.

**G. Directions of the Authority:**



19. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to refund the paid-up amount of Rs. 2,29,852/- after deduction of only Rs. 25,000/- with 1% cost of the flat and refund the balance amount, to the complainant after deductions as per the clause 4(a) of the Affordable Housing Policy 2013 along with interest @ 11.10% p.a. on such balance amount from date of seeking cancellation till actual realization of amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
20. The complaint stand disposed of.
21. File be consigned to registry.

**Dated: 16.01.2025**

*v.1 - 3*  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram