

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

Complaint no. : 5920 of 2022  
Complaint filed on: 12.09.2022  
Date of decision : 06.03.2025

**Anupam Aggarwal**

R/o: H.No. 1004, Tower A-1, Tulip White, Sector-69,  
Gurugram, Haryana-122001

**Complainant**

**Versus**

**M/s APT Infrastructure Private Limited & Anr.**

Office at: 423, 424, & 426, 4<sup>th</sup> Floor, Tower -B,  
Spazedge, Sector-47, Sohna Road, Gurugram,  
Haryana-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Gaurav Bhardwaj (Advocate)

None

Complainant

Respondents

**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 to the allottee as per the agreement for sale executed *inter se* them.

**A. Unit and project related details**



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

S. No.	Particulars	Details
1.	Name and location of the project	"Taksila Heights", Sector 37-C, Gurugram
2.	Unit no.	T10/1502 (As per demand letter dated 21.02.2017 at page no. 18 of the complaint)
3.	Total area	1536.290 sq. ft. (As per demand letter dated 21.02.2017 at page no. 18 of the complaint)
4.	Date of booking	14.02.2017 (Page no. 15 of the complaint)
5.	Allotment letter	Not on Record
6.	Date of buyer's agreement	Not Executed
7.	Possession clause	N/A
8.	Due date of possession	N/A
9.	Sale Consideration	71,23,517/- (Page no. 17 of the complaint)
10.	Offered Sale Consideration	67,58,879/- exclusive of taxes etc. (Page no. 17 of the complaint)
9.	Amount paid by the complainant	Rs.1,00,000/- (As per demand letter dated 21.02.2017 at page no. 18 of the complaint)





10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered
12.	Refund request made by the complainant through legal notice dated	06.09.2019 (Page no. 20 of the complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. The present complaint highlights the gross misconduct on part of the respondent company and the injustice meted out to innocent buyers by the former. A stringent action against both the respondents for defrauding the innocent buyers and for violation of the provisions entailed in Real Estate (Regulation and Development) Act, 2016 is sought by way of said complaint.
- b. Somewhere around 2017, the Respondent no.1 approached the complainant via respondent no.2, who claimed to be the office-in-charge/authorized broker of the respondent no.1 company and offered the sale of a ready to move residential flat in the residential group housing project of the respondent no.1 company namely, 'Taksila Heights' located at Sector 37-C, Gurugram.
- c. Thereafter, the complainant visited respondent no.1's office where both the respondents painted a rosy picture of the project and made various tall claims by showing the features and model flat to him, thereby inducing him to purchase a unit in the said project. To this, the complainant agreed to purchase a unit in said project and chose unit bearing no. T-10/1502, admeasuring super area of 1536.290 sq. ft.
- d. In the brochure shared with the complainant, the total cost of the unit in question was mentioned as Rs. 71,23,517/-. However, upon immediate

*Handwritten signature/initials*





booking, the respondent no.1 through its representative, respondent no.2, offered a deal of Rs. 67,58,879/- to the complainant. It was represented that the said amount would be all inclusive except the registration/stamp duty charges payable at the time of registration of conveyance deed. It was specifically assured that the said amount would be all inclusive and no other charges on account of tax or any hidden charges would be levied from the complainant and any payment towards tax shall be borne by the respondent no.1. The said assurance was recorded by respondent no.2, being agent of respondent no.1, in his own writing and signature underneath the brochure.

- e. Believing the representations of both the respondents, the complainant booked the unit bearing no. T-10/1502, admeasuring super area of 1536.290 sq. ft. in the project in question, by paying an amount of Rs. 1,00,000/- by cheque bearing no. 937603, dated 14.02.2017 drawn on PNB Bank towards the booking of the unit in question.
- f. Thereafter, vide demand letter dated 21.02.2017, the respondent no.1 raised demand due at time of possession. However, to the utter shock of the complainant, the said respondent had imposed several charges like labour cess, legal charges, meter charges thereby reflecting the total balance amount to be Rs. 70,23,517.43/-. It is further to note that out of the booking advance amount of Rs. 1,00,000/-, Rs. 95,693.7/- was adjusted towards unit instalment while Rs. 4,306.22/- was adjusted towards service tax. It is pertinent to mention here that the said conduct was completely contrary to the assurances given by both the respondents.
- g. After receipt of said demand letter, the complainant immediately visited respondent no.1's office and spoke to both the respondents in order to question them regarding the arbitrary demand letter completely against

12



the representations made by them at the time of booking. to this, the respondents said that they shall give all the taxable amount in cash while the receipts would reflect total amount as Rs. 71,23,517/-. However, the complainant was taken and completely refused to accept such unreasonable assertion of the respondents.

- h. The said conduct of both the respondents was completely unreasonable and misleading. Accordingly, the complainant decided to not continue with the booking and asked the respondent no.1 to refund the booking amount paid by them as he wished to withdraw from the booking. However, to his utter shock, the respondent no.1 outrightly refused to refund the booking amount paid by the complainant.
- i. The complainant kept pursuing the respondent no.1 to refund the amount paid by him as the respondent simply swayed away from his assurances on the basis of which the booking was made and thus there was never a binding legal transaction between the parties, but to no avail as the respondent no.1 paid no heed to the request of the complainant.
- j. That after no response from both the respondents after innumerable requests, the complainant had no option but to send a legal notice dated 06.09.2019 to the respondents seeking refund of the paid amount. however, to his utter shock, instead of refunding the amount, vide reply dated 14.11.2019, the respondent no.1 made all the false claims regarding the above-mentioned transaction and claimed to have rightfully forfeited the booking amount of the complainant.
- k. The question of forfeiture of booking amount does not arise as the transaction was never legal and was simply not taken forward in order to convert into a contract so as to enable the respondent no.1 to forfeit any amount. Moreover, no loss was caused to the respondents in order to



entitle them any forfeiture. It is further to note that prior to issuance of legal notice by the complainant, the respondent never sent any official letter informing him about the forfeiture and simply chose to sit over the money paid by the complainant. Thereafter, the complainant kept painstakingly pursuing the respondents to refund his hard-earned money but all in vain. the respondents simply duped the complainant of his hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondents have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainant and his family.

1. That the present complaint has been filed in order to seek refund of the principal amount paid by the complainant along with interest at the prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.

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

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

I. Direct the respondent to refund the total amount of Rs.1,00,000/- as allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate from the date of payment till the date of actual receipt.

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:





- a. That present complaint was filed on 12.09.2022 and registered as complaint no. 5920 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. The authority also sent notice vide speed post on 29.11.2022 and email dated 25.11.2022. However, none appeared on behalf of respondents. The respondent was directed to file reply in the registry, subject to cost of Rs.10,000/-. The respondent neither filed reply not paid the cost imposed on it despite adequate opportunity given vide proceeding dated 24.01.2023, 18.07.2023. Thus, vide proceedings dated 26.10.2023, the defence of the respondent was struck off.
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 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 allottees 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.*

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 complainant 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. (Supra)*** 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."*

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 complainant**

**F.I Direct the respondent to refund the total amount of Rs.1,00,000/- as allottee wishes to withdraw from the project and without prejudice to any other remedy available seeks return of the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate from the date of payment till the date of actual receipt.**

14. The complainant booked residential unit no.-T10/1502 admeasuring area of 1536.290 sq. ft. The complainant paid an amount of Rs. 1,00,000/- through cheque dated 14.02.2017, for which no receipt was issued by the respondent in this regard.
15. The present complaint has been filed by the complainant alleging arbitrary escalation of the unit cost, wrongful imposition of charges, and unlawful forfeiture of the booking amount by the respondent-promoter without issuance of any receipt, allotment letter, or execution of a builder buyer agreement.

A



16. The respondent issued a demand letter dated 21.02.2017, wherein the said payment of Rs. 1,00,000/- was acknowledged and adjusted partly towards unit instalment (Rs.95,693.78/-) and service tax (Rs. 4,306.22/-).
17. Thereafter, vide demand letter dated 21.02.2017 the respondent no. 1 raised the demand which was due at time of possession. Vide demand letter the respondent had imposed several charges like labour cess, legal charges, meter charges thereby reflecting the total balance amount to be Rs. 71,23,517.43/-. It is further to note that out of the booking advance amount of Rs. 1,00,000/-, Rs. 95,693.7/- was adjusted towards unit instalment while Rs. 4,306.22/- was adjusted towards service tax.
18. The complainant expressed grievance that the total cost of the unit was promised to be Rs. 67,58,879/- which is evident from annexure P/1 annexed with the complaint. Subsequently, the respondent no. 1 unilaterally increased the cost to ₹71,23,517.43/- by imposing additional charges including labour cess, legal charges, meter charges, etc., at the stage of possession demand without prior agreement or basis in any contractual document.
19. The complainant, aggrieved by the unilateral cost escalation and arbitrary demands, expressed his unwillingness to proceed further and withdrew from the project by serving a legal notice dated 06.09.2019.
20. Upon perusal of the documents on record, the authority observes that the complainant has made a payment of Rs.1,00,000/- to the respondent towards booking amount and the respondent has also admitted payment of the same in the demand letter dated 21.02.2017 raised by the respondent. However, the respondent has failed to issue any receipt w.r.t to the payment made by the complainant-allottee. The respondent upon receipt of the booking amount has failed to issue any allotment letter in favour of the





complainant allotting a unit in the said project despite receiving the said amount from the complainant. Moreover, BBA was not executed *inter se* parties. It is beyond the imagination of the authority as to why the respondent has forfeited the booking amount paid by the complainant without even fulfilling the obligations cast upon it and in absence of any application form/allotment letter/BBA.

21. In the absence of any executed BBA or allotment letter, and without fulfilling statutory obligations mandated under the Real Estate (Regulation and Development) Act, 2016, the respondent had no legal authority to forfeit or retain any part of the amount received from the complainant. The principle of unjust enrichment squarely applies in this case.
22. In view of the reasons stated above, the respondent was not within its right to retain amount received from the complainant. Thus, the complainant is entitled to get refund of the entire amount paid by him. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 1,00,000/- within a period of 90 days from this order.

**G. Directions of the Authority**


23. 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 respondents are directed to refund the paid-up amount of Rs.1,00,000/- received by it from the complainant within 90 days from the date of this order.
  - ii. In the event of non-compliance within the prescribed period, the respondent shall be liable to pay interest on the refundable amount at the rate stipulated under the provisions of the Real Estate (Regulation



and Development) Act, 2016, i.e., @ 11.10% p.a. calculated from the date of expiry of the 90-day period until the date of actual realization of the amount.

24. Complaint stands disposed of.
25. File be consigned to registry.

**Dated: 06.03.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

